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Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 5*1 J51 TAX EXEMPTION AND TAX ABATEMENT

§5-09 Additional Documentation for Certain Alterations or Improvements.

Applications for alterations requiring a new or amended Certificate of Occupancy must include: (a) PW-1, PW-1A, PW-1B and Initial Work Permits; and (b) final Certificate of Occupancy; (c) such additional documentation as may be applicable or re- quested.

The following major capital improvements require the approval of designated agencies on the forms indicated below, and such additional documentation as the Office shall require. The forms listed herein may be revised or added to by the Department of Buildings, in which case the Office will require the forms as revised. If a Borough Office was not using any of the referenced forms when documentation was obtained, the Office may require the forms then in effect or as listed in the prior Rules and Regulations.

(a) **Asbestos abatement.**

(1) Asbestos Inspection Report (ACP-7) or Asbestos Removal Plan.

(b) **Adequate wiring, new wiring or new service.**

(1) Certificate of Electrical Inspection (Form BEC 16A, DOB) or contractor's affidavit if the Certificate is not applicable.

(c) **Boiler/burners: boiler and oil burner replacement.**

(1) Notice of Proposed Steam or Hot Water Boiler Installation for boilers serving 6 units or more and over 350,000

BTUs (B form 900A signed by a boiler inspector, DOB); and

(2) Initial Work Permit or PW-2 (DOB); and

(3) For boilers with a capacity of 350,000 BTUs or more, approved Application for Certificate of Operation (APC 5-0, stamped) or Certificate of Registration (APC 501), (Bureau of Air, Noise and Hazardous Materials, DEP); and

(4) Certificate of Electrical Inspection (Form BEC 16A, for Bulletin 8, Bureau of Electrical Control, DOB) or contractor's affidavit if the Certificate is not applicable (e.g., if boiler only); and

(5) Certificate of Approval for Oil Burning Installation (B Form 16A, Sign-off, DOB).

(d) **Boiler/burners: boiler and gas burner or boiler and combination gas and oil burner.**

(1) Schedule B Plumbing (PW-1B) and/or Notice of Proposed Steam or Hot Water Boiler I installation (B form 900A signed by a boiler inspector) (DOB); and

(2) Initial Work Permit or PW-2 (DOB); and

(3) For boilers with a capacity of 350,000 BTUs or more, approved Application for Certificate of Operation (APC 5-0, stamped) or Certificate of Registration (APC 501), (Bureau of Air, Noise and Hazardous Materials, DEP); and

(4) Certificate of Electrical Inspection (Form BEC 16A, for Bulletin 8, Bureau of Electrical Control, DOB) or contractor's affidavit if the Certificate is not applicable.

(e) **Boiler/burners: boiler only.**

(1) If burner is oil-fired, documents (1) through (5) in paragraph (c) above; or

(2) If burner is gas-fired, documents (1) through (4) of paragraph (d) above; or

(3) If burner is gas- and oil-fired, documents (1) through (4) of paragraph (d) above.

(f) **Boiler/burners: burner upgrading.**

(1) Approved Application for Certificate of Operation (APC 5-0, stamped, Bureau of Air, Noise and Hazardous Materials, DEP).

(g) **Boiler/burners: new central heating system.**

(1) Plan/Work Approval Application with Schedule C Heating & Combustion Equipment for oil or Schedule B Plumbing for gas (PW-1 with PW-1C or PW-1B), or computer printout showing scope of work (DOB); and

(2) Initial Work Permit or PW-2 (DOB); and

(3) Certificate of Electrical Inspection (Form BEC 16A, for Bulletin 8, Bureau of Electrical Control, DOB) or contractor's affidavit if the Certificate is not applicable; and

(4) Approved Application for Certificate of Operation (APC 5-0, stamped, Bureau Air, Noise and Hazardous Materials, DEP); and

(5) Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(h) **Boiler enclosure.**

(1) Initial Work Permit or PW-2 (DOB); and

(2) Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(i) **Chimney.**

(1) Initial Work Permit or PW-2 (DOB); and

(2) Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(j) **Compactor: conversions to central and upgrading of incinerators.**

(1) Initial Work Permit or PW-2 (DOB); and

(2) Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(3) For replacement compactor, submit affidavit attesting to the replacement.

(k) **Compactor: new or refuse chute.**

(1) Initial Work Permit or PW-2 (DOB); and

(2) Computer print-out showing plumbing sign-off or B Form 505 (DOB) or Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(l) **Deleading (removal of lead paint).**

(1) Violation Notice, Approved Contract and Violation Dismissal (Department of Health)

(m) **Elevator installation: replacement or upgrading (except replacement of hoist cables).**

(1) Approved Elevator application/Permit (ELV-1, DOB); and

(2) Sign-off by a DOB inspector (Form 73), or a stamped Elevator Inspection/Test Report by Approved Private Elevator Inspection Agency (ELV-3, DOB); and

(n) **Fire escapes.**

(1) Initial Work Permit or PW-2 (DOB); and

(2) Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(o) **Hot water heater or hot water tank.**

(1) Plan/Work Approval Application with Schedule B Plumbing (PW-1 with PW-1B), or computer printout showing scope of work (DOB); and

(2) Initial Work Permit or PW-2 (DOB); and

(3) Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(4) For boilers with a capacity of 350,000 BTUs or more, approved Application for Certificate of Operation (APC 5-0, stamped) or Certificate of Registration (APC 501), (Bureau of Air, Noise and Hazardous Materials, DEP).

(p) **Landmarks preservation work permit.**

(1) Permit for Minor Work or Certificate of Appropriateness as applicable and Notice of Compliance (Landmarks Preservation Commission); and

(2) Description of Landmarks Preservation work listed on or attached to the R-2 form available from the J-51 Office.

(q) **Oil tank installation.**

(1) Plan/Work Approval Application with Schedule C Heating & Combustion Equipment (PW-1 with PW-1C), or computer printout showing scope of work (DOB); and

(2) Initial Work Permit or PW-2 (DOB); and

(3) Certificate of Approval for Oil Burning Installation (B Form 16A, Sign-off, DOB).

(r) **Piping: gas.**

(1) Plan/Work Approval Application with Schedule B Plumbing (PW-1 with PW-1B) or computer printout showing scope of work (DOB); and

(2) Initial Work Permit or PW-2 (DOB); and

(3) Computer printout showing plumbing sign-off or B Form 505 (DOB); and

(4) Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(s) **Piping: waste and vent.**

(1) Plan/Work Approval Application with Schedule B Plumbing (PW-1 with PW-1B) or computer printout showing scope of work, (DOB); and

(2) Initial Work Permit or PW-2 (DOB); and

(3) Computer printout showing plumbing sign-off or B Form 505 or Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(t) **Piping: water mains and risers.**

(1) Plan/Work Approval Application with Schedule B (PW-1 with PW-1B) or computer printout showing scope of work, (DOB); and

(2) Initial Work Permit or PW-2 (DOB); and

(3) Computer printout showing plumbing sign-off or B Form 505 (DOB) or Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(u) **Sealing dumbwaiters.**

(1) Initial Work Permit or PW-2 or Plan/Work Approval Application or computer printout showing scope of work (PW-1, DOB); and

(2) Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(v) **Sewer (street connection).**

(1) Street Opening Permit from the Bureau of Sewers (DEP) or Bureau of Highways (Department of Transportation) as applicable.

(w) **Sprinkler (new or relocated) plumbing and drainage.**

(1) Plan/Work Approval Application with Schedule B Plumbing (PW-1 with PW-1B) or computer printout showing scope of work, (DOB); and

(2) Initial Work Permit or PW-2 (DOB); and

(3) Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(x) **Standpipes.**

(1) Plan/Work Approval (PW-1) or computer printout showing scope of work, (DOB); and

(2) Initial Work Permit or PW-2 (DOB); and

(3) Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

(y) **Structural items not physically verifiable.**

(1) Affidavit from an architect or engineer specifying the nature, quantity and location of work done (e.g. number of floor joists installed, cubic yards of structural concrete used, pounds of structural steel used, etc.). In addition, length, size and placement of steel beams may be required. Photographs of new floor joists in place are recommended.

(z) **Water service (street connection).**

(1) Street-Opening Permit (Bureau of Highways, DOT)

(aa) **New water storage tank (no permit required for replacement, submit affidavit attesting to replacement).**

(1) Plan/Work Approval Application with Schedule B Plumbing (PW-1 with PW-1B) or computer printout showing scope of work DOB); and

(2) Initial Work Permit or PW-2 (DOB); and

(3) Letter of Completion for DIR. 14 on work done pursuant to permit or computer printout showing the sign-off date (DOB).

HISTORICAL NOTE

Section added City Record Jan. 27, 1998 eff. Feb. 26, 1998. [See T28 §5-01 Note 1]

Subd. (a) amended City Record Jan. 8, 1999 §4, eff. Feb. 7, 1999. [See T28 §5-02 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Jan. 27, 1998 eff. Feb. 26, 1998. Note: Statement of Basis and Purpose. The Act authorizes HPD to promulgate Rules governing the administration of the program. The proposed changes to the rules (i) bring the rules into conformance with amendments to the Act which became effective on June 15, 1993, (ii) provide procedures necessary to implement these amendments, (iii) further clarify implementation of the Act, (iv) provide modest increases to the allowances for certain items on the Itemized Cost Breakdown Schedule where warranted by inflation and (v) revise fees to place a penalty on uncollectible checks and charge a reasonable fee for declaratory rulings.

Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 5*1 J51 TAX EXEMPTION AND TAX ABATEMENT

§5-10 Neighborhood Preservation Program Areas.

AREAS IN THE COUNTY OF BRONX:

MOTT HAVEN: The area bounded by East 159th Street; Third Avenue; East 161st Street; Prospect Avenue; East 149th Street; Jackson Avenue; Bruckner Expressway; Major Deegan Expressway; Morris Avenue; East 149th Street and Park Avenue.

ALDUS GREEN: The area bounded by East 169th Street; East 167th Street; Westchester Avenue; Sheridan Expressway; Longfellow Avenue; Randall Avenue; Tiffany Street; Longwood Avenue; Bruckner Expressway; East 149th Street; and Prospect Avenue.

MORRISANIA: The area bounded by Cross Bronx Expressway; Park Avenue; East 174th Street; Washington Avenue; Cross Bronx Expressway; Arthur Avenue; Crotona Park North; Waterloo Place; East 175th Street; Southern Boulevard; Cross Bronx Expressway; Sheridan Expressway; East 167th Street; East 169th Street; Prospect Avenue; East 161st Street; Third Avenue; East 159th Street; Park Avenue; and Webster Avenue.

HIGHBRIDGE-CONCOURSE: The area bounded by Washington Bridge-Cross Bronx Expressway; Webster Avenue; Park Avenue; East 149th Street; and the Harlem River.

WEST TREMONT: The area bounded by West Fordham Road; East Fordham Road; Webster Avenue; Cross Bronx Expressway; George Washington Bridge; and the Harlem River.

BELMONT-BRONX PARK SOUTH: The area bounded by Southern Boulevard; Bronx Park South; Boston Road; East 180th Street; Bronx River Parkway; Cross Bronx Expressway; Crotona Parkway; East 175th Street; Waterloo Place; Crotona Park North; Arthur Avenue; Cross Bronx Expressway; Washington Avenue; East 174th Street; Park Avenue; Cross Bronx Expressway; and Webster Avenue.

KINGSBRIDGE: The area bounded by Van Cortlandt Park South; West Gun Hill Road; Jerome Avenue; Bainbridge Avenue; East 211th Street and its prolongation; Conrail right of way; Bedford Park Boulevard; Webster Avenue; East Fordham Road; West Fordham Road; the Harlem River; Marble Hill Avenue; West 230th Street; Riverdale Avenue; Greystone Avenue; Waldo Avenue; Manhattan College Parkway; and Broadway.

SOUND VIEW: The area bounded by the Cross Bronx Expressway; Bronx River Parkway; East Tremont Avenue; White Plains Road; Randall Avenue; Olmstead Avenue; Lacombe Avenue; Westchester Creek; East River; Bronx River; Westchester Avenue; and Sheridan Expressway.

PELHAM PARKWAY: The area bounded by Adee Avenue; Mathews Avenue; Williamsbridge Road; Pelham Parkway South; Yates Avenue; Lydig Avenue; Williamsbridge Road; Neil Avenue; Bogart Avenue; East Tremont Avenue; Bronx River Parkway; and Bronx Park East.

AREAS IN THE COUNTY OF KINGS (BROOKLYN):

WILLIAMSBURG: The area bounded by Metropolitan Avenue; Union Avenue; Conselyea Street; Wood Point Road; Frost Street; Morgan Avenue; Meserole Street; Bushwick Avenue; Flushing Avenue; Union Avenue; Division Avenue; and the East River.

BEDFORD-STUYVESANT: The area bounded by Myrtle Avenue; Broadway; Ralph Avenue; Atlantic Avenue; and Nostrand Avenue.

BUSHWICK: The area bounded by Flushing Avenue; Cypress Avenue; Menahan Street; St. Nicholas Avenue; Gates Avenue; Wyckoff Avenue; Eldert Street; Irving Avenue; Chauncey Street; Central Avenue; property line of the Cemetery of the Evergreens; Conway Street; and Broadway.

EAST-NEW YORK: The area bounded by Jamaica Avenue; Elderts Lane; Atlantic Avenue; Fountain Avenue; New Lots Avenue; and Sheffield Avenue.

SOUTH BROOKLYN (A): The area bounded by The Buttermilk Channel; Congress Street; Hicks Street; Hamilton-Gowanus Parkway; the Gowanus Canal; and the Gowanus Bay.

SOUTH BROOKLYN (B): The area bounded by Fourth Avenue; Pacific Street; Flatbush Avenue; Sixth Avenue; and 15th Street.

SUNSET PARK: The area bounded by the Upper New York Bay; the Gowanus Bay; 15th Street; Prospect Park S.W.; Coney Island Avenue; Caton Avenue; Fort Hamilton Parkway; 37th Street; Eighth Avenue; Long Island Railroad right of way; Gowanus Expressway; 64th Street; Shore Parkway; and the Long Island Railroad right of way.

CROWN HEIGHTS: The area bounded by Pacific Street; Vanderbilt Avenue; Atlantic Avenue; Ralph Avenue; East New York Avenue; Utica Avenue; Winthrop Street; Flatbush Avenue; Parkside Avenue; Ocean Avenue; Empire Boulevard; Washington Avenue; Eastern Parkway; Grand Army Plaza; and Flatbush Avenue.

CONEY ISLAND: The area bounded by the Coney Island Creek; Stillwell Avenue; the Boardwalk West; and West 37th Street.

FLATBUSH: The area bounded by Parkside Avenue; Flatbush Avenue; Winthrop Street; New York Avenue; Clarendon Road; East 31st Street; Newkirk Avenue; Nostrand Avenue; Foster Avenue; New York Avenue; Avenue H;

Flatbush Avenue; Avenue K; and Coney Island Avenue.

EAST FLATBUSH: The area bounded by Clarkson Avenue; Utica Avenue; East New York Avenue; East 98th Street; Church Avenue; Ralph Avenue; Clarendon Road; and New York Avenue.

BROWNSVILLE: The area bounded by Broadway; Rockaway Avenue; Atlantic Avenue; East New York Avenue; Christopher Avenue; Glenmore Avenue; Powell Street; Sutter Avenue; Van Sinderen Avenue; Dumont Avenue; Junius Street; Livonia Avenue; Stone Avenue; Linden Boulevard; Rockaway Avenue; Hegeman Avenue; Hopkinson Avenue; Riverdale Avenue; East 98th Street; East New York Avenue; Ralph Avenue; Atlantic Avenue; and Saratoga Avenue.

AREAS IN THE COUNTY OF NEW YORK (MANHATTAN):

LOWER EAST SIDE: The area bounded by East 14th Street; the East River; Delancey Street; Chrystie Street; East Houston Street; and Avenue A.

MANHATTAN VALLEY: The area bounded by Cathedral Parkway (West 110th Street); Central Park West; West 100th Street; and Broadway.

EAST HARLEM: The area bounded by East 142nd Street; the Harlem River; East 96th Street; and Fifth Avenue.

CENTRAL HARLEM: The area bounded by West 145th Street; the Harlem River; Fifth Avenue; Cathedral Parkway (West 110th Street); Morningside Avenue; West 123rd Street; St. Nicholas Avenue; West 141st Street; and Bradhurst Avenue.

HAMILTON HEIGHTS: The area bounded by West 155th Street; Bradhurst Avenue; West 141st Street; Convent Avenue; West 140th Street; Amsterdam Avenue; West 133rd Street; and Riverside Drive.

WASHINGTON HEIGHTS: The area bounded by the Harlem River; Teunissen Place; West 230th Street; Marble Hill Lane; the Harlem River; West 155th Street; and the Hudson River.

AREAS IN THE COUNTY OF QUEENS:

HALLETS POINTS: The area bounded by the East River-East Channel, Hallets Cove and Pot Cove; Hoyt Avenue South; 21st Street; 31st Avenue; Vernon Boulevard; and 35th Avenue.

JACKSON HEIGHTS-CORONA-EAST ELMHURST: The area bounded by Grand Central Parkway; Long Island Railroad right of way; 110th Street; Corona Avenue; Long Island Expressway; Junction Boulevard; Roosevelt Avenue; and Brooklyn-Queens Expressway East.

RIDGEWOOD: The area bounded by Grand Avenue; Rust Street; 59th Drive; 60th Street; Bleecker Street; Forest Avenue; Myrtle Avenue; the Long Island Railroad right of way; and Queens-Brooklyn boundary line.

JAMAICA SOUTH: The area bounded by the Long Island Railroad right of way; New York Boulevard; Southern Parkway (Sunrise Highway) and Van Wyck Expressway.

FAR ROCKAWAY: The area bounded by the Jamaica Bay-Mott Basin; Queens-Nassau boundary line; Far Rockaway Beach; Beach 32nd Street; and Norton Drive.

AREAS IN THE COUNTY OF RICHMOND (STATEN ISLAND):

PORT RICHMOND: The area bounded by the Kill Van Kull; Jewett Avenue and its prolongation; Forest Avenue; and the Willow Brook Expressway.

NEW BRIGHTON: The area bounded by the Kill Van Kull; Westervelt Avenue; Brook Street; Castleton Avenue; and North Randall Avenue and its prolongation.

STAPLETON: The area bounded by Victory Boulevard; the Upper New York Bay; Vanderbilt Avenue; Van Duzer Street; Cebra Avenue; and St. Pauls Avenue.

FOX HILLS: The area bounded by Vandervilt Avenue; the Upper New York Bay; the Staten Island Rapid Transit Railway right of way; and the Staten Island Expressway.

HISTORICAL NOTE

Section added City Record Jan. 27, 1998 eff. Feb. 26, 1998. [See T28 §5-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Jan. 27, 1998 eff. Feb. 26, 1998. Note: Statement of Basis and Purpose. The Act authorizes HPD to promulgate Rules governing the administration of the program. The proposed changes to the rules (i) bring the rules into conformance with amendments to the Act which became effective on June 15, 1993, (ii) provide procedures necessary to implement these amendments, (iii) further clarify implementation of the Act, (iv) provide modest increases to the allowances for certain items on the Itemized Cost Breakdown Schedule where warranted by inflation and (v) revise fees to place a penalty on uncollectible checks and charge a reasonable fee for declaratory rulings.

Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 6 TAX EXEMPTION PURSUANT TO §421-A OF THE REAL PROPERTY TAX LAW AND §11-245 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

§6-01 Scope; Construction; Definitions.

(a) **Scope of rules.** This chapter governs the grant of tax exemption pursuant to §421-a of the Real Property Tax Law of the State of New York, including the procedure for filing an application for tax exemption and the issuance of Preliminary and Final Certificates of Eligibility by the Office of Development of the Department of Housing Preservation and Development. Upon issuance of the Certificate of Eligibility, the calculation and implementation of the tax exemption are under the jurisdiction of the Department of Finance.

(b) **Construction.** This chapter is to be construed to secure the effectuation of the purposes of §421-a of the Real Property Tax Law and §11-245 of the Administrative Code and in accordance with the general principle of law that exemption statutes are to be strictly construed against the taxpayer applying for the exemption.

(c) **Definitions.** As used in this chapter, the following terms shall have the following meanings:

Act. "Act" shall mean §421-a of the Real Property Tax Law, as amended.

Adjusted monthly rent. "Adjusted monthly rent" shall mean the rent payable per month as provided in the first effective lease upon initial occupancy of a rental dwelling unit of a multiple dwelling after completion of construction assisted by exemption under the Act, not inclusive of charges for parking or electricity, gas, cooking fuel and other utilities other than heat and hot water.

Administrative Code. "Administrative Code" shall mean the Administrative Code of the City of New York.

Affordable units. "Affordable units" shall mean units created and rented in accordance with §6-08 of this chapter.

Aggregate floor area. "Aggregate floor area" shall mean the sum of the gross horizontal areas of all of the floors of a dwelling or dwellings and accessory structures on a lot measured from the exterior faces of exterior walls or from the center line of party walls.

Annual schedule of reasonable costs. "Annual schedule of reasonable costs" shall mean the amounts determined by the Department to be reasonable for the maintenance and operation of a multiple dwelling in such categories and classifications attached to these rules as Appendix A.

Certificate of Eviction. "Certificate of Eviction" shall mean a certificate of eviction granted by the city rent agency pursuant to §26-408 of the Administrative Code.

Commencement of construction. "Commencement of construction" shall mean the date upon which excavation and the construction of initial footings and foundations commences in good faith. An architect or professional engineer licensed in the State of New York shall certify that such construction commenced on such date and that such construction was thereafter completed without undue delay. Notwithstanding the foregoing, construction shall not commence prior to issuance by the Department of Buildings of either (i) a building or alteration permit for the construction of an entirely new multiple dwelling, the footprint of which consisted entirely of vacant and unimproved land upon such date, or (ii) an alteration permit for the construction of a new multiple dwelling above, and on an entirely separate tax lot from, one or more existing structures which are to be retained, provided that only the floor area attributable to the new multiple dwelling, and any eligible commercial, community facility or accessory use space within such new structure shall be eligible for benefits under the Act. Any such new multiple dwelling shall comply with all other applicable statutory and regulatory requirements.

Commissioner. "Commissioner" shall mean the Commissioner of the Department of Housing Preservation and Development, or his or her designee, or the chief executive officer of any successor agency thereto authorized to administer these rules.

Completion of construction. "Completion of construction" shall mean the date upon which either a Temporary Certificate of Occupancy is issued for all residential areas in the multiple dwelling or a Permanent Certificate of Occupancy is issued for the entire building.

Construction. "Construction" shall mean the construction of a new building which is a Class A multiple dwelling.

Demolished. "Demolished" shall mean the total destruction of a building or structure by razing or otherwise.

Department. "Department" shall mean the Department of Housing Preservation and Development of the City of New York or any successor agency or department thereto.

Department of Buildings. "Department of Buildings" shall mean the Department of Buildings of the City of New York or any successor agency or department thereto.

Eligible debt-financed project. "Eligible debt-financed project" shall mean a project that may be encumbered by a lien or mortgage, where (A) such project is not obtaining low income housing tax credits pursuant to §42(b)(1)(A) of the Internal Revenue Code of 1986, as amended (nine percent (9%) reservation), (B) any lien or mortgage encumbering such project provides that it is expressly subject and subordinate to the Written Agreement entered into with the Department, and (C) the average household income of the units in such project does not exceed eighty percent (80%) of median income.

Floor area of commercial, community facilities, and accessory use space. "Floor area of commercial, community facilities, and accessory use space" shall mean the gross horizontal areas of all the floors or any portion thereof of a

multiple dwelling or dwellings and accessory structures or spaces on a lot measured from the exterior faces of exterior walls of commercial or community facilities or accessory uses as such uses are defined in the Zoning Resolution; (See Article 1, Chapter 2). Notwithstanding the foregoing, parking areas which are not part of the building such as uncovered outdoor parking areas and open space beneath a building (including access roads) shall not be considered accessory use space. Provided that, for properties for which a final certificate of eligibility is issued on or after November 3, 1995 accessory use space shall not include accessory parking space located not more than twenty-three feet above the curb level.

Geographic exclusion area. "Geographic exclusion area" shall mean that area of Manhattan described in §6-02(c)(10) of this chapter.

Hotel. "Hotel" shall mean (i) any Class B multiple dwelling, as such term is defined in the Multiple Dwelling Law, (ii) any structure or part thereof containing living or sleeping accommodations which is used or intended to be used for transient occupancy, (iii) any apartment hotel or transient hotel as defined in the Zoning Resolution, or (iv) any structure or part thereof which is used to provide short term rentals or owned or leased by an entity engaged in the business of providing short term rentals. For purposes of this definition, a lease, sublease, license or any other form of rental agreement for a period of less than six months shall be deemed to be a short term rental. Notwithstanding the foregoing, a structure or part thereof owned or leased by a not-for-profit corporation for the purpose of providing governmentally funded emergency housing shall not be considered a hotel for purposes of this chapter.

Low and moderate income. "Low and moderate income" shall mean a household income not exceeding 100 percent of median income. For purposes of this chapter, low income households shall be deemed to be those at 60 percent or less of median income and moderate income households shall be those between 60 and 100 percent of median income, provided, however, that the average household income in any group of affordable units shall not exceed 80 percent of median income.

Median income. "Median income" shall be calculated in accordance with the regulations of the United States Department of Housing and Urban Development governing eligibility for occupancy as a lower income family, by size of family, in the metropolitan statistical area, which includes the City of New York, for purposes of §8 of the United States Housing Act of 1937, as amended.

Multiple dwelling or building. "Multiple dwelling" or "building" shall mean a dwelling which is, or is to be, lawfully occupied as the residence or home of three or more families living independently of one another, whether individual dwelling units herein are rented or owned as a cooperative or condominium.

Negotiable Certificate. "Negotiable Certificate" shall mean a document issued by the Department which certifies that the bearer is entitled to the benefits of the Act for a specified number of units within the geographic exclusion area, provided that all program requirements have been met.

Office. "Office" shall mean the Office of Tax Incentive Programs of the New York City Department of Housing Preservation and Development or any successor thereto.

Prior assessed valuation. "Prior assessed valuation" shall mean the taxable assessed valuation in effect pursuant to §1805-(3) of the Real Property Tax Law, exclusive of any exemption, of a tax lot (land and improvements) during the tax year preceding the tax year of Commencement of Construction.

Program for the development of affordable housing. "Program for the development of affordable housing" shall mean housing which complies with the requirements of a grant, loan or subsidy from any federal, state or local agency or instrumentality to provide no less than twenty percent of its units as units affordable to and occupied by or affordable to and available for occupancy by individuals or families whose incomes do not exceed a specified limit and which has been approved by the commissioner pursuant to this chapter.

Public project. "Public project" shall mean a building developed with substantial governmental assistance or a building developed pursuant to a regulatory agreement with a Federal, state or local agency or instrumentality requiring the development of affordable housing.

Residential building. "Residential building" shall mean a structure or part thereof lawfully occupied in whole or part as the home, residence or sleeping place of one or more persons.

Room Count. "Room Count" shall be calculated in the following manner: Each dwelling unit with at least one room which either (i) contains no cooking facilities and measures at least one hundred and fifty (150) square feet, or (ii) contains cooking facilities and measures at least two hundred and thirty (230) square feet, shall count as two and one-half rooms. Every other room in the dwelling unit separated by either walls or doors, including bedrooms, shall count as an additional room, plus one-half room for a balcony, provided, however, that kitchens, cooking facilities, bathrooms or corridors shall not count as an additional room. To be included in the calculation of "room count," a room must meet the requirements of habitability as provided in Administrative Code §§27-746 and 27-751.

Single room occupancy. "Single room occupancy" shall mean occupancy in a multiple dwelling by one or more persons of a room or rooms either without a lawful kitchen or kitchenette or without a lawful bathroom or without separate means of egress for occupants thereof to the public areas of the multiple dwelling.

Substantial governmental assistance. "Substantial governmental assistance" shall mean grants, loans or subsidies provided to any building or buildings on the same zoning lot or, if only a portion of such zoning lot is being granted benefits pursuant to the Act, to any building or buildings on such portion of such zoning lot, by any federal, state or local agency or instrumentality pursuant to a program for the development of affordable housing, provided that (1) as determined by the commissioner, each of the buildings on such zoning lot or portion thereof is part of the same project, (2) each of the buildings on such zoning lot or portion thereof is part of the same application for benefits pursuant to the Act, (3) the periods of construction and final real property tax exemption benefits granted pursuant to the Act for all of the buildings on such zoning lot or portion thereof being granted benefits pursuant to the Act shall commence simultaneously, and (4) no final real property tax exemption benefits shall be granted pursuant to the Act for any buildings on such zoning lot or any portion thereof being granted benefits pursuant to the Act until receipt of a certificate of occupancy or a temporary certificate of occupancy for the residential portions of the building or buildings on such zoning lot containing the units affordable to and occupied by or affordable to and available for occupancy by individuals or families whose incomes do not exceed a specified amount. Such subsidies may include allocations of low income housing tax credits and, in the discretion of the Department, below market sales or sales subject to evaporating purchase money mortgages by a federal, state or local agency or instrumentality, but shall not include permanent financing provided through the State of New York Mortgage Agency, purchase money mortgages, or mortgage insurance.

Written Agreement. "Written Agreement" shall mean a document issued by the Department pursuant to §6-08(l) of the Rules.

Zoning lot. "Zoning lot" shall mean a "zoning lot" as defined in §12-10 of the Zoning Resolution.

Zoning Resolution. "Zoning Resolution" shall mean the Zoning Resolution of the City of New York, as amended.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subds. (a), (b), (c) in part, amended City Record May 6, 1994 eff. June 5 1994.

Subd. (c) Commencement of construction definition amended City Record July 8, 1996 eff. Aug.

7, 1996. [See Note 1]

Subd. (c) Eligible debt-financed project definition added City Record July 30, 1998 §1, eff. Aug. 30, 1998. [See Note 2]

Subd. (c) Floor area of commercial, community facilities, and accessory use space definition amended City Record July 8, 1996 eff. Aug. 7, 1996. [See Note 1]

Subd. (c) Hotel definition amended City Record Apr. 21, 2005 §2, eff. May 21, 2005. [See T28 §5-03 Note 4]

Subd. (c) Hotel definition amended City Record Dec. 10, 2004 §2, eff. Jan. 9, 2005. [See Note 3]

Subd. (c) Low and moderate income definition amended City Record July 30, 1998 §2, eff. Aug. 30, 1998. [See Note 2]

Subd. (c) Median income definition added City Record July 30, 1998 §3, eff. Aug. 30, 1998. [See Note 2]

Subd. (c) Negotiable Certificate definition amended City Record July 18, 2003 §1, eff. Aug. 17, 2003. [See T28 §6-02 Note 2]

Subd. (c) Negotiable certificate definition amended City Record July 30, 1998 §4, eff. Aug. 30, 1998. [See Note 2]

Subd. (c) Program . . . affordable housing added City Record May 20, 2008 §2, eff. June 19, 2008. [See T28 §6-09 Note 1]

Subd. (c) Public project definition added City Record July 5, 2007 §1, eff. Aug. 4, 2007. [See Note 4]

Subd. (c) Room Count definition amended City Record July 18, 2003 §1, eff. Aug. 17, 2003. [See T28 §6-02 Note 2]

Subd. (c) Substantial government assistance amended City Record May 20, 2008 §1, eff. June 19, 2008. [See T28 §6-09 Note 1]

Subd. (c) Written agreement definition added City Record July 30, 1998 §5, eff. Aug. 30, 1998. [See Note 2]

Subd. (c) Zoning lot added City Record May 20, 2008 §2, eff. June 19, 2008. [See T28 §6-09 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 8, 1996:

The rules are being promulgated pursuant to City Charter Section 1802(6) and in order to comply with the City Administrative Procedure Act. Section 421-a(3) of the Real Property Tax Law authorizes HPD to issue rules for the program. The amended rules deal with application deadlines and fees for declaratory rulings, conform the Rules to Chapter 692 of the Laws of 1995 and offer a new definition of "Commencement of Construction".

2. Statement of Basis and Purpose in City Record July 30, 1998: Section 421-a of the Real Property Tax Law authorizes the Department of Housing, Preservation and Development to promulgate rules governing tax exemption. The amended Rules note changes in the low income housing production aspect of 421-a.

3. Statement of Basis and Purpose in City Record Dec. 10, 2004: Real Property Tax Law ("RPTL") §§421-a and 421-g both expressly state that hotels are not eligible for the respective tax exemption benefits. However, neither statute defines "hotel." Similarly, Administrative Code §11-243(r) provides for the withdrawal of J-51 benefits if a structure becomes operated exclusively for hotel use. The legislative history of RPTL §421-a indicates that the statute was enacted to address the housing shortage in New York City by encouraging new construction of safe and decent dwelling units. In other words, the statute was intended to encourage the new construction of rent regulated apartments for permanent residency, and it specifically excluded hotels. RPTL §489, as implemented by Administrative Code §11-243, was intended to encourage the rehabilitation of permanent housing. RPTL §421-g similarly was intended to encourage the conversion of nonresidential buildings to residential buildings for permanent residents in Lower Manhattan. Since none of the operative statutes defines "hotel", HPD has relied upon regulatory definitions that have not always been consistent. Furthermore, the term "hotel" is defined in a different manner in other sources of legal authority such as the Zoning Resolution, the Building Code and the Multiple Dwelling Law. The proposed amendments are intended to promote legislative intent by incorporating various types of transient occupancy into the regulatory definition of "hotel". Furthermore, the amendments will accomplish the added purpose of conforming the regulations that apply to the RPTL §421-a, RPTL §421-g and RPTL §489 (J-51) programs. The amendment to the definition of "Commencement of Conversion" contained in the 421-g rules conforms the provision to the extender enacted in RPTL §421-g by Chapter 261 of the Laws of 2000. The amendment to 28 RCNY §6-02(c)(7) conforms that provision to the local law provision contained in Administrative Code §11-245(c). In Local Law 42 of 2003, the City Council authorized projects in Manhattan located in FAR 15 zones to get 421-a benefits if they are commenced prior to December 1, 2007.

4. Statement of Basis and Purpose in City Record July 5, 2007: Section 421-a of the Real Property Tax Law has provided tax benefits for the construction of new residential buildings in the City of New York since 1971. Under Real Property Tax Law §421-a, new multiple dwellings that meet all of the statutory and regulatory requirements are eligible for a partial tax exemption that consists of up to three years of construction period benefits and 10, 15, 20 or 25 years of partial tax exemption after construction. One hundred percent of increases in assessed valuation are exempt from taxation during the construction period, and the regular benefit period does not commence until after the entire construction period benefits term has run. Currently, HPD cannot grant extensions for the filing of any applications for a Preliminary Certificate of Eligibility and can only grant extensions for the filing of applications for a Final Certificate of Eligibility to projects developed with substantial governmental assistance. HPD may currently grant extensions for the completion of applications for Final Certificates of Eligibility for good cause shown. For purposes of the application filing and completion deadlines, the rule amendments add a new definition of public project to incorporate buildings developed with substantial governmental assistance as well as buildings developed pursuant to a regulatory agreement with a Federal, state or local agency or instrumentality requiring the development of affordable housing. With this amendment, developments like inclusionary housing projects that do not get governmental grants, loans or subsidies, would be eligible for extensions that apply to other governmentally assisted projects. The rule amendments allow HPD to grant filing extensions of up to four years to such public projects for Preliminary Certificate of Eligibility and Final Certificate of Eligibility applications. These amendments are intended to avoid fiscal disasters at such projects and the attendant drain on public funds if their representatives fail to meet the appropriate deadlines. The rule amendments also

allow HPD to grant filing extensions for Final Certificate of Eligibility applications of up to two years in the case of a building that is not a public project where the applicant has established that it reasonably relied upon the representations of third parties that the benefits of the Act would be available. HPD would retain the discretion for good cause shown to grant completion extensions for Final Certificate of Eligibility applications for all projects. The rule amendments also provide that Final Certificate of Eligibility applications must include evidence satisfactory to the Office of Tax Incentive Programs in a form approved by the Department that a rental building owner has registered the building and any occupied units with DHCR and, if the building is not fully occupied, an affidavit stating that the owner shall register the remaining units as they become occupied and submit proof of such registration upon the earlier to occur of occupancy of the last remaining unit or one year from the date of Completion of Construction. These provisions are intended to account for the fact that DHCR requires building owners to register rental units within 90 days of occupancy and not all RPTL §421-a rental buildings are rented up at the time that HPD is ready to issue a Final Certificate of Eligibility. By requiring such owners to provide proof of registration within a fixed time frame, HPD can ensure that the applicant is complying with RPTL §421-a's rent registration requirements.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 6 TAX EXEMPTION PURSUANT TO §421-A OF THE REAL PROPERTY TAX LAW AND §11-245 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

§6-02 Eligibility.

(a) **Eligibility.** Partial tax exemption will only be granted to multiple dwellings which are eligible projects and which meet all the eligibility requirements of this section.

(b) **Eligible projects.** The tax benefits of the Act are available to:

(1) new multiple dwellings located outside the geographic exclusion area containing not less than three (3) dwelling units provided construction is commenced before December 31, 2007;

(2) new multiple dwellings located in the geographic exclusion area if the commencement of construction occurred on or before November 29, 1985 and if such building is completed no later than December 31, 2000 and only to the extent the building receives a permanent Certificate of Occupancy indicating that it was built pursuant to architectural, structural, and mechanical plans approved by the Department of Buildings on or before November 29, 1985; and

(3) new multiple dwellings located in the geographic exclusion area if the commencement of construction occurred after November 29, 1985 and before December 28, 2010, only if construction is carried out with substantial governmental assistance or if affordable units are created in accordance with the requirements of §6-08 of this chapter.

(c) **Ineligible projects.** The tax benefits of the Act are not available to:

(1) Any building or structure which is receiving tax exemption and/or tax abatement under any other provision of

state or local law for new construction, conversion or rehabilitation, including but not limited to, §§488-a and 489 of the Real Property Tax Law and §§11-243 and 11-244 of the Administrative Code, and Article 16 of the General Municipal Law; provided however, that if a building or structure is divided into condominium units, and a condominium unit within the building is entitled to receive permanent tax exemption under any statute under which exemption is granted based on the exempt status of the owner, the granting of such an exemption shall not prevent the remaining condominium unit or units from receiving §421-a exemption.

(2) Any multiple dwelling which results from the conversion or rehabilitation of any building or structure;

(3) Any building or portion thereof which after the completion of construction is used as a hotel, as that term is defined herein;

(4) Any building or portion thereof which after the completion of construction is used for single room occupancy, as that term is defined herein;

(5) Any multiple dwelling situated on land which is mapped as a public park provided, however, that this exclusion from eligibility for exemption shall not apply to any land which has been mapped as a public park but which, for a period of ten years or more after the date of such mapping, has not been acquired by the state or the city in which such land is located and with respect to which land the Department of Parks and Recreation has determined that such land is not required for public park purposes, and that such department has no intention of acquiring such land and that no funds have been allocated for such purpose;

(6) Any multiple dwelling situated on land which was utilized for ten or more consecutive years immediately prior to October first, nineteen hundred seventy-one as a "private park" as hereinafter defined. A private park is a privately owned zoning lot in a densely developed area having a minimum size of four thousand square feet, free of all developments and containing only trees, grass, benches, walkways and passive recreational facilities including structures incidental thereto which has been used and maintained during said period for such passive recreational activity by the general public without charge with the consent and participation of the owner thereof;

(7) Any multiple dwelling, or portion thereof, the construction of which commenced on or after November twenty-ninth, nineteen hundred eighty-five and which is located within any district in the county of New York where a maximum base floor area ratio, as that term is defined in the Zoning Resolution, of fifteen or greater was permitted as of right by provisions of such resolution in effect on April fourteenth, nineteen hundred eighty-two; provided, however, that this rule shall no longer be applicable to the extent to which such local law restriction is modified or repealed.

(8) Any multiple dwelling the footprint of which is located in whole or in part within any area in the county of New York designated by the Zoning Resolution in effect on the date of commencement of construction as either a manufacturing district or a mixed-use district except to the extent that such multiple dwellings in a mixed-use district could be constructed for residential purposes, as of right, pursuant to the Zoning Resolution, unless construction actually commenced prior to January first, nineteen hundred eighty-two; this restriction is in accordance with City policy of preservation of these districts for mainly non-residential purposes: provided, however, that this restriction shall not apply to multiple dwellings for which construction commenced after the effective date of these rules.

(9) For purposes of paragraphs (7) and (8) above, the obtaining of a variance or special permit to allow residential construction in a manufacturing or mixed-used district shall not render the newly constructed Class A multiple dwelling eligible for tax benefits under the Act. In addition, to the extent the zoning lot of a project includes any building or structure located in such non-eligible district that is not to be demolished, the partial tax exemption shall be reduced by an amount equal to the area of the portion of the zoning lot which is located in such ineligible area.

(10) Except for multiple dwellings qualifying for the benefits of the Act pursuant to §6-08 of this chapter:

(i) any project commenced, as that term is defined herein, after November 29, 1985 and before March 7, 2006

within the geographic exclusion area, bounded and described as follows: Beginning at the intersection of the bulkhead line in the Hudson River and 96th Street extended; thence easterly to 96th Street and continuing along 96th Street to its easterly terminus; thence easterly to the intersection of 96th Street extended and the bulkhead line in the East River; thence southerly along said bulkhead line to the intersection of said bulkhead line and 14th Street extended; thence westerly to 14th Street and continuing along 14th Street to Broadway; thence southerly along Broadway to Houston Street; thence westerly along Houston Street to Thompson Street; thence southerly along Thompson Street to Spring Street; thence westerly along Spring Street to Avenue of the Americas; thence northerly along Avenue of the Americas to Vandam Street; thence westerly along Vandam Street to Varick Street; thence northerly along Varick Street to Houston Street; thence westerly along Houston Street and continuing to its westerly terminus; thence westerly to the intersection of Houston Street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the intersection of said bulkhead line and 11th Avenue extended; thence northerly to 11th Avenue and continuing along 11th Avenue to 14th Street; thence easterly along 14th Street to 10th Avenue; thence northerly along 10th Avenue to 28th Street; thence easterly along 28th Street to 9th Avenue; thence northerly along 9th Avenue to 33rd Street; thence easterly along 33rd Street to 8th Avenue; thence northerly along 8th Avenue to 34th Street; thence easterly along 34th Street to 7th Avenue; thence northerly along 7th Avenue to 41st Street; thence westerly along 41st Street and continuing to its westerly terminus; thence westerly to the intersection of 41st Street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the place of beginning;

(ii) any project commenced, as that term is defined herein, on or after March 7, 2006 and before May 11, 2007 within the geographic exclusion area, bounded and described as follows: Beginning at the intersection of the bulkhead line in the Hudson River and 96th Street extended; thence easterly to 96th Street and continuing along 96th Street to its easterly terminus; thence easterly to the intersection of 96th Street extended and the bulkhead line in the East River; thence southerly along said bulkhead line to the intersection of said bulkhead line and 14th Street extended; thence westerly to 14th Street and continuing along 14th Street to Broadway; thence southerly along Broadway to Houston Street; thence westerly along Houston Street to Thompson Street; thence southerly along Thompson Street to Spring Street; thence westerly along Spring Street to Avenue of the Americas; thence northerly along Avenue of the Americas to Vandam Street; thence westerly along Vandam Street to Varick Street; thence northerly along Varick Street to Houston Street; thence westerly along Houston Street and continuing to its westerly terminus; thence westerly to the intersection of Houston Street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the intersection of said bulkhead line and 11th Avenue extended; thence northerly to 11th Avenue and continuing along 11th Avenue to 14th Street; thence easterly along 14th Street to 10th Avenue; thence northerly along 10th Avenue to 30th Street; thence westerly along 30th Street to 11th Avenue; thence northerly along 11th Avenue to 41st Street; thence westerly along 41st Street and continuing to its westerly terminus; thence westerly to the intersection of 41st Street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the place of beginning; or

(iii) any project commenced, as that term is defined herein, on or after May 11, 2007 and before July 1, 2008 within the geographic exclusion area, bounded and described as follows: Beginning at the intersection of the bulkhead line in the Hudson River and 96th Street extended; thence easterly to 96th Street and continuing along 96th Street to its easterly terminus; thence easterly to the intersection of 96th Street extended and the bulkhead line in the East River; thence southerly along said bulkhead line to the intersection of said bulkhead line and 14th Street extended; thence westerly to 14th Street and continuing along 14th Street to Broadway; thence southerly along Broadway to Houston Street; thence westerly along Houston Street to Thompson Street; thence southerly along Thompson Street to Spring Street; thence westerly along Spring Street to Avenue of the Americas; thence northerly along Avenue of the Americas to Vandam Street; thence westerly along Vandam Street to Varick Street; thence northerly along Varick Street to Houston Street; thence westerly along Houston Street and continuing to its westerly terminus; thence westerly to the intersection of Houston Street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the intersection of said bulkhead line and 30th Street extended; thence easterly along 30th Street to 11th Avenue; thence northerly along 11th Avenue to 41st Street; thence westerly along 41st Street and continuing to its westerly terminus; thence westerly to the intersection of 41st Street extended and the bulkhead line in the Hudson River;

thence northerly along said bulkhead line to the place of beginning; or

(iv) any project commenced on or after July 1, 2008 within the geographic exclusion area as defined pursuant to §6-09 of this chapter except as otherwise provided in such §6-09.

(d) **Duration of exemption.** Eligible buildings may receive a ten, fifteen, twenty or twenty-five year tax exemption, as described herein. In order to qualify for such benefits, the multiple dwelling must meet the eligibility requirements described below for each level of exemption.

(1) Only the ten year exemption is available to buildings located within the geographic exclusion area described in §6-02(c)(10), above, and such buildings shall be eligible to receive such benefits only if each building meets one of the following conditions: (i) construction is carried out with substantial governmental assistance, or

(ii) the Department has imposed a requirement or has certified pursuant to §6-08 herein that 20 percent (20%) of the units are affordable to persons of low and moderate income, or

(iii) pursuant to an agreement with the Department, in conformity with the requirements of §6-08 herein, housing units affordable to persons of low and moderate income are either newly constructed or substantially rehabilitated off-site.

(2) The ten year exemption is available to buildings located outside the geographic exclusion area but in Manhattan on tax lots south of or adjacent to either side of 110th Street, the construction of which commenced on or after July 1, 1985, except that the fifteen year exemption shall be available to such buildings if:

(i) construction is carried out with substantial governmental assistance; or

(ii) the Department has imposed a requirement or has certified pursuant to herein that 20 percent (20%) of the units are affordable to persons of low and moderate income.

(3) The fifteen year exemption is available to buildings located in the boroughs of the Bronx, Brooklyn, Queens, Staten Island and in Manhattan north of 110th Street, the construction of which commenced on or after July 1, 1985, unless such multiple dwellings are eligible for the twenty-five year exemption described in (5) below.

(4) The twenty year exemption is available in the borough of Manhattan for buildings on tax lots now existing or hereafter created south of or adjacent to either side of one hundred tenth street which commenced construction after July 1, 1992 and before December 28, 2010, only if:

(i) construction is carried out with substantial governmental assistance; or

(ii) the Department has imposed a requirement or has certified pursuant to §6-08 herein that 20 percent (20%) of the units are affordable to families of low and moderate income.

(5) The twenty-five year exemption is available to buildings located in the boroughs of the Bronx, Brooklyn, Queens, Staten Island or Manhattan north of 110th Street, the construction of which commenced on or after July 1, 1985, if the multiple dwelling:

(i) is located in one of the following areas:

(A) Neighborhood Preservation Program Areas as determined by the Department as of June 1, 1985, or

(B) Neighborhood Preservation Areas as determined by the New York City Planning Commission as of June 1, 1985, or

(C) an area eligible for mortgage insurance provided by the Rehabilitation Mortgage Insurance Corporation (REMIC) as of May 1, 1992, or

(D) an area receiving funding for a neighborhood preservation project pursuant to the Neighborhood Reinvestment Corporation Act (42 U.S.C. §180 et seq.) as of June 1, 1985, or

(ii) meets one of the following conditions:

(A) is constructed with substantial governmental assistance, or

(B) is a building where the Department has imposed a requirement or has certified that 20 percent (20%) of the units contained in that multiple dwelling are affordable to persons of low and moderate income, exclusive of those units created pursuant to §6-08 herein.

(e) **Construction requirements.** To be eligible for partial tax exemption, a multiple dwelling must meet the following requirements:

(1) It shall contain at all times not less than the number of dwelling units specified in §6-02(b)(1). A multiple dwelling containing the requisite number of dwelling units may include: garden type maisonette dwelling projects containing a series of attached dwelling units which are provided as a group collectively with all essential services such as, but not limited to, water supply and house sewers, and which units are located on a site or plot under common ownership, including ownership as a condominium; and buildings erected at the same time with common exterior walls, provided that in each case such buildings are operated as a unit under a single ownership, notwithstanding that Certificates of Occupancy were issued by the Department of Buildings for separate portions thereof covering less than the requisite number of units.

(2) If a multiple dwelling contains more than one hundred dwelling units, not less than ten percent of the dwelling units in such multiple dwelling shall contain at least four and one-half rooms and, in addition, not less than fifteen percent shall contain at least three and one-half rooms. The number of rooms in a dwelling unit shall be computed in accordance with the definition of "room count" contained in subdivision (c) of §6-01 of this chapter. Those units consisting of four and one-half rooms or more, to the extent that they comprise ten percent of all units in the multiple dwelling, shall not be included as part of the units which must contain three and one-half rooms, comprising a total of fifteen percent of all the units in the multiple dwelling. This room count requirement may be waived in writing at the discretion of the Department:

(i) where the multiple dwelling is to provide housing for the elderly; or

(ii) upon the filing of adequate documentation from which the Department determines that compliance with the room count requirement would impose an undue and unreasonable economic hardship. The necessity of alteration of existing construction shall not in itself be deemed such a hardship.

(3) If construction of a new multiple dwelling commences on or after August 1, 1981 and such construction takes place on land which, immediately prior to the commencement of construction, was improved with a residential building or buildings that have since been substantially demolished, and the new building or buildings contain more than twenty dwelling units, then such new building or buildings shall contain at least five dwelling units for each Class A dwelling unit in existence immediately prior to the demolition preceding construction. The calculation of the ratio of new to old units shall be made based on the entire site included in the 421-a application. For purposes of this paragraph, "immediately prior to the commencement of construction" shall be deemed to be a date which is one month prior to the commencement of construction.

(f) **Site requirements.** (1) To be eligible for partial tax exemption, the land upon which an eligible project is located must have been vacant, predominantly vacant, under-utilized, or improved with a non-conforming use on the

operative date. The operative date shall be:

(i) thirty-six months prior to the commencement of construction, if construction commences on or after August 1, 1981; or

(ii) October 1, 1971, if construction commenced before August, 1981.

(2) If only part of the land upon which an otherwise eligible project is located satisfies the requirement set forth in paragraph (1), above, or if only part of a building or structure on said land would satisfy that requirement, partial tax exemption shall be available in accordance with the following formula:

(i) If fifty-one percent (51%) or more of the area of the land satisfies the requirement set forth above, then the partial tax exemption shall be reduced by an amount equal to the percent of the area of the site which does not satisfy that requirement;

(ii) If less than fifty-one percent (51%) of the area of the land satisfies the requirement set forth above, then the entire site is ineligible for partial tax exemption hereunder.

(3) **Definitions.** For the purpose of this subdivision (f), the following definitions are applicable:

Actual Assessed Valuation. "Actual assessed valuation" shall mean the assessed valuation of a tax lot without reference to §1805(3) of the Real Property Tax Law.

Land improved with a non-conforming use. "Land improved with a nonconforming use" is defined in the same manner as that term was defined in the Zoning Resolution in effect on the operative date.

Predominantly vacant. "Predominantly vacant" land is a plot of land on which not more than fifteen percent (15%) of the lot area contained enclosed, permanent, improvements. Fences, sheds, garage attendant's booths, pier bulkheads, lighting fixtures and similar items, or any improvement having an Actual Assessed Value of less than $2,000 shall not constitute an enclosed, permanent improvement.

Under-utilized. "Under-utilized" land is land or space which was under-utilized by virtue of the fact that:

(A) It was improved with a residential building or buildings

(a) whose room count in occupied dwelling units numbered not more than seventy percent of the room count in dwelling units in the new building or buildings; or

(b) whose aggregate floor area was no greater than seventy percent of the aggregate floor area of the new building or buildings.

(c) provided, however, that buildings commenced prior to the effective date of these rules shall be governed by the rules in effect at the time of commencement.

(B) It consisted of air rights above a public roadway, waterway, railroad right of way, public buildings, or other similar property used by the general public, provided that the public building was used by the general public on the operative date and continues to be so used and classified after the completion of the eligible construction, and provided further that "public building" shall mean structures or parts of structures in which persons congregate for civic, political, educational, religious or recreational purposes, or in which persons are harbored to receive medical, charitable or other care or treatment, or in which persons are held or detained by reason of public or civic duty, or for correctional purposes, including among others, court houses, schools, colleges, libraries, museums, exhibition buildings, lecture halls, churches, assembly halls, lodge rooms, club houses with more than five sleeping rooms, dance halls, theatres, bath houses, hospitals, asylums, armories, fire houses, police stations, jails and passenger depots; or

(C) Construction commenced on or after November 29, 1985 and before May 12, 2000 on land that was improved with a non-residential building or buildings

(a) each of which contained:

(1) no more than the permissible floor area ratio for non-residential buildings in the zoning district in question, and

(2) a floor area ratio which was twenty percent (20%) or less of the maximum floor area ratio for residential buildings for such zoning district, or

(b) each of which had an actual assessed valuation equal to or less than twenty percent (20%) of the actual assessed valuation of the land on which the building or buildings were situated, or

(c) which, by reason of the building's configuration or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized, on the operative date, in the capacity in which it was formerly utilized.

(D) Except as provided in subparagraph (E) of this paragraph, commencement of construction occurred on or after May 12, 2000 and before October 30, 2002 on land that was improved with a non-residential building or buildings

(a) each of which contained:

(1) no more than the permissible floor area ratio for non-residential buildings in the zoning district in question, and

(2) a floor area ratio which was seventy-five percent (75%) or less of the maximum floor area ratio for residential buildings for such zoning district, or

(b) each of which had an actual assessed valuation equal to or less than seventy-five percent (75%) of the actual assessed valuation of the land on which the building or buildings were situated, or

(c) which, by reason of the building's configuration, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized, on the operative date, in the capacity in which it was formerly utilized.

(E) Commencement of construction occurred on or after May 12, 2000 and before October 30, 2002 on a tax lot now existing or hereafter created which is located south of or adjacent to either side of 110th Street in the borough of Manhattan and on land that was improved with a non-residential building or buildings

(a) each of which contained:

(1) no more than the permissible floor area ratio for non-residential buildings in the zoning district in question, and

(2) a floor area ratio which was fifty percent (50%) or less of the maximum floor area ratio for residential buildings in such zoning district, or

(b) each of which had an actual assessed valuation equal to or less than fifty percent (50%) of the actual assessed valuation of the land on which the building or buildings were situated, or

(c) which, by reason of the building's configuration, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized, on the operative date, in the capacity in which it was formerly utilized.

(F) Except as provided in subparagraph (G) of this paragraph, commencement of construction occurred on or after

October 30, 2002 on land that was improved with a nonresidential building or buildings

(a) each of which contained:

(1) no more than the permissible floor area ratio for non-residential buildings in the zoning district in question, and

(2) (i) a floor area ratio which was seventy-five percent (75%) or less of the maximum floor area ratio for residential buildings in such zoning district, or (ii) if the land was not zoned to permit residential use on the operative date, had a floor area ratio which was seventy-five percent (75%) or less of the floor area ratio of the residential building which replaces such non-residential building; or

(b) each of which had an actual assessed valuation equal to or less than seventy-five percent (75%) of the actual assessed valuation of the land on which the building or buildings were situated, or

(c) which, by reason of the building's configuration, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized, on the operative date, in the capacity in which it was formerly utilized.

(G) Commencement of construction occurred on or after October 30, 2002 on a tax lot now existing or hereafter created which is located south of or adjacent to either side of 110th Street in the borough of Manhattan and on land that was improved with a non-residential building or buildings

(a) each of which contained:

(1) no more than the permissible floor area ratio for non-residential buildings in the zoning district in question, and

(2) (i) a floor area ratio which was fifty percent (50%) or less of the maximum floor area ratio for residential buildings in such zoning district, or (ii) if the land was not zoned to permit residential use on the operative date, had a floor area ratio which was fifty percent (50%) or less of the floor area ratio of the residential building which replaces such non-residential building; or

(b) each of which had an actual assessed valuation equal to or less than fifty percent (50%) of the actual assessed valuation of the land on which the building or buildings were situated, or

(c) which, by reason of the building's configuration, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could not longer be functionally or economically utilized, on the operative date, in the capacity in which it was formerly utilized.

Vacant. "Vacant" land is land, including land under water, which contains no enclosed, permanent improvement. Fences, sheds, garage attendant's booths, piers, bulkheads, lighting fixtures, and similar items, or any improvement having an Actual Assessed Value of less than $2,000 shall not constitute an enclosed, permanent improve- ment.

(g) **Rent regulatory requirements.** To be eligible for partial tax exemption the land upon which the eligible project is located must meet the following letting, rental and occupancy requirements:

(1) If a building which, on December 31, 1974, contained more than twenty-five occupied dwelling units administered under the City Rent and Rehabilitation Law, the Rent Stabilization Law of nineteen hundred sixty-nine, or the Emergency Tenant Protection Act of nineteen hundred seventy-four, is displaced, or any unit therein is displaced, the new multiple dwelling will be eligible for partial tax exemption only if a Certificate of Eviction was issued for at least one dwelling unit in the displaced building. If only one unit is displaced as the result of eligible construction, the Certificate of Eviction must pertain to that displaced unit. Notwithstanding the foregoing, the sale, transfer or utilization of air rights over residential buildings which were not demolished shall not be construed as a displacement within the purview of this subdivision (g).

(2) Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the Emergency Tenant Protection Act of 1974, the rents of a unit shall be fully subject to regulation under such local law or such Act, unless exempt under such local law or such act from regulation by reason of the cooperative or condominium status of the unit, for the entire period during which the property is receiving tax benefits pursuant to the Act, or for the period any such applicable local law or such Act is in effect, whichever is shorter. Thereafter, such rents shall continue to be subject to such regulation to the same extent and in the same manner as if this subdivision (g) had never applied thereto, except that for dwelling units in buildings completed, as that term is defined herein, on or after January 1, 1974, such rents shall be deregulated if:

(i) with respect to dwelling units located in multiple dwellings completed after January 1, 1974 such unit becomes vacant after the expiration of the lease for the unit in effect when such benefit period or applicable law or Act expires, provided, however, such unit shall not be deregulated if the Commissioner of the New York State Division of Housing and Community Renewal or a court of competent jurisdiction finds the unit became vacant because the owner thereof or any person acting on his or her behalf engaged in any course of conduct, including but not limited to, interruption or discontinuance of essential services which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his use or occupancy of such unit, and that upon such finding in addition to being subject to any other penalties or remedies permitted by law, the owner of such unit shall be barred from collecting rent for such unit in excess of that charged to the tenant, if the tenant so desires, in which case the rent of such tenant shall be established as if such tenant had not vacated such unit, or compliance with such other remedy, including, but not limited to, all remedies provided for by the emergency tenant protection act of nineteen seventy-four for rent overcharge or failure to comply with any order of the Commissioner of the New York State Division of Housing and Community Renewal, as shall be determined by said Commissioner to be appropriate; provided, however, that if a tenant fails to accept any such offer of restoration of possession, such unit shall return to rent stabilization at the previously regulated rent.

(ii) with respect to dwelling units located in multiple dwellings with became subject to the rent stabilization provisions of the Act on or after July 1, 1984, the lease for the unit expires after such tax benefit period expires, provided that each lease and renewal thereof for such unit for the tenant entitled to a lease at the time of such deregulation contained a notice in at least twelve (12) point type informing such tenant that the unit shall be subject to deregulation upon the expiration of such benefit period and stated the approximate date on which such benefit period was expected to expire. If each lease and renewal thereof has not contained such notice, a unit covered by such lease shall be subject to subdivision (i) above even though it became subject to the rent stabilization provisions of the Act on or after July 1, 1984. This subdivision (ii) shall not apply to any unit in any multiple dwelling which was subject to the rent stabilization provisions of the Act prior to July 1, 1984, notwithstanding any contrary provision in any lease or renewal thereof.

(3) Notwithstanding paragraph (2) above, dwelling units in multiple dwellings owned as cooperatives or condominiums which are exempt from such provisions of law shall not be required to be subject to the provisions of law set forth in that paragraph (2) during the time period specified therein. Newly created dwelling units in a building for which a prospectus for condominium or cooperative formation has been submitted to the Attorney General at the time of application for benefits to the Office, shall not be required to be registered with the New York State Division of Housing and Community Renewal, provided that an affidavit has been filed with the Office stating that the sponsor will register the building and all units as they become occupied, with the New York State Division of Housing and Community Renewal within fifteen months from the date of issuance of a Final Certificate of Eligibility if a cooperative or condominium plan has not been declared effective by that time.

(4) The offering by the owner to all tenants in rental dwelling units in the multiple dwelling, of an initial lease of at least two years; unless the dwelling unit's rent is regulated by local laws, such as §26-401 of the Administrative Code, which do not provide for the offering of leases for fixed terms. This requirement shall not preclude a shorter lease where requested by the tenant, or where a lease of at least two years is specifically prohibited by the terms of a Department of Housing and Urban Development regulatory agreement for an insured subsidized project, or where, through foreclosure,

title to a building eligible for partial tax exemption pursuant to the Act is held subsequently by the Department of Housing and Urban Development.

(5) No lease for dwelling units subject to the Rent Stabilization Law or Emergency Tenant Protection Act which are registered with the New York State Division of Housing and Community Renewal shall contain escalation clauses for real estate taxes or any other provisions for increasing the rent set forth in the lease other than permitting an increase in rent pursuant to an order of the New York State Division of Housing and Community Renewal or the Rent Guidelines Board; or an increase of 2.2 percent pursuant to §6-04(b) of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record July 18, 2003 §2, eff. Aug. 17, 2003. [See Note 1]

Subd (b) amended City Record July 30, 1998 §6, eff. Aug. 30, 1998. [See T28 §6-01 Note 2]

Subd. (b) amended City Record May 6, 1994 eff. June 5, 1994.

Subd. (b) par (3) amended City Record May 20, 2008 §3, eff. June 19, 2008. [See T28 §6-09 Note 1]

Subd. (c) amended City Record May 6, 1994 eff. June 5, 1994.

Subd. (c) par (7) amended City Record Dec. 10, 2004 §3, eff. Jan. 9, 2005. [See T28 §6-01 Note 3]

Subd. (c) par (10) amended City Record May 20, 2008 §4, eff. June 19, 2008. [See T28 §6-09 Note 1]

Subd. (d) amended City Record May 6, 1994 eff. June 5, 1994.

Subd. (d) par (4) open par amended City Record May 20, 2008 §5, eff. June 19, 2008. [See T28 §6-09 Note 1]

Subd. (d) par (4) open par amended City Record July 18, 2003 §3, eff. Aug. 17, 2003. [See Note 1]

Subd. (d) par (4) open par amended City Record July 30, 1998 §7, eff. Aug. 30, 1998. [See T28 §6-01 Note 2]

Subd. (e) amended City Record May 6, 1994 eff. June 5, 1994.

Subd. (e) par (2) open par amended City Record July 18, 2003 §4, eff. Aug. 17, 2003. [See Note 1]

Subd. (e) par (3) amended City Record July 18, 2003 §5, eff. Aug. 17, 2003. [See Note 1]

Subd. (f) amended City Record May 6, 1994 eff. June 5, 1994.

Subd. (f) par (3) Under-utilized subpar (A) amended City Record July 18, 2003 §6, eff. Aug. 17, 2003. Clause (c) was inadvertently omitted in this amendment and is included by editor. [See Note 1]

Subd. (f) par (3) Under-utilized subpar (C) repealed and added City Record July 18, 2003 §7, eff.

Aug. 17, 2003. [See Note 1]

Subd. (f) par (3) Under-utilized subpars (D), (E), (F), (G) added City Record July 18, 2003 §7, eff.

Aug. 17, 2003. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 18, 2003:

The State Legislature recently enacted Chapter 349 of the Laws of 2002, which extends the benefits of Real Property Tax Law §421-a from construction commenced before December 31, 2003 to construction commenced before December 31, 2007. Conforming amendments need to be made to HPD's rules governing the Real Property Tax Law §421-a program. In addition, the City Council recently enacted local law number 29 for the year 2002. This local law provides an alternative to the second part of the underutilization site eligibility test for sites improved with a non-residential building on the Operative Date that were not then zoned to permit residential use. Such sites will instead have to demonstrate that the non-residential building on the site on the Operative Date had a floor area ratio of less than or equal to 75% (or 50% in the case of tax lots south of or adjacent to 110th Street in Manhattan) of the new residential building replacing it. Again, the amendments to HPD's §421-a rules conform to this legislative change. Recent amendments to the New York City Zoning Resolution have left HPD without a method of calculating the initial two and one-half rooms under the definition of "room count" contained in Real Property Tax Law §421-a(1)(d). By amending the definition of "room count," the rule change would fill this void and no statutory amendment would be necessary. The remaining amendments relating to "room count" are for conforming purposes to ensure that the method of calculating rooms provided in the new "room count" definition is utilized for all of the relevant purposes.

RPTL §421-a(2)(c)(iii) provides that "in the event that, immediately prior to the commencement of new construction, such land was improved with a residential building or buildings that have since been substantially demolished, and the new building or buildings contain more than twenty dwelling units, then such new construction shall contain at least five dwelling units for each class A dwelling unit in existence immediately prior to the demolition preceding construction." The amendment to 28 RCNY §6-02(e)(3) would make the rule more consistent with the statutory provision. Finally, the RPTL §421-a Affordable Housing Program enables new multiple dwellings in the Geographic Exclusion Area to receive RPTL §421-a tax benefits through the purchase of negotiable certificates. These negotiable certificates are generated by the off-site construction, conversion or substantial rehabilitation of affordable units. The developers of these affordable units must submit a request for a written agreement with HPD. This request must be accompanied by certain documents that HPD must approve and which will thereafter be incorporated into this written agreement, known as "The 421-a Written Agreement for Creation of Affordable Housing." The amendment to 28 RCNY §6-08(l)(15) will require that HPD also approve a document that developers already have been required to submit: a financial statement describing the proposed sources and uses of all funds for the project.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 6 TAX EXEMPTION PURSUANT TO §421-A OF THE REAL PROPERTY TAX LAW AND §11-245 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

§6-03 Local Community Planning Board Review.

(a) **Submission of application to local community board.** An applicant for partial tax exemption pursuant to the Act whose project contains more than twenty dwelling units shall send a complete copy of the application for a Preliminary Certificate of Eligibility and supporting papers by certified mail or hand delivery to the local Community Planning Board for the area in which such project is located within ten days of submission of the application to the Department. A copy of the receipt shall be hand delivered or mailed to the Department for annexation to the application no later than ten days after the date appearing on such receipt.

(b) **Standards for review.** The local Community Board shall have a forty-five day period after receipt of such application and supporting papers to file objections with the Department as to the applicant's eligibility for partial tax exemption hereunder. Such objections, if any, may only be based upon an applicant's eligibility under subdivision two of §421-a of the Real Property Tax Law or the applicant's failure to comply with the eligibility requirements in §6-02 of these regulations. The local Community Board may, in its own discretion and within the forty-five day period, hold a public hearing to determine whether any objections as to eligibility should be filed. Nothing contained in this section shall preclude a final determination of ineligibility of an applicant by the Department prior to the expiration of the forty-five day period.

(c) **Notification to community board.** In the event the local Community Board files objections, the Department shall make a determination thereon and notify such Community Board within forty-five days after receipt of the objections.

(d) **Review of projects containing more than one hundred fifty dwelling units.** Where a project contains more than one hundred fifty dwelling units, the local Community Board may, within thirty days of the receipt of a copy of an applicant's notification, request the Department to hold a public hearing solely on the question of the applicant's eligibility under subdivision two of §421-a of the Real Property Tax Law or the applicant's failure to comply with the eligibility requirements in §6-02 of this chapter. If such request is made, the Department shall hold a hearing before the Commissioner or other person or persons whom he or she may designate, make a determination, and notify the Community Board within forty-five days after such hearing.

HISTORICAL NOTE

Section amended City Record May 6, 1994 eff. June 5, 1994.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 6 TAX EXEMPTION PURSUANT TO §421-A OF THE REAL PROPERTY TAX LAW AND §11-245 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

§6-04 Determination of Initial Rent; Rent Increases.

(a) **Determining the initial adjusted monthly rent and the comparative adjusted monthly rent for rental dwelling units.** No certification of eligibility shall be issued by the Department until the Department determines the initial adjusted monthly rent to be paid by tenants residing in rental dwelling units contained within the multiple dwelling. Except for affordable units, the initial adjusted monthly rent is determined in accordance with the provisions of paragraph (3) below.

(1) The total expenses of the multiple dwelling shall be determined by the Department in order to calculate the initial adjusted monthly rent. Total expenses shall mean the annual total of the following:

(i) An amount for the annual cost of operation and maintenance, as established pursuant to the Annual Schedule of Reasonable Costs; plus,

(ii) An amount for vacancies, contingency reserves and management fees as established pursuant to the Annual Schedule of Reasonable Costs; plus,

(iii) Projected real property taxes to be levied on the multiple dwelling and the land on which it is situated at the time of estimated initial occupancy; plus,

(iv) Fourteen percent of the total project cost, as determined pursuant to §6-05(b)(1)(i) and the Annual Schedule of Reasonable Costs, which amount will include debt service; less,

(v) The estimated annual income to be derived from any Floor Area of Commercial, Community Facilities, and Accessory Use Space in the multiple dwelling.

(2) The adjusted monthly rent per room shall be determined by the Department by dividing the total expenses as determined pursuant to paragraph (1) above by twelve (12) and then dividing that amount by the Room Count as defined in subdivision (c) of §6-01 of this chapter; i.e.,

Total Expenses 12	=	Total Monthly Expenses	Total Monthly Expenses Room Count	=	Adjusted Monthly Rent Per Room

(3) The The initial adjusted monthly rent for each dwelling unit shall be determined by the Department by multiplying the adjusted monthly rent per room to be determined pursuant to paragraph (2) above by the Room Count, as defined in subdivision (c) of §6-01 of this chapter, of each rental dwelling unit. Adjustments to the initial adjusted monthly rent per room to be determined pursuant to paragraph (2) above by the Room Count, as defined in subdivision (c) of §6-01 of this chapter, of each rental dwelling unit. Adjustments to the initial adjusted monthly rent for any dwelling unit may be allowed by the Department provided that the total of the rentals charged in the multiple dwelling do not exceed the total expenses of such multiple dwelling, as determined pursuant to paragraph (1) above; i.e.,

Adjusted Monthly Rent Per Room × Room Count Per Dwelling Unit	=	Initial Adjusted Monthly Rent for Such Dwelling Unit

(b) **Rent increases.** The owner of a multiple dwelling receiving partial tax exemption may insert in each lease to be effective during the period of gradual diminution of tax exemption, as defined in §6-06(e) of this chapter, a provision for an annual rent increase over the initial adjusted monthly rental at a rate not to exceed 2.2 percent per annum on the anniversary date of the first lease for the unit provided, however, that no increase shall be permitted pursuant to this subdivision (b) unless specifically provided for in each affected lease, and provided further that no more than one such increase per unit may be charged or collected in each given year regardless of the number of lease renewals or new leases which may pertain to that unit. The initial 2.2 percent escalation and all subsequent escalations shall be based solely on the actual rental amount in effect (regardless of whether the legal regulated rent may be greater) at the commencement of the period during which the increase may be charged and shall not be compounded from year to year but rather shall remain constant based on said rent. In addition, the increase shall be independent of any other escalation authorized by the Rent Guidelines Board and shall not be considered or included when a Rent Guidelines Board increase is effected, making the latter increase effective upon the base rent, excluding the 2.2 percent escalation. The maximum increase permitted by this subdivision (b) is 19.8 percent over the actual rental amount in effect at the commencement of the period during which the increase may be charged. The maximum increase permitted by this subdivision (b) may be charged in each year following the expiration of the tax benefit period, but shall not exceed 19.8 percent, or that amount charged in the last year of the exemption period, and shall not become part of the base rent.

(c) **Annual rent schedule.** Each year the owner shall make available to the Office a schedule of rents for each unit in the building.

HISTORICAL NOTE

Section amended City Record May 6, 1994 eff. June 5, 1994.

Section in original publication July 1, 1991.

Subd. (a) par (2) open par amended City Record July 18, 2003 §8, eff. Aug. 17, 2003. [See T28 §6-02 Note 1]

Subd. (a) par (3) open par amended City Record July 18, 2003 §9, eff. Aug. 17, 2003. [See T28 §6-02 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 6 TAX EXEMPTION PURSUANT TO §421-A OF THE REAL PROPERTY TAX LAW AND §11-245 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

§6-05 Application Procedure; Documentation.

(a) **Application forms.** All prescribed forms and applications must be obtained from the Department of Housing Preservation and Development, Office of Tax Incentive Programs, 3rd Floor, 150 William Street, New York, New York 10038. All applications shall be submitted to the Department on such form or forms as shall be prescribed by the Department. Only applications complete in all detail shall be considered for a Certificate of Eligibility. All forms must be filled out fully and legibly by the applicant and shall be typewritten or inscribed in permanent ink.

(b) **Preliminary Certificate of Eligibility; documentation.** An application for a Preliminary Certificate of Eligibility must be made to the Office after the commencement of construction but prior to the issuance of either a Temporary Certificate of Occupancy for all residential areas or a Permanent Certificate of Occupancy. For a public project, the Department may grant an extension of up to four years for filing the application for a Preliminary Certificate of Eligibility. The application for a Preliminary Certificate of Eligibility shall consist of an affidavit in the form required by the Office and shall include the following:

(1) A sworn statement by the owner (if the owner is other than an individual, the statement must be certified by the chief executive officer or managing partner of the owner), together with certifications by certified public accountants, appraisers, engineers and architects where required by this chapter, attesting to the accuracy of information provided to the Department concerning the eligibility of a project under §6-02 of this chapter and the initial adjusted monthly rent required by the Act for each rental dwelling unit contained within the multiple dwelling. This sworn statement shall include, as a minimum, a statement of the following:

(i) Total project cost of the newly constructed building and a breakdown of the costs:

(A) Land acquisition cost or purchase price shall be certified to by an independent certified public accountant or by an appraisal of value of the land and any improvements thereon prepared by an independent appraiser found to be qualified by the Department if the land was purchased more than two years prior to the date of the commencement of construction or in the event that the land was obtained by other than purchase; provided further that in the event the land is leased and not purchased, rent attributable to the development period shall be included in total project cost.

(B) Site preparation costs not covered by an appraisal in subparagraph (A) above shall be certified to by an affidavit from a licensed architect or engineer on a date not more than ninety days prior to the filing of an application for a Preliminary Certificate of Eligibility, and an estimate of the balance of such costs to be incurred prepared by such a licensed engineer or architect. The application for a Final Certificate of Eligibility shall contain a statement of all site preparation costs incurred, which shall be certified to by an independent certified public accountant. Site preparation costs may include, but are not limited to, costs expended to demolish structures. Site preparation costs may also include relocation expenses, which may be independently certified to by the owner or applicant;

(C) A good faith estimate of construction costs as well as an estimate prepared by a licensed engineer of any abnormal, unique or special foundation costs which may be incurred;

(D) An allowance for off-site costs, including but not limited to legal, engineering, and architectural fees, insurance, interest and taxes during construction, title and mortgage fees;

(E) Specific other amounts which would ordinarily and customarily be incurred in connection with the construction of an eligible project.

(ii) Compliance with eligibility requirements including:

(A) Statement of the conditions of the site as of thirty-six months prior to the commencement of construction, or as of October 1, 1971, as required by this chapter, along with sufficient documentation to demonstrate the conditions of the site to the satisfaction of the Department;

(B) A statement of the number of occupied dwelling units in existence on the site on December 31, 1974;

(C) A statement, if the construction is to include more than twenty dwelling units, that the building will provide no less than five Class A dwelling units for each Class A dwelling unit in existence on the site immediately prior to the commencement of new construction; as required by this chapter;

(D) A statement that the new multiple dwelling will contain not less than three dwelling units;

(E) A statement that not less than ten percent of the dwelling units in the new multiple dwelling will contain at least four and one-half rooms and that no less than fifteen percent of such dwelling units will contain at least three and one-half rooms, as determined pursuant to §6-02(d) hereof, if the multiple dwelling is to contain more than one hundred dwelling units, unless such requirements are waived in writing by the Department;

(F) The submission to the Department of one set of plans approved by the Department of Buildings, as evidenced by a seal of the Department of Buildings thereon or an architect's affidavit that such plans are so approved.

(G) If construction commenced on or before November 29, 1985, sufficient documentation to demonstrate to the satisfaction of the Department the condition of the site on November 29, 1985.

(H) If construction commenced after November 29, 1985 and is located within the geographic exclusion area,

(a) written certification by the Department in accordance with §6-08 herein, that 20 percent (20%) of the units

contained in that building will be affordable to persons of low and moderate income; or

(b) written certification by the Department, in accordance with §6-08 herein, that construction is being carried out with substantial governmental assistance; or

(c) a copy of a written agreement with the Department for the construction or substantial rehabilitation of housing units affordable to persons of low and moderate income on another site, such agreement expressly providing that the creation of said units is intended to meet the requirements of §6-08 herein; or,

(d) Negotiable Certificates issued pursuant to §6-08, herein, evidencing the bearer's entitlement to the benefits of the Act for the units for which the applicant is seeking tax benefits.

(iii) The date upon which it is estimated that initial occupancy will commence.

(2) A statement of intention that the owner will register all rental units with the New York State Department of Housing and Community Renewal prior to initial occupancy and will offer initial leases of not less than two years to tenants of such stabilized units, or such shorter term as the tenant requests, or a statement that the multiple dwelling is to be owned as a cooperative or condominium.

(3) A certified copy of a Certificate of Eviction, if required by §6-02(f) herein.

(4) A schedule of proposed initial rents for each rental dwelling unit in the building. No requests for revision of this schedule will be considered once a Final Certificate of Eligibility has been issued for the building in question.

(c) **Filing fees.** A non-refundable deposit toward a non-refundable filing fee for each multiple dwelling for which application is made for benefits hereunder shall be paid at the time of the filing of the application for a Preliminary Certificate of Eligibility. The deposit shall be in the amount of one hundred ($100) dollars and shall form part of the non-refundable filing fee of four-tenths (4/10) of one percent (.4%) of the total project cost as determined pursuant to §6-05(b) herein, or four-tenths (4/10) of one percent (.4%) of the total project sell-out price, if the building will be owned as a cooperative or condominium, as stated in the last amendment to the offering plan accepted for filing by the New York State Attorney General, at the option of the applicant, less any fees paid to the Department pursuant to §6-08(k)(3), herein, which resulted in the issuance of a written agreement. Payment of the balance of this fee shall be made no later than ninety days after approval of the application for a Preliminary Certificate of Eligibility. If payment is not made within such time, a late fee of an additional one-tenth (1/10) of one percent (.1%) of the total project cost, as determined pursuant to §6-05(b) herein shall be charged. In no event shall any Preliminary Certificate of Eligibility be issued prior to full payment of all filing fees deemed by the Department to be outstanding.

These fees shall apply to all applications where the first Certificate of Eligibility, for such application, whether Preliminary or Final, is issued after the effective date of these rules. All other applications shall be subject to the fees defined by the rules in effect immediately prior to promulgation of these rules.

Payment shall be made by a certified or cashier's check payable to the Commissioner of the Department of Finance of the City of New York. If the application for a Final Certificate of Eligibility includes an increase in the amount of the total project cost, an additional filing fee shall be paid based upon such increase in the total project cost as is approved by the Department.

(d) **Final Certificate of Eligibility: documentation.** (1) The owner must file an application for a Final Certificate of Eligibility which shall consist of an affidavit in the form required by the Commissioner and shall include the following:

(i) A sworn statement of the actual total project cost of the newly constructed building. Such actual project cost may be approved by the Department as the total project cost of such building provided all of the items comprising such

actual total project cost are certified to by a certified public accountant licensed by the State of New York, and further provided that such actual total project cost does not exceed the specific costs determined by the Department pursuant to its promulgated Annual Schedule, plus any allowable abnormal, unique or special foundation costs which may be incurred. In the event that costs relating to commercial portions of the building are incomplete, an estimate of such costs may be accepted tentatively by the Office, provided a supplemental accountant's certification is provided after such costs have been determined. If additional fees are owed on the basis of such supplemental certification, benefits are subject to revocation if the fees are not paid. Where such costs differ from the original cost certification filed with the application for a Preliminary Certificate of Eligibility, such sworn statement shall include

(A) the difference in costs, and

(B) the reason or basis for such difference in costs;

(ii) A revised schedule of proposed initial rents, if any, containing any modification of the original schedule filed with the application for a Preliminary Certificate, for each rental dwelling unit in the building. No requests for revision to this schedule will be considered once a Final Certificate of Eligibility has been issued for the building in question;

(iii) (A) Evidence satisfactory to the Office in a form approved by the Department that the owner of rental dwelling units has registered the building and any occupied units with the New York State Division of Housing and Community Renewal, and, if the building is not fully occupied, an affidavit stating that the owner shall register all remaining units as they become occupied and shall submit proof of such registration of all remaining units in a form approved by the Department upon the earlier to occur of (1) the occupancy of the last remaining unit, or (2) one year from the date of Completion of Construction; or (B) if the project is to be owned and operated as a cooperative or a condominium, a statement by the owner that if the prospective cooperative or condominium plan has not been declared effective for filing at a time fifteen months after the issuance of a Final Certificate of Eligibility, such owner will register these rental units with the New York State Division of Housing and Community Renewal no later than fifteen calendar days after such fifteen month period.

(iv) A statement of the date of completion of the building.

(v) If construction commenced after November 29, 1985 within the geographic exclusion area, and construction was not carried out with substantial governmental assistance, a copy of the Written Agreement and proof of compliance with the requirements of §6-08 herein, including a Permanent Certificate of Occupancy for all new or substantially rehabilitated units or a Temporary Certificate of Occupancy for the entire residential portion of a building or buildings located outside the geographic exclusion area which was constructed or rehabilitated pursuant to an agreement with the Department to qualify the building located within the geographic exclusion area for the benefits of the Act. Proof of compliance shall include the requisite number of Negotiable Certificates in accordance with the ratios set forth in §6-08(b).

(vi) In the event that through no fault of the applicant, and due to unforeseen circumstances which are beyond the control of the applicant, construction of the off-site units which was promptly commenced and has been diligently proceeding has not been completed before the completion of the building applying for benefits pursuant to the Act, the Department, in its sole discretion, may permit the applicant to submit a Letter of Credit equal to 150 percent of the Department approved estimate of the cost of completing the off-site units. The written agreement with the Department will be amended to provide a new completion date, after which the Department shall have the authority to use the proceeds of the Letter of Credit to complete the construction.

(vii) Proof that the multiple dwelling has been registered with the Department in accordance with the provisions of article two of subchapter four of the Housing Maintenance Code.

(viii)(A) For applications received on or after December 19, 2006, an affidavit from the owner certifying that whenever any household appliance in any dwelling unit, or any household appliance that provides heat or hot water for

any dwelling unit in the multiple dwelling, is installed or replaced with a new household appliance on or after December 19, 2006, such new appliance shall be certified as Energy Star. If applicable, such affidavit may instead certify (a) that an appropriately-sized Energy Star certified household appliance is not manufactured, such that movement of walls or fixtures would be necessary to create sufficient space for such appliance, and/or (b) that an Energy Star certified boiler or furnace of sufficient capacity is not manufactured.

(B) For purposes of this subparagraph (viii), (a) "household appliance" shall mean any refrigerator, room air conditioner, dishwasher or clothes washer, within a dwelling unit in the multiple dwelling that is provided by the owner, and any boiler or furnace that provides heat or hot water for any dwelling unit in the multiple dwelling, and (b) "Energy Star" shall mean a designation from the United States Environmental Protection Agency or Department of Energy indicating that a product meets the energy efficiency standards set forth by the agency for compliance with the Energy Star program.

(ix) For applications received for any projects that commence construction on or after December 28, 2007, an affidavit from the owner certifying that either (A) all building service employees employed or to be employed at the building shall receive the applicable prevailing wage for the duration of such building's tax exemption pursuant to the Act, or (B) such project contains less than fifty dwelling units, or (C) at initial occupancy, at least fifty percent (50%) of the dwelling units in the multiple dwelling will be affordable to individuals or families with a gross household income at or below one hundred twenty-five percent (125%) of the area median income and that any such rental units will remain affordable for the entire period during which they receive benefits pursuant to this Act.

(2) The application for a Final Certificate of Eligibility must be filed as follows:

(i) for a multiple dwelling to be owned as a rental, the application must be filed prior to occupancy of the building, but no earlier than the date of the application for a Preliminary Certificate of Eligibility.

(ii) for a multiple dwelling to be owned as a condominium or a cooperative, the application must be filed prior to the first taxable status date following the completion of construction. In the event such application is not timely filed, benefits of the Act shall be revoked pursuant to §6-07(e)(5) herein only where the failure to file such application has resulted in the extension of the construction benefit period beyond the actual period of construction.

(iii) (A) For a public project, the Department may grant an extension of up to four years for filing the application for a Final Certificate of Eligibility, provided that to the extent to which the failure to file such application has resulted in the extension of the construction benefit period beyond the actual period of construction for such public project, the construction benefit period shall be retroactively adjusted so that it is coterminous with the actual construction period.

(B) For a building which is not a public project, the Department may grant an extension of up to two years for filing the application for a Final Certificate of Eligibility where the applicant has established that it reasonably relied upon the representations of third parties that the benefits of the Act would be available, provided that to the extent to which the failure to file such application has resulted in the extension of the construction benefit period beyond the actual period of construction for such building, the construction benefit period shall be retroactively adjusted so that it is coterminous with the actual construction period.

(3) The applications for a Final Certificate of Eligibility must be completed by the applicant as follows:

(i) for a multiple dwelling containing one hundred units or less, within ninety days following the issuance of a permanent certificate of occupancy or a temporary certificate of occupancy covering all residential space.

(ii) for a multiple dwelling containing more than one hundred units, within one hundred and eighty days following the issuance of a permanent certificate of occupancy or a temporary certificate of occupancy covering all residential space.

(iii) where an extension has been granted under paragraph (2)(iii) of this subdivision, the application must be completed (A) within ninety days of the filing thereof for a multiple dwelling containing one hundred units or less, or (B) within one hundred and eighty days of the filing thereof for a multiple dwelling containing more than one hundred units.

(4) Reserved.

(5) In the event that all the required documents are not timely filed, benefits of the Act may be revoked pursuant to §6-07(e)(5) herein. An application shall be deemed complete when all items delineated in §6-05 have been submitted, as well as any other documents which the Office may request.

(6) Notwithstanding the provisions contained in paragraph (3) of this subdivision, the Office may grant an extension to complete an application for a Final Certificate of Eligibility for good cause shown.

(e) **Issuance of a Certificate of Eligibility.** (1) Upon receipt of the application for a Preliminary Certificate of Eligibility the Department shall determine the initial adjusted monthly rent and the comparative adjusted monthly rent with respect to rental dwelling units contained within the multiple dwelling pursuant to §6-04(a) herein. Upon the Commissioner's determination that a multiple dwelling is entitled to partial tax exemption hereunder the Department shall issue a Preliminary Certificate of Eligibility to be delivered by the applicant to the appropriate borough officer of the Property Division of the Department of Finance together with his, her or its application to the Department of Finance for partial tax exemption. Such certification shall be conditioned upon the filing and approval of an application for a Final Certificate of Eligibility as herein provided.

(2) Upon receipt of the application for a Final Certificate of Eligibility and either a Temporary Certificate of Occupancy for all residential areas in the multiple dwelling or a Permanent Certificate of Occupancy, and upon the Commissioner's determination that a multiple dwelling is entitled to partial tax exemption hereunder, the Department shall issue a Final Certificate of Eligibility to be delivered by the owner to the appropriate borough officer of the Property Division of the Department of Finance between February 1st and March 15th, together with his, her or its application to the Department of Finance for partial tax exemption.

(f) **Voluntary withdrawal.** Once an application for a Preliminary Certificate of Eligibility or a Final Certificate of Eligibility has been approved, an owner may withdraw the application only if (i) all taxes which would have been owed absent the exemption are paid to the City, with all interest accrued thereon, and (ii) the building for which the application was made is substantially incomplete or unoccupied by residential tenants.

(g) **Declaratory rulings.** A declaratory ruling with respect to an analysis of a specific or hypothetical site, project, fact pattern or document or an interpretation of the applicability of a specific provision of the 421-a statute or Rules to an actual or hypothetical site, project, fact pattern or document or any other issue related to eligibility may be given in the discretion of the Office upon payment of a non-refundable fee in the amount of $1,500 payable at the time such declaratory ruling is requested in writing. In no event shall a declaratory ruling bind the Office as to the overall eligibility of a project for 421-a benefits.

HISTORICAL NOTE

Section amended City Record May 6, 1994 eff. June 5, 1994.

Section in original publication July 1, 1991.

Subd. (b) open par amended City Record July 5, 2007 §2, eff. Aug. 4, 2007. [See T28 §6-01 Note 4]

Subd. (d) amended City Record May 17, 2004 eff. June 16, 2004. [See Note 1]

Subd. (d) par (1) subpar (iii) amended City Record July 5, 2007 §3, eff. Aug. 4, 2007. [See T28 §6-01 Note 4]

Subd. (d) par (1) subpars (vii), (viii) added City Record May 18, 2007 § 1, eff. June 17, 2007. [See Note 2]

Subd. (d) par (1) subpar (ix) added City Record May 20, 2008 §6, eff. June 19, 2008. [See T28 §6-09 Note 1]

Subd. (d) par (2) subpar (iii) amended City Record July 5, 2007 §3, eff. Aug. 4, 2007. [See T28 §6-01 Note 4]

Subd. (d) par (2) subpar (iii) added City Record July 8, 1996 eff. Aug. 7, 1996. [See T28 §6-01 Note 1]

Subd. (d) par (3) amended City Record July 8, 1996 eff. Aug. 7, 1996. [See T28 §6-01 Note 1]

Subd. (d) par (4) amended City Record July 5, 2007 §3, eff. Aug. 4, 2007. [See T28 §6-01 Note 4]

Subd. (g) added City Record July 8, 1996 eff. Aug. 7, 1996. [See T28 §6-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 17, 2004:

Section 421-a of the Real Property Tax Law has provided tax benefits for the construction of new residential buildings in the City of New York since 1971. Under Real Property Tax Law §421-a, new multiple dwellings that meet all of the statutory and regulatory requirements are eligible for a partial tax exemption that consists of up to three years of construction period benefits and 10, 15, 20 or 25 years of partial tax exemption after construction. One hundred percent of increases in assessed valuation are exempt from taxation during the construction period, and the regular benefit period does not commence until after the entire construction period benefits term has run. The amendments to the 421-a rules establish more reasonable filing and completion deadlines for an application for a final certificate of eligibility. They also give HPD discretion to grant extensions for the completion of such applications for good cause shown.

The final certificate of eligibility signifies the completion of the multiple dwelling and, consequently, the end of construction period benefits. Thereafter, the regular tax exemption benefits period starts to run. Those 421-a applications pending on the effective date of these amendments for multiple dwellings that already have received a permanent certificate of occupancy or a temporary certificate of occupancy covering all residential space will have six months to file and to complete their applications for a final certificate of eligibility.

2. Statement of Basis and Purpose in City Record May 18, 2007: These proposed rule amendments implement Local Law 107 of 2005, which requires recipients of 421-a tax exemption benefits to purchase certain Energy Star certified household appliances. The proposed rule amendment also now requires multiple dwelling registration in accordance with article two of subchapter four of the Housing Maintenance Code as another prerequisite to getting Real Property Tax Law §421-a benefits.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 6 TAX EXEMPTION PURSUANT TO §421-A OF THE REAL PROPERTY TAX LAW AND §11-245 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

§6-06 The Tax Exemption.

(a) **Taxes on prior assessed valuation not subject to exemption.** Taxes on the assessed value of land receiving benefits under this section, and any improvements thereon, during the tax year preceding the commencement of construction are not eligible for exemption under the Act. Tax exemption under the Act is not available until the tax year following the first year taxable status date following commencement of construction. The Prior Assessed Valuation remains subject to taxation at the prevailing rate from year to year.

(b) **Diminution of tax exemption for excess commercial space.** As of July 1, 1975, in the event the multiple dwelling contains Floor Area of Commercial, Community Facility and/or Accessory Use Space which exceeds twelve percent (12%) of the Aggregate Floor Area, there shall be a diminution of the tax exemption in an amount equal to the ratio of Floor Area of Commercial, Community Facility and/or Accessory Use Space in excess of twelve percent (12%) of the Aggregate Floor Area to the Aggregate Area. Where a project contains a separately assessed parcel such as a residential condominium located above a separately owned commercial space, the proportionate reduction of tax exemption resulting from Commercial, Community Facility and Accessory Use Space in excess of twelve percent (12%) shall be allocated entirely to the non-residential parcel or parcels up to the point that no exemption exists for any such parcel before applying the reduction in exemption to the residential space, provided, however, that such allocation shall only be made with respect to properties for which a preliminary application for benefits is received after July 26, 1993 or for which a final application is received after such date if no preliminary application was received.

(c) **Exemption during construction.** Multiple Dwellings which satisfy all of the requirements set forth herein and have received a Preliminary Certificate of Eligibility shall be exempt from real property taxes, other than assessments

for local improvements, upon any increase in assessed valuation over the Prior Assessed Valuation during the statutorily defined period of construction, or for a period of three years, whichever is less, provided that taxes shall be paid in each tax year in which full or partial exemption is in effect on the Prior Assessed Valuation, as defined in §6-01(c) herein.

(d) **Exemption after construction.** After the first taxable status date immediately following the completion of construction any increase in assessed valuation over the Prior Assessed Valuation of eligible multiple dwellings which have received a Final Certificate of Eligibility shall be exempt from real property taxes, other than assessments for local improvements, for either ten, fifteen, twenty or twenty-five consecutive tax years, as provided in §6-02(d) herein, pursuant to the following schedules. In addition, owners must pay full taxes on the Prior Assessed Valuation, as defined in §6-01)(c) herein.

TEN YEAR EXEMPTION

Year	Percent of Increased Assessed Valuation Which is Exempt
First	100%
Second	100%
Third	80%
Fourth	80%
Fifth	60%
Sixth	60%
Seventh	40%
Eighth	40%
Ninth	20%
Tenth	20%
Eleventh	0%

FIFTEEN YEAR EXEMPTION

Year	Percent of Increased Assessed Valuation Which is Exempt
First through Eleventh	100%
Twelfth	80%
Thirteenth	60%
Fourteenth	40%
Fifteenth	20%
Sixteenth	0%

TWENTY YEAR EXEMPTION

Year	Percent of Increased Assessed Valuation Which is Exempt
First through Twelfth	100%
Thirteenth and Fourteenth	80%
Fifteenth and Sixteenth	60%
Seventeenth and Eighteenth	40%
Nineteenth and Twentieth	20%
Twenty-first	0%

TWENTY-FIVE YEAR EXEMPTION

Year	Percent of Increased Assessed Valuation Which is Exempt
First through twenty-first	100%
Twenty-second	80%
Twenty-third	60%
Twenty-fourth	40%
Twenty-fifth	20%
Twenty-sixth	0%

(e) **Period of gradual diminution of tax exemption.** Solely for purposes of §6-04(b) of this chapter, the period of gradual diminution of tax exemption shall be the following:

(1) For the ten year benefit period, the ten years beginning in the first year of exemption after completion of construction.

(2) For the fifteen year benefit period, the five years beginning in the eleventh year of exemption after completion of construction.

(3) For the twenty year benefit period, the eight years beginning in the thirteenth year after completion of construction.

(4) For the twenty-five year benefit period, the five years beginning in the twenty-first year of exemption after completion of construction.

HISTORICAL NOTE

Section amended City Record May 6, 1994 eff. June 5, 1994.

Section in original publication July 1, 1991.

28 RCNY 6-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 6 TAX EXEMPTION PURSUANT TO §421-A OF THE REAL PROPERTY TAX LAW AND §11-245 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

§6-07 Record Keeping; Revocation of Tax Exemption; Discrimination Prohibited.

(a) **Collection of data; subpoenas; testimony.** At any time subsequent to the filing of an application and during the period of tax exemption, the Department may:

(1) Examine any books, papers, records or other data which may be relevant or material to the tax exemption requested or granted;

(2) Summon any person, including, but not limited to, the owner or an officer, director, member or employee of the owner, or any person having, or having had, possession, custody or control of books, papers or records relating to the tax exemption requested or granted, or any person or firm that participated in the construction of the building, to appear before the Commissioner or his or her designee at the time or place designated in the summons or to produce such books, papers or records or other data, and to give such testimony under oath as may be relevant or material to the tax exemption requested or granted.

(b) **Availability of books and records; revocation.** All books, records and documents required by §6-05 herein, or which relate to or support the application made pursuant to this chapter as well as an annual schedule of rents for each unit in the building, as required by §6-04(c) herein, shall be kept by the owner and made available for inspection by the Department until the expiration of the tax exemption requested or granted. Failure to make books, records or documents, including an annual schedule of rents for each unit in the building, available upon request may result in the prospective or retroactive revocation of tax exemption benefits.

(c) **Preservation of records.** The Department shall maintain a complete file of all records, documents, notices and correspondence relating to each application. Pursuant to the provisions of the Freedom of Information Law, these records shall be open to public inspection upon prior written request to the Department of Housing Preservation and Development, Freedom of Information Record Access Officer, 100 Gold Street, 9th Floor, New York, N.Y. 10038. Records are available for inspection by members of the general public and a copy of an application or any part thereof, shall be furnished to any person upon payment of the prevailing charge.

(d) **False or misleading applications; revocation.** If the applicant has furnished information which is incorrect or misleading in any substantial respect or which fails to comply with this chapter or requirements imposed by the New York State Division of Housing and Community Renewal and if the breach or omission has not been cured within the time prescribed in §6-07(h), below, the Department may revoke any Preliminary or Final Certificate of Eligibility, retroactively or prospectively.

(e) **Additional grounds for revocation.** The Commissioner of the Department of Finance or the Commissioner of the Department of Housing Preservation and Development may withdraw tax exemption granted to a building pursuant to the Act upon the happening of any of the following events:

(1) The multiple dwelling is operated primarily for commercial, hotel, or single room occupancy use. Revocation shall be effective from the first tax quarter in which the prohibited use began;

(2) The real estate taxes or water or sewer charges with respect to the building (and land) remain unpaid for one year after the same are due and payable to the City unless the applicant or his, her or its predecessor in title has entered into an installment agreement with the City which provides for the payment of delinquent taxes, assessments or other legal charges pursuant to §11-401 et seq. of the Administrative Code and all payments required by said installment agreement have been paid when due. Revocation shall be effective from the first tax quarter in which taxes were unpaid;

(3) The building ceases to be subject to the provisions of law set forth in §6-02(g)(2) unless the building is exempt from such provisions pursuant to §6-02(g)(3). Revocation shall be effective on the date of such cessation;

(4) Any person subject to be summoned by virtue of §6-07(a) fails to appear and produce books, papers, records or other data as required by said section, after being duly summoned to appear. Revocation shall be retroactive to start of construction;

(5) The applicant fails to satisfy any time requirement set forth herein. Revocation shall be retroactive to start of construction.

(6) The applicant fails to establish to the satisfaction of the Department that affordable units created to qualify a building for the benefits of the Act which have not been transferred to a qualified not-for-profit organization are being maintained as affordable and in a habitable condition pursuant to the requirements of §6-08 herein.

(7) The multiple dwelling qualified for the benefits of the Act on the basis of Negotiable Certificates, and the Department finds that the units which were the basis for the issuance of the Negotiable Certificates which have not been transferred to a qualified not-for-profit organization are not being maintained as affordable and in a habitable condition pursuant to the requirements of §6-08 herein.

(8) The Department finds that a rental building located in the geographic exclusion area which qualified for the benefits of the Act pursuant to §6-08(b) herein has been converted to cooperative or condominium ownership prior to the expiration of the partial tax exemption.

(f) **Discrimination prohibited: revocation.** No owner of a multiple dwelling which is receiving the benefits of the Act, nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy thereto in

violation of the anti-discrimination provisions of §8-107 of the Administrative Code. The practice of any discrimination as described herein shall result in the revocation of benefits under the Act, retroactive to the date of such practice. Nothing contained in this subdivision (f) shall restrict such consideration in the development of housing accommodations for the lawful purpose of providing for the special needs of a particular group.

(g) **Initial occupancy of designated units not by persons of low and moderate income or not affordable; revocation.** No owner of a multiple dwelling located within the geographic exclusion area, which is receiving the benefits of the Act only because the requisite number of affordable units has been created, nor any employee, manager, or officer of such owner shall, at initial occupancy, or upon vacancy, directly or indirectly, rent such affordable unit to any person ineligible for such occupancy or, at any time during the tax benefit period, rent fewer than the number of units required by the Department pursuant to §6-08 herein at a cost affordable to persons of low and moderate income. Any such practice shall result in the revocation of benefits under the Act, retroactive to commencement of construction.

(h) **Notice and procedure upon revocation.** The Department shall serve, by ordinary mail, a Notice of Revocation or Reduction on the applicant and any subsequent owner or mortgagee, which has previously registered with the Department for the receipt of such notice, that said applicant, owner or mortgagee has furnished incorrect or misleading information of a substantial nature, or has omitted information of a material nature, or is in violation of one or more provisions of the Act or this chapter. The notice will provide a brief description of the violation alleged. The applicant, owner or mortgagee shall have ninety (90) days to cure the violation or, alternatively, may request an informal hearing within thirty (30) days from the date of the notice to rebut the allegations therein. Upon the applicant's, owner's or mortgagee's failure to cure or rebut within the time prescribed, the Department shall advise the Department of Finance that a Certificate of Eligibility has been revoked or that the amount of exemption is to be reduced. The Department of Finance shall retroactively or prospectively withdraw or reduce tax exemption granted to an eligible multiple dwelling. In the case of a retroactive revocation, the Department of Finance shall reinstate the amount of taxes which have been exempted and charge interest at the rate prescribed by the Administrative Code to be calculated from the day on which such taxes would have been payable but for the exemption.

HISTORICAL NOTE

Section amended City Record May 6, 1994 eff. June 5, 1994.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 6-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 6 TAX EXEMPTION PURSUANT TO §421-A OF THE REAL PROPERTY TAX LAW AND §11-245 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

§6-08 Affordable Housing Construction Requirements.

(a) **Multiple dwellings affected.** Within the geographic exclusion area described in §6-02(c)(10) herein, the benefits of the Act are available only to multiple dwellings which would otherwise be eligible for benefits of the Act pursuant to the provisions of these rules and where construction commenced on or before November 29, 1985, unless such construction is carried out with substantial governmental assistance, or the owner thereof complies with the requirements of this section.

(b) **Number of affordable units required to be created.** A multiple dwelling located in the geographic exclusion area which would otherwise be eligible pursuant to the provisions of these rules and not constructed with substantial government assistance may qualify for benefits under the Act by the method described in either paragraph (1), (2), (3), (4), (5), or (6) of this §6-08(b). The ratio of the number of affordable units to be created to the number of units in a multiple dwelling located within the geographic exclusion area seeking the benefits of the Act are listed below.

[See tabular material in printed version]

(1) Obtaining the certification of the Department that twenty percent (20%) of the units contained in the multiple dwelling applying for benefits pursuant to the Act shall be rented to persons of low and moderate income as defined by this chapter at rents to be determined by the Department pursuant to this section.

(2) Entering into a written agreement with the Department on or before December 31, 1990 to create through new construction on a site or sites meeting the requirements of §6-02(f), herein, Class A dwelling units to be rented to

persons of low and moderate income as defined by this chapter at rents to be determined by the Department pursuant to this section numbering at least twenty percent (20%) of the units in the multiple dwelling located within the geographic exclusion area seeking benefits pursuant to the Act.

(3) Entering into a written agreement with the Department on or before December 31, 1990 to substantially rehabilitate an existing Class A multiple dwelling, the residential portion of which is vacant, to be rented to persons of low and moderate income as defined by this chapter at rents to be determined by this section. The number of units to be substantially rehabilitated shall be in accordance with the following ratios:

(i) twenty-five percent (25%) of the number of units contained in the multiple dwelling or dwellings located within the geographic exclusion area which will be owned as a rental; or

(ii) thirty percent (30%) of the number of units contained in the multiple dwelling or dwellings located within the geographic exclusion area which will be owned as a cooperative or condominium.

(4) Entering into a Written Agreement with the Department on or after January 1, 1991 to create Class A dwelling units through new construction on a site or sites meeting the requirements of §6-02(f) herein, to convert an existing non-residential building to a Class A multiple dwelling, or to substantially rehabilitate an existing Class A multiple dwelling building, the residential portion of which is vacant and has been entirely vacant for not less than three years, to be rented to:

(i) persons of low income as defined by this chapter at the rents to be determined by the Department pursuant to this chapter numbering at least twenty percent (20%) of the units in the multiple dwelling located within the geographic exclusion area seeking benefits pursuant to the Act.

(ii) persons of moderate income as defined by this chapter at rents to be determined by this section numbering at least tweny-five percent (25%) of the units in the multiple dwelling located within the geographic exclusion area seeking benefits pursuant to the Act.

(iii) homeless persons are referred by the Department or by the Human Resources Administration, numbering at least sixteen and six-tenths percent (16.6%) of the units in the multiple dwelling located within the geographic exclusion area seeking benefits pursuant to the Act.

(5) Entering into a written agreement with the Department to create through new construction or substantial rehabilitation Single Room Occupancy units to be rented to persons of low and moderate income as defined by these rules at rents to be determined by the Department pursuant to this section. The number of units to be created shall be in accordance with the following ratios:

(i) forty-two percent (42%) of the number of units contained in the multiple dwelling or dwellings located within the geographic exclusion area which will be owned as a rental; or

(ii) fifty-one percent (51%) of the number of units contained in the multiple dwelling or dwellings located within the geographic exclusion area which will be owned as a cooperative or condominium.

(6) If the average size of the residential units contained in the multiple dwelling or dwellings located within the geographic exclusion area seeking benefits pursuant to the Act exceeds 1,200 square feet, the Department shall increase the number of affordable units which must be created pursuant to paragraphs (2), (3), (4) or (5) of §6-08(b) by multiplying that number of units by the ratio of the average square footage to 1200 square feet unless the average square footage per unit of the low and moderate income units is equal to those of the multiple dwelling in the geographic exclusion area and the developer is the same for the geographic exclusion area units and the affordable units.

(7) If the number of low and moderate income units to be created exceeds 130, two out of every three units in

excess of 130 must be rented to moderate income households as defined in this chapter, and must number twenty-five percent (25%) of the number of the units in the multiple dwelling located within the geographic exclusion area seeking the benefits of the Act; and one out of every three units in excess of 130 must be rented to low income households as defined in this section, and must number twenty percent (20%) of the number of units in the multiple dwelling located within the geographic exclusion area seeking the benefits of this Act.

(c) **Location of affordable units.** Dwelling units created to satisfy the requirements of this section must be contained in a multiple dwelling located on a site or sites outside of the geographic exclusion area, except those affordable units contained in the multiple dwelling, located within the geographic exclusion area, seeking benefits of the Act. In addition, where a written agreement was executed on or after January 1, 1991, dwelling units created to satisfy the requirements of this chapter may also be located on a site or sites within the geographic exclusion area. Sites outside of the geographic exclusion area may be either privately owned or owned by the City of New York. The development of City owned sites must be carried out pursuant to the provisions of §6-08(d).

(d) **Development of City-owned sites.** (1) An applicant for benefits pursuant to this Act who wishes to create the required number of low and moderate income units on a vacant City-owned site may be offered a site or sites pursuant to a method to be established by the Department. Such method shall make available parcels which will yield the necessary number of low and moderate income units.

(2) The following procedures apply to the substantial rehabilitation or conversion of City-owned sites or to new construction on vacant City-owned parcels:

(i) All construction shall be performed by the developer under a license agreement with the City. At no time will title to the multiple dwelling be conveyed to the developer. All hard and soft development costs will be borne by the developer.

(ii) After a permanent Certificate of Occupancy has been issued for the multiple dwelling or dwellings, the Department shall convey title to the multiple dwelling or dwellings to a qualified not-for-profit organization in whose catchment area the project is located. Disposition will be for $1 per multiple dwelling through ULURP or UDAAP. If the building is located in the catchment area for more than one local and/or city-wide qualified not-for-profit group, the Department will select the group to whom the building will be sold.

(iii) one hundred percent (100%) of the units in the multiple dwelling or dwellings must be affordable units.

(iv) ten percent (10%) of the units must be provided for homeless families. Referrals will be made by HPD/HRA by agreement with the not-for-profit organization, which shall provide the not-for-profit organization with the ability to screen prospective tenants.

(e) **Ownership of affordable units.** (1) All affordable units created pursuant to this section must be owned as rentals, for either 20 years or as long as the building containing the affordable units receives real estate tax benefits, whichever is longer.

(2) Buildings containing affordable units created on privately owned sites may be owned by either a for-profit or a qualified not-for-profit organization.

(i) In the event ownership of the affordable units is retained by a for-profit owner, the owner of the building receiving the benefits of the Act as a result of satisfaction of the requirements of this section shall have the ongoing responsibility for insuring the continuing maintenance and operation of the affordable units in a habitable condition. Should an owner fail to maintain such units as affordable or in a habitable condition, pursuant to §6-07(e)(6), (7) and (8) of this chapter, benefits of the Act received by the multiple dwelling located in the geographic exclusion area shall be revoked retroactive to the start of construction. Upon receipt of a Notice of Revocation pursuant to §6-07(h) of this chapter, the owner shall have a ninety day period to cure such violation.

(ii) The developer of the affordable units on privately owned sites may elect to transfer ownership of the off-site units to a qualified not-for-profit organization is a New York State corporation experienced in the management of low income housing and approved in writing by the Department in accordance with the purpose of this section. In that event, the developer must convey title to a qualified not-for-profit for $1.00 per multiple dwelling. The not-for-profit owner shall assume the ongoing responsibility for insuring the continuing maintenance and operation of the affordable units in a habitable condition. Failure of the not-for-profit to maintain such units as affordable or in a habitable condition shall not result in a revocation of the tax benefits received by the multiple dwellings located in the geographic exclusion area.

(iii) A developer creating affordable units on a privately-owned site with the assistance of the Federal Low Income Housing Credit under §42 of the Internal Revenue Code of 1986 may retain ownership of such units if the developer enters into a management contract with a qualified managing agent approved in writing by the Department and conforms to the requirements of this section. Failure of the managing agent to maintain such units as affordable or in a habitable condition shall not result in a revocation of the tax benefits received by the multiple dwelling located in the geographic exclusion area.

(A) The management contract must be approved by the Department and shall be for twenty years or for the length of the real estate tax benefits on the affordable units, whichever is longer. The developer must obtain the prior written approval of the Department to substitute another qualified managing agent if, during the term of the contract, the relationship with the original manager is severed for any reason.

(B) The affordable units must remain as rent stabilized units for twenty years or the length of the real estate tax benefits on such affordable units, whichever is longer. Thereafter, upon each vacancy the affordable units may be deregulated according to the following schedule:

Year After Expiration of Lower Income Housing Plan	Maximum % of Units that can be at Market
One	0%
Two	0%
Three	20%
Four	20%
Five	40%
Six	40%
Seven	60%
Eight	60%
Nine	80%
Ten	80%
Eleven	100%

(C) The developer shall enter into an agreement with the Department to fund two reserve funds. The first shall create sufficient funds for maintenance and operation of the affordable housing units to the extent to which maintenance and operating expenses exceed income available from the rent roll, and shall be created in accordance with §6-08(f)of this section. The second covers capital improvement costs and will require the developer to deposit with the City a Capital Improvement Escrow Fund equal to 1 percent (1%) of total development costs. The developer will be required to replenish the fund within sixty (60) days of any drawing down. Interest will accrue to such Fund, which will be held by the Department. The not-for-profit can draw on this escrow fund upon authorization by the Department if the developer fails to make necessary capital repairs. Neither the Department nor the City shall have any liability as Escrow Agent; the Department's determination of withdrawal of funds shall be binding on all parties.

(D) If HPD approves a not-for-profit manager, the developer must enter into a purchase option contract with the not-for-profit for the period of the affordable housing plan. This option contract shall state that the not-for-profit manager may purchase the affordable units for $1 if the owner abandons the project. Evidence of abandonment shall include failure by the developer to meet the maintenance and operating expenses, failure to replenish the Capital Improvement Escrow Fund, or failure to make necessary repairs. Further, if during the time of the Federal Low Income Housing Credit, such credit is revoked and recaptured due to failure by the developer to comply with the applicable provisions of the Internal Revenue Code and any applicable regulations, then the not-for-profit may exercise the purchase option listed above. If the developer retains ownership through the end of the affordable housing plan, then the Capital Improvement Escrow Fund is paid to the developer upon expiration of the affordable housing plan. If the developer abandons the development before the end of the expiration of the affordable housing plan, then the Capital Improvement Escrow Fund is transferred to the not-for-profit. The purchase option contract may provide for an automatic termination of the contract if HPD approves termination of the not-for-profit as managing agent. In the absence of a not-for-profit manager, HPD may require the owner to enter into a purchase option contract with a not-for-profit acceptable to HPD which would take effect in the event of abandonment.

(f) **Special reserve account.** The developer of affordable units necessary to qualify a multiple dwelling within the geographic exclusion area for benefits of the Act, which shall not be owned by the for-profit developer of such multiple dwelling, must create a special operating reserve fund. The fund shall be in the amount of $2.25 for each square foot of affordable housing contained in such new, newly converted or substantially rehabilitated multiple dwelling or dwellings, including a pro rata share of common space of buildings not entirely lower income. The fund shall be placed in a blocked account which will be administered by the Department. This reserve fund is separate from the normal building reserve fund built into the rent roll that will be accumulated over time and will be available only on a program-wide basis to cover unanticipated increases in the costs of operating and maintaining units in general. Once an expenditure from the fund has been authorized on a programmatic basis, the dollars can be drawn down on a project-by-project basis. There will be a separate account for each project. Notwithstanding the above, the reserve fund may also be drawn down, with the approval of the Department, in the event of unusual occurrences not normally covered by the normal building reserves.

(g) **Construction requirements.** (1) Affordable Class A dwelling units created through new construction must meet the standards set forth in the Department's "Design Guidelines For Housing-New Construction" and "Standard Specifications" ("Design Guidelines") (applicant should obtain the most recent edition of the Design Guidelines from the Department). In addition, such dwelling units must satisfy one of the following requirements:

(i) Unless the affordable units are created under §6-08(b)(3) or §6-08(b)(5), 50 percent (50%) of the units must contain two or more bedrooms, and in all cases average square footage and bedroom mix must be equally distributed with respect to all income levels; or

(ii) For multiple dwellings that commence construction before December 28, 2007, such affordable units must be located in the same building and must contain the same average square footage and bedroom mix of all residential units contained in such multiple dwelling. For multiple dwellings that commence construction on or after December 28, 2007, if the affordable units are created in accordance with §6-08(b)(1) and unless preempted by federal requirements, (A) all affordable units must have a comparable number of bedrooms and a unit mix proportional to the market rate units contained in such multiple dwelling, or (B) at least fifty percent (50%) of the affordable units must have two or more bedrooms and not more than fifty percent (50%) of the remaining affordable units can be smaller than one bedroom, or (C) the floor area of the affordable units must be no less than twenty percent of the total floor area of all dwelling units in such multiple dwelling.

(2) Affordable Class A dwelling units created through substantial rehabilitation or conversion must meet the standards set forth in the Department's "Design Guidelines For Housing-Substantial Rehabilitation" and "Standard Specifications." ("Design Guidelines") (applicant should obtain the most recent edition of the Design Guidelines from the Department).

(i) In order for the rehabilitation of a vacant multiple dwelling or the conversion of a non-residential building to qualify under §6-08(b)(4) of these rules, the scope of work must include but is not limited to the following:

(A) Beam replacement, to the extent required by the Department

(B) New subflooring

(C) New partition framing

(D) New sheetrock walls and ceilings

(E) New windows

(F) New finish flooring, roofing and insulation

(G) New kitchen cabinets

(H) New baths with ceramic tile finishes

(I) New interior and exterior doors (wood and metal)

(J) New finish carpentry

(K) New plumbing

(L) New heating

(M) New electrical

(N) New elevators (where applicable)

(0) Masonry repairs, to the extent required by the Department

(P) New fire escapes, to the extent required by the Department

(Q) Concrete site work, to the extent required by the Department

(ii) At least fifty percent (50%) of the affordable units created pursuant to this paragraph shall contain two or more bedrooms each, except that the Department may reduce the bedrooms requirements when, in the sole opinion of the Department, existing structural elements preclude compliance. If the Department approves a reduction in the number of bedrooms, the developer will be required to rehabilitate or create through conversion additional units in a room and bedroom configuration which is acceptable to the Department, to compensate for the number of bedrooms and square footage which would have been obtained had the bedroom requirement been met. For the purposes of computation, the Department will require three studios or two one-bedroom units to be built for every two-bedroom unit lost. The Department will seek the solution which results in creating apartments with the highest bedroom count possible, consistent with the Department's policy of creating housing which meets the needs of families.

(3) Single Room Occupancy Units created to conform to §6-08(b)(5) must conform to the Department's Single Room Occupancy Guidelines (applicant should obtain the most recent edition of the Guidelines from the Department).

(h) **Income and occupancy requirements.** All units created pursuant to this section must, at initial occupancy, be affordable to low and moderate income households, as defined in this chapter. Such units must be rented to households earning no more than four times the annual rent for the dwelling unit established pursuant to §6-08(i), herein, and must be rented to households that consist of the minimum number of people as specified below:

Bedroom Size	Minimum Number of People
0	1
1	1
2	2
3	4

(i) **Initial rents; re-rentals.** (1) For projects permitted to assume debt pursuant to §6-08(o)(2), the Department shall establish initial rents for individual units as provided in subparagraph (i). For all other projects, initial rents shall be established as provided in subparagraph (ii).

(i) Units rented to persons of low income are not to exceed 30% of 55% of median income. Units rented to persons of moderate income are not to exceed the average of 30% of 75% of median income, provided that no initial annual rent will be established for any unit in a moderate or mixed income project which exceeds 30% of 95% of annual median income. The Department shall establish a total rent roll for units created pursuant to this section based upon program-wide standards for the amount necessary for maintenance, operation, administration, creation of normal reserve accounts, debt service, and in consideration of the income level to be served. For the purpose of determining median income, the following family sizes shall be imputed:

Number of Bedrooms	Imputed Family Size
0	1.0
1	1.5
2	3.0
3	4.5
4	6.0

(ii) The Department shall establish a total rent roll for units created pursuant to this section based upon program-wide standards for the amount necessary for maintenance, operation, administration and the creation of normal reserve accounts, and in consideration of the income level to be served. For affordable units being constructed under any of the options in this section, the managing agent may set rents higher than the allowable rent roll only with the prior written approval of the Department and only as long as no household is charged more than thirty percent (30%) of their annual income for rent. Such rents shall be the higher of the rents in effect when the Written Agreement for Creation of Affordable Housing is entered into or when construction of the affordable housing units commences. The initial rents for individual units will be determined by the managing entity, and must be affordable to low and moderate income families, as defined in this chapter. In no case shall the initial rent of any affordable unit exceed 30% of 100% of median income.

(2) Upon initial occupancy, all units created pursuant to this section must be registered with the New York State Division of Housing and Community Renewal. Such units must remain rent stabilized for the entire period during which such units receive real estate tax benefits under any New York State or New York City tax abatement and/or exemption programs, or for 20 years, whichever is longer.

(3) Future rent increases may not exceed the increases established by the Rent Guidelines Board.

(4) Upon vacancy, units must be re-rented at no more than the legal stabilized rent. All units must be rented to families earning no more than four times such annual rent.

(5) Tenants holding a lease and in occupancy of any unit created pursuant to this section at the expiration of the rent stabilization period pursuant to paragraph (2) of this subdivision (i) shall have the right to remain as rent stabilized tenants for the duration of their occupancy. Once units become vacant after termination of benefits, the owner of such units shall have the option to de-stabilize such rents.

(6) Tenant incomes and rents must be certified to the Department by the owner of the multiple dwelling containing the affordable units following initial rent up. Thereafter, the owner of such multiple dwelling must certify to the Department tenant incomes and rents for all re-rentals after vacancies on an annual basis, but no later than January 31 for each calendar year ending December 31.

(7) For the purposes of this subsection (i), "rent" shall mean gross rent, as defined for the purposes of the federal low income housing tax credit program, and shall include utilities. In the event that utilities are charged separately, gross rent shall be reduced accordingly.

(j) **Second tier rents.** As an additional protection against future insolvency of units created pursuant to this section and owned by a qualified not-for-profit organization, the Department will also register with the New York State Division of Housing and Community Renewal a second level of rents. This second tier of rents will be set by the Department at or very close to the maximum rents affordable to moderate income families as defined in this chapter. Implementing the second tier of rents for any unit will be allowed on vacancy only with the Department's written permission. The Department will give its permission after a finding that the project has been efficiently managed and the need for second tier rents are a result of factors outside the control of the not-for-profit owner, but in any event, in the following cases only:

(1) When the project's financial feasibility is threatened by a significant unanticipated rise in maintenance and operating expenses that cannot be covered by the rent roll and available reserves; or

(2) When a significant, unanticipated expense occurs in the building that cannot be covered by the rent roll and available reserves; or

(3) When rents rise faster than the income of the tenants who are paying 30 percent (30%) of their income in rent and where the increased rent(s) on the vacant unit(s) are used to maintain the rents for existing tenants at 30 percent (30%) of their income.

(k) **Time requirements; filing fees.** (1) The written agreement with the Department for the creation of affordable units pursuant to this section must be entered into prior to the commencement of construction of such affordable units.

(2) Such written agreement may be entered into after the commencement of construction of the multiple dwelling or dwellings located in the geographic exclusion area seeking benefits of this Act.

(3) Any request for a written agreement pursuant to §6-08(1) herein shall be accompanied by a filing fee of $100 for each proposed unit of affordable housing, which fee shall be non-refundable but shall be applied to the filing fee for the tax benefits for the affordable units, as established by §6-05(c) herein and §5-05(f) of Title 28 of the Rules of the City of New York governing tax exemption and abatement pursuant to §11-243 of the Administrative Code (J-51).

(l) **Request for written agreement.** The following shall be required to be submitted to the Department with any request for a written agreement. Once approved, all documents will be incorporated into the agreement, the complete package to be referred to as The 421-a Written Agreement for Creation of Affordable Housing:

(1) A cover sheet identifying:

(i) the applicant

(ii) if a corporate entity, the principals in that entity

(iii) the location of the affordable housing units

(iv) the location, if known, of the multiple dwelling located within the geographic exclusion area seeking benefits of the Act.

(2) A statement that the units are intended to entitle a project to receive benefits of the Act and that such units will be rented in compliance with all provisions of this chapter.

(3) Proof of control of the site of the affordable units including:

(i) if privately owned, deed or contract of sale; or

(ii) if a city-owned building is to be rehabilitated or converted,

(A) proof of selection of site; and

(B) endorsed license agreement with the City to permit the rehabilitation or con- version.

(4) Preliminary building plans as approved by the Department, indicating a site plan of the low and moderate income building, total size of the building and the size and configuration of the dwelling units to be contained in the building.

(5) A scope of work indicating the extent of rehabilitation or scope of new construction or conversion.

(6) Identification of the owner of the affordable units created on privately owned sites: (i) if a for-profit owner, the name of the ownership entity and principals.

(ii) a not-for-profit owner, the name of not-for-profit and evidence of pre-quali- fication.

(7) A marketing plan for tenant selection and apartment rental. The marketing plan shall identify specific organizations or institutions, such as Community Boards, not-for-profit organizations, senior citizen centers, religious institutions, etc., which shall advertise the availability of the affordable units and must be in accordance with the Department's marketing guidelines, which can be obtained from the Department. All marketing efforts must meet equal opportunity and fair housing guidelines.

(8) A statement that a rental multiple dwelling located within the geographic exclusion area which qualified for benefits under the Act pursuant to §6-08(b)(3), (4) or (6) of this section will not be converted to cooperative or condominium ownership during the period of partial tax exemption. Conversion may be permitted by the Department subsequent to the expiration of the period of partial tax exemption where the affordable units are owned by a for-profit organization only if the conversion sponsor:

(i) enters into a Written Agreement with the Department to provide for the maintenance and operation of the affordable units for the remainder of the 20 years or the period during which such units receive tax benefits under any New York State or New York City tax abatement or exemption program, whichever is longer, or

(ii) transfers the ownership of the affordable units to a not-for-profit organization qualified by the Department.

(9) Where affordable units are created pursuant to §6-08(b)(1) herein, a statement that such units will not be converted to condominium or cooperative ownership for 20 years, or as long as the buildings containing the affordable units receive tax benefits under any tax abatement or tax exemption program from the State of New York or the City of New York, whichever is longer.

(10) Where the affordable units will be owned by for-profit organization, except those units meeting the requirments of §6-08, a statement that the recipient of the benefits of this Act will be responsible for the maintenance and operation of the units in a habitable condition. If the units will be owned by a not-for-profit organization as permitted under §6-08(e)(2)(iii) of this chapter, the developer shall be required to fund a reserve fund in the amount of $2.25 for each square foot of affordable housing provided, in the same manner as that described in §6-08(f), and a Capital Improvement Escrow Fund in accordance with §6-08(e)(2)(iii).

(11) For units to be owned by a not-for-profit organization, an agreement to fund a blocked reserve account, in an amount specified by this section and administered by the Department, or to create such a fund should the units owned by a for-profit organization be transferred to a not-for-profit in the future.

(12) An agreement to submit to the Department, within five days of their execution or issuance by another City agency:

(i) a construction contract for the creation of the lower income units between the applicant and the entity chosen to carry out the construction;

(ii) final approved plans by the Department of Buildings;

(iii) the altered building application and alteration permit for substantial rehabilitations and conversions or the new building permit for new construction;

(iv) a temporary certificate of occupancy for the entire residential portion of the building or the permanent certificate of occupancy.

(13) An agreement that changes or amendments made to any document included in this plan must obtain the prior approval of the Department.

(14) A filing fee in the amount of $100 for each proposed unit of affordable housing.

(15) A financial statement describing proposed sources and uses of all funds for the project, as approved by the Department.

(m) **Certification; negotiable certificates.** (1) After the Department determines that a request for Written Agreement is complete and satisfies all requirements of this section, the Department shall approve the request for a Written Agreement. The Written Agreement will provide for the granting of benefits of this Act for a specified number of dwelling units contained in a multiple dwelling located within the exclusion area. Such Written Agreement must be submitted to the Department with the application for benefits of the Act for the multiple dwelling located in the geographic exclusion area. In the event benefits of the Act are granted based upon a Written Agreement, failure to satisfy the conditions contained in such Written Agreement will result in a revocation of any benefits received by the multiple dwelling located in the exclusion area.

(2) Upon the submission to the Department of a permanent Certificate of Occupancy for, or the temporary Certificate of Occupancy for the entire residential portion of, the building containing the affordable units created pursuant to this section, the Department shall conduct a site inspection. Following that site inspection and upon satisfaction that all terms of the Written Agreement and of this section have been met, the Department shall issue the Negotiable Certificates representing the completion of the affordable units.

(3) Such Negotiable Certificate shall be required prior to the issuance of the Final Certificate of Eligibility for a multiple dwelling located within the geographic exclusion area pursuant to §6-05(e) of this chapter, unless at the sole option of the Department, pursuant to §6-05(d)(l)(vi) of this chapter, a Letter of Credit has been submitted to the Department.

(4) Such Negotiable Certificate shall provide that a specified number of dwelling units containing up to an average size of twelve hundred square feet to be constructed in the geographic exclusion area shall be eligible to receive benefits of the Act.

(5) In the event that the benefits of the Act are to be transferred to more than one building located within the geographic exclusion area, and at the written request of the applicant, the Negotiable Certificate shall be "drawn down"

by the amount required for each transfer, and a new Negotiable Certificate, endorsed by the applicant, shall be issued for each transfer. Application for the benefits of the Act must be accompanied by the original Negotiable Certificate and a copy of the Certificate of Completion.

(n) **Governmental assistance to affordable units.** (1) Affordable units created pursuant to §6-08(b) herein may not be the recipient of any other as-of-right or discretionary government benefit, consideration or assistance, excluding tax exempt financing, federal low income housing tax credits, and real estate tax benefits enumerated in paragraph (3) of this subdivision (n).

(2) Affordable units created to satisfy the low and moderate income housing requirements of any other governmental benefit, consideration or assistance except tax exempt financing, federal low income housing tax credits, and real estate tax benefits enumerated in paragraph (3) of this subdivision (n) shall not be considered as being created to satisfy the requirements of this section. Units created pursuant to §6-08(b)(i) herein shall not also qualify as affordable units under this section.

(3) In order to qualify a multiple dwelling located within the geographic exclusion area for benefits under the Act, affordable units created by rehabilitation or conversion must receive a Certificate of Eligibility for the benefits of §11-243 or 11-244 of the Administrative Code or §421-g of the Real Property Tax Law, and affordable units created by new construction must receive a Certificate of Eligibility for the benefits of the Act, unless such units obtain tax exemption pursuant to §420-a or 420-b of the Real Property Tax Law, §696 of the General Municipal Law, or §577 of the Private Housing Finance Law.

(4) Affordable units created pursuant to §6-08(b)(2) through §6-08(b)(5) of these rules may not be used, or have been used, to satisfy a requirement to create low or moderate income housing imposed by a federal, state, or local agency or instrumentality or pursuant to a court or administrative order or decree (unless such requirement is imposed solely as a condition to receiving bond financing or federal low income housing tax credits for the property containing the affordable units).

(5) Notwithstanding anything to the contrary contained in this subdivision, affordable units created to satisfy the requirements of the inclusionary housing program established pursuant to the New York City Zoning Resolution may be used to qualify a multiple dwelling in the geographic exclusion area for the benefits of the Act if at least twenty percent (20%) of the units contained in the multiple dwelling applying for such benefits are affordable to persons of low and moderate income as defined by this chapter.

(o) **Mortgage and debt limitations.** (1) In the case of a project which qualifies for tax benefits pursuant to §6-08(b)(1), any lien or mortgage encumbering one or more low and moderate income units in such project shall expressly provide that it is subject and subordinate to the Written Agreement imposing the restrictions required by this §6-08, commencing upon issuance of a Final Certificate of Eligibility for such tax benefits.

(2) Projects undertaken pursuant to either §6-08(b)(4)(i), §6-08(b)(4)(ii), or §6-08(b)(4)(iii) may be encumbered with a lien or mortgage, provided the amount of debt placed on the project permits rents for such units to comply with the provisions of §6-08(i) and such lien or mortgage expressly provides that it is subject and subordinate to the Written Agreement.

HISTORICAL NOTE

Section amended City Record May 6, 1994 eff. June 5, 1994.

Section in original publication July 1, 1991.

Subd. (b) par (1) amended City Record May 20, 2008 §7, eff. June 19, 2008. [See T28 §6-09 Note 1]

Subd. (b) par (4) open par amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See Note 1]

Subd. (d) par (2) open par amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See Note 1]

Subd. (f) amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See Note 1]

Subd. (g) par (1) subpar (ii) amended City Record Apr. 23, 2009 §1, eff. May 23, 2009. [See T28 §6-10 Note 1]

Subd. (g) par (1) subpar (ii) amended City Record May 20, 2008 §8, eff. June 19, 2008. [See T28 §6-09 Note 1]

Subd. (g) par (2) open par amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See Note 1]

Subd. (g) par (2) subpar (i) open par amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See Note 1]

Subd. (g) par (2) subpar (ii) amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See Note 1]

Subd. (i) par (1) amended City Record July 30, 1998 §8, eff. Aug. 30, 1998. [See T28 §6-01 Note 2]

Subd. (i) par (7) added City Record July 30, 1998 §9, eff. Aug. 30, 1998. [See T28 §6-01 Note 2]

Subd. (l) par (3) amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See Note 1]

Subd. (l) par (5) amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See Note 1]

Subd. (l) par (12) subpar (iii) amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See Note 1]

Subd. (l) par (15) amended City Record July 18, 2003 §10, eff. Aug. 17, 2003. [See T28 §6-02 Note 1]

Subd. (l) par (15) added City Record July 30, 1998 §11, eff. Aug. 30, 1998. [See T28 §6-01 Note 2]

Subd. (n) par (1) amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See Note 1]

Subd. (n) par (3) amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See Note 1]

Subd. (n) par (4) added City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See Note 1]

Subd. (n) par (5) added City Record June 5, 2007 §1, eff. July 5, 2007. [See Note 2]

Subd. (o) added City Record July 30, 1998 §10, eff. Aug. 30, 1998. [See T28 §6-01 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 20, 1997:

The proposed rules: (1) enable conversions of existing, non-residential buildings, to meet the affordable housing requirements of §6-08 of such rules, (2) clarify existing provisions prohibiting affordable units constructed or rehabilitated in order to satisfy a requirement imposed by a governmental entity or court orer from meeting the

affordable housing requirements of §6-08 of such rules, and (3) include the recently-authorized §421-g (Lower Manhattan Residential Conversion Program) and §577 of the Private Finance Housing Law as two of the possible forms of real estate tax exemption for the affordable units created pursuant to §6-08 of such rules.

The rules are being proposed pursuant to City Charter §1802(6) and in order to comply with the City Administrative Procedure Act. Section 421-a(3) of the Real Property Tax Law authorizes HPD to issue rules for the program.

2. Statement of Basis and Purpose in City Record June 5, 2007: This rule amendment would clarify that affordable units created to satisfy the requirements of the Inclusionary Housing Program under the New York City Zoning Resolution would qualify a multiple dwelling in the Geographic Exclusion Area for extended benefits pursuant to Real Property Tax Law §421-a if at least 20% of the units are affordable to low and moderate income persons. In other words, the proposed rule amendment affirms that inclusionary housing units are carved out of the "double dipping" prohibition currently applicable to projects in the Geographic Exclusion Area.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 6-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 6 TAX EXEMPTION PURSUANT TO §421-A OF THE REAL PROPERTY TAX LAW AND §11-245 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

§6-09 New Eligibility Requirements.

(a) **Definitions.** For purposes of this section 6-09, the following terms shall have the following meanings:

Affordability requirement. "Affordability requirement" shall mean that not less than twenty percent of the onsite units in such multiple dwelling are GEA 60% AMI units or GEA SGA units.

Applicable deadline. "Applicable deadline" shall mean, unless otherwise exempted pursuant to the Act, (a) with respect to a multiple dwelling within the geographic exclusion area, June 30, 2008, and (b) with respect to the limitations on benefits imposed pursuant to paragraph five of subdivision b of this section, December 27, 2007.

Commence. "Commence" shall mean:

(a)(1) the later to occur of (i) the date upon which a new metal or concrete structure to be incorporated into the multiple dwelling that shall perform a load bearing function for such multiple dwelling is installed; or (ii) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural, plumbing and structural plans approved by the Department of Buildings) was issued by such department; or

(2) if a project includes new residential construction and the concurrent conversion, alteration or improvement of a pre-existing building or structure, the later to occur of (i) the date upon which the actual construction of the conversion, alteration or improvement of the pre-existing building or structure begins; or (ii) the date upon which an alteration permit for the multiple dwelling (based upon architectural, plumbing and structural plans approved by the Department

of Buildings) on which the actual construction of the conversion, alteration or improvement takes place, was issued by such department;

(b) provided, however, that (1) with respect to subparagraph (1) of paragraph (a), if piles or caissons are required, "commence" shall mean the later to occur of (i) the date upon which at least one fully driven pile or caisson is installed; or (ii) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural, plumbing and structural plans approved by the Department of Buildings) was issued by such department; and

(2) with respect to both subparagraphs (1) and (2) of paragraph (a):

(i) such installation of a new metal or concrete structure or such beginning of the actual construction of the conversion, alteration or improvement of the pre-existing building or structure, respectively, and such issuance of a building or alteration permit, must both have occurred in order for the multiple dwelling to meet this definition of "commence"; and

(ii) for multibuilding projects, each multiple dwelling in such multibuilding project shall be deemed to "commence" (A) with respect to subparagraph (1) of paragraph (a), on the later to occur of (1) the date upon which a new metal or concrete structure to be incorporated into the first multiple dwelling in such multibuilding project that shall perform a load bearing function for such multiple dwelling is installed; or (2) the date upon which a building or alteration permit for the first multiple dwelling in such multibuilding project (based upon architectural, plumbing and structural plans approved by the Department of Buildings) was issued by such department, provided that all of the multiple dwellings in such multibuilding project have been issued by the Department of Buildings a building or alteration permit (based upon architectural, plumbing and structural plans approved by such department) on or before the applicable deadline, and the periods of construction and final real property tax exemption benefits granted pursuant to the Act shall commence simultaneously for all of the multiple dwellings in such multibuilding project; and (B) with respect to subparagraph (2) of paragraph (a), on the later to occur of (1) the date upon which the actual construction of the conversion, alteration or improvement of the first pre-existing building or structure in such multibuilding project begins; or (2) the date upon which an alteration permit for the first multiple dwelling in such multibuilding project (based upon architectural, plumbing and structural plans approved by the Department of Buildings) on which the actual construction of the conversion, alteration or improvement takes place, was issued by such department, provided that all of the multiple dwellings in such multibuilding project have been issued by the Department of Buildings a building or alteration permit (based upon architectural, plumbing and structural plans approved by such department) on or before the applicable deadline, and the periods of construction and final real property tax exemption benefits granted pursuant to the Act shall commence simultaneously for all of the multiple dwellings in such multibuilding project; and

(iii) if the architectural, plumbing and structural plans approved by the Department of Buildings in conjunction with the issuance of the first such building or alteration permit are thereafter amended to provide for more than a thirty-five percent (35%) increase (the "35% standard") in the floor area of such multiple dwelling as defined pursuant to the Act, the construction of such multiple dwelling shall be deemed to have commenced on the date upon which such amended plans are filed with such department, provided, however, that, in the case of a multibuilding project that meets the requirements of clause (ii) of this paragraph (2), any such increase in the floor area may be distributed amongst the multiple dwellings in such multibuilding project in any manner permitted under the Zoning Resolution and the 35% standard may be applied to such multibuilding project on an aggregate rather than a single building basis; and

(iv) the construction of any such multiple dwelling also must be completed without undue delay. For purposes of this definition of "commence", (A) if a project consists of one multiple dwelling and such multiple dwelling is completed within thirty-six (36) months from the later to occur of (1) the date of the installation of a new metal or concrete structure or of the beginning of the actual construction of the conversion, alteration or improvement of the pre-existing building or structure, respectively, (2) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural, plumbing and structural plans approved by the Department of Buildings) was issued by such department, or (3) December 28, 2007, such multiple dwelling shall be deemed to have been completed without

undue delay, and (B) if a project meets the requirements of clause (ii) of this paragraph (2), if all of the multiple dwellings in such multibuilding project are completed within thirty-six (36) months from the later to occur of (1) the date of the installation of a new metal or concrete structure for the first multiple dwelling in such multibuilding project or of the beginning of the actual construction of the conversion, alteration or improvement of the first pre-existing building or structure in such multibuilding project, respectively, (2) the date upon which a building or alteration permit for the first multiple dwelling (based upon architectural, plumbing and structural plans approved by the Department of Buildings) was issued by such department, or (3) December 28, 2007, all of the multiple dwellings in such multibuilding project shall be deemed to have been completed without undue delay. Where construction is not completed within such thirty-six (36) month period and an architect or professional engineer has certified that such construction was completed without undue delay, the Department will not merely rely on such certification. In order to determine whether such construction was, in fact, completed without undue delay, the Department will consider the following factors: (i) the extraordinary size and/or complexity of the construction project; (ii) strikes or other unavoidable labor stoppages of substantial duration and severity; (iii) industry-wide shortages of construction materials of substantial duration and severity; (iv) substantial damage to completed construction work caused by fire or other casualty, (v) inability, despite diligent and continuous efforts, to obtain financing for the construction of such project, and (vi) mortgage foreclosure proceedings or other lien enforcement litigation by a lender with regard to such project. In each case, the Department will consider such factors and determine whether construction could reasonably have been completed in a materially shorter period of time.

(c) Where it is determined in accordance with this definition of "commence" that a multiple dwelling commenced construction on or after December 28, 2007 with respect to paragraph five of subdivision (b) of this section or July 1, 2008 with respect to paragraphs one, three or six of subdivision (b) of this section, respectively, this definition of "commence" shall supersede the definition of "commencement of construction" contained in §6-01 of this chapter.

Common charges or carrying charges. "Common charges or carrying charges" shall mean the estimated amounts contained in the offering plan accepted by the office of the Attorney General of the State of New York for filing.

Geographic exclusion area or GEA. "Geographic exclusion area" or "GEA" shall mean the boundaries for any geographic exclusion areas set forth in §421-a of the Real Property Tax Law and §11-245 of the Administrative Code that are effective on or after July 1, 2008.

GEA 60% limit. "GEA 60% limit" shall mean (A) for a multiple dwelling owned and operated as a rental, (1) incomes at the time of initial occupancy that do not exceed sixty percent of the area median incomes adjusted for family size, and (2) rents at the time of initial occupancy that do not exceed thirty percent of sixty percent of the area median incomes adjusted for family size, minus the amount of any applicable utility allowance, and (B) for a multiple dwelling owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, (1) incomes at the time of initial occupancy that do not exceed sixty percent of the area median incomes adjusted for family size, and (2) sales prices at the time of initial sales that result in mortgage payments, including both principal and interest calculated at the prevailing rate and assuming that the mortgage constitutes 90% of the purchase price, and common charges or carrying charges, respectively, that collectively do not exceed thirty percent of sixty percent of the area median incomes adjusted for family size.

GEA SGA limit. "GEA SGA limit" shall mean (A) for a multiple dwelling owned and operated as a rental, (1) incomes at the time of initial occupancy that do not exceed one hundred twenty percent of the area median incomes adjusted for family size and, where such a multiple dwelling contains more than twenty-five units, incomes at the time of initial occupancy that do not exceed an average of ninety percent of the area median incomes adjusted for family size, and (2) rents at the time of initial occupancy that do not exceed thirty percent of one hundred twenty percent of the area median incomes adjusted for family size, minus the amount of any applicable utility allowance, and, where such a multiple dwelling contains more than twenty-five units, rents at the time of initial occupancy that do not exceed an average of thirty percent of ninety percent of the area median incomes adjusted for family size, minus the amount of any applicable utility allowance, or (B) for a multiple dwelling owned and operated as a condominium or cooperative

development by individual condominium unit owners or shareholders, (1) incomes at the time of initial occupancy that do not exceed one hundred twenty-five percent of the area median incomes adjusted for family size, and (2) sales prices at the time of initial sales that result in mortgage payments, including both principal and interest calculated at the prevailing rate and assuming that the mortgage constitutes 90% of the purchase price, and common charges or carrying charges, respectively, that collectively do not exceed thirty percent of one hundred twenty-five percent of the area median incomes adjusted for family size.

GEA 60% AMI unit. "GEA 60% AMI unit" shall mean (A) if a multiple dwelling is owned and operated as a rental, a unit that, upon its initial rental and upon all subsequent rentals of the unit after a vacancy, complies with the GEA 60% limit, or (B) if a multiple dwelling is owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, a unit that, upon the initial sale of such unit, complies with the GEA 60% limit.

GEA SGA unit. "GEA SGA unit" shall mean (A) if a multiple dwelling is owned and operated as a rental, a unit that, upon its initial rental and upon all subsequent rentals of the unit after a vacancy, complies with the GEA SGA limit, or (B) if a multiple dwelling is owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, a unit that, upon the initial sale of such unit, complies with the GEA SGA limit.

Multibuilding project. "Multibuilding project" shall mean a project that consists of more than one multiple dwelling where the multiple dwellings are contiguous and are under common ownership. For purposes of this definition of "multibuilding project", multiple dwellings shall be deemed to be (a) "contiguous" if such multiple dwellings are on tax lots that (1) are adjacent for at least ten linear feet, or, (2) but for the intervention of streets or street intersections, would be adjacent for at least ten linear feet and front the same street or intersection, and (b) "under common ownership" if at the date of commencement of construction, each of the multiple dwellings in such multibuilding project is owned and/or controlled directly or indirectly by the same individual or entity.

Onsite. "Onsite" shall mean situated within a building or buildings on the same zoning lot, or, if only a portion of such zoning lot is being granted benefits pursuant to the Act, situated within a building or buildings on such portion of such zoning lot; provided, however, that (1) each of the buildings on such zoning lot or portion thereof is part of the same application for benefits pursuant to the Act, (2) the periods of construction and final real property tax exemption benefits granted pursuant to the Act for all of the buildings on such zoning lot or portion thereof being granted benefits pursuant to the Act shall commence simultaneously, and (3) no final real property tax exemption benefits shall be granted pursuant to the Act for any of the buildings on such zoning lot or any portion thereof being granted benefits pursuant to the Act until receipt of a certificate of occupancy or a temporary certificate of occupancy for the residential portions of the building or buildings on such zoning lot containing the GEA 60% AMI units and/or the GEA SGA units.

Party in interest. "Party in interest" shall mean any person or entity holding an ownership, ground lease, mortgage, or other security interest, or holding any other interest which may be converted to such interest, in the real property containing the multiple dwelling receiving the benefits pursuant to the Act.

Prevailing rate. "Prevailing rate" shall mean the single family mortgage rate for a thirty-year fixed rate loan established by the Federal Home Loan Mortgage Association and the Federal National Mortgage Association that is either (1) for purposes of the application for a Preliminary Certificate of Eligibility, quoted for the month in which the construction of such multiple dwelling commences, or (2) for purposes of the application for a Final Certificate of Eligibility, quoted for the month in which the first certificate of occupancy or temporary certificate of occupancy for the first unit in such multiple dwelling that is owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, is issued.

Utility allowance. "Utility allowance" shall mean an allowance set forth by the Department for the payment of utilities where the tenant of a GEA 60% AMI unit or a GEA SGA unit is required to pay all or a portion of the utility

costs with respect to such unit in addition to any payments of rent.

(b) **Multiple Dwellings Affected.** (1) Unless otherwise exempted pursuant to the Act, a multiple dwelling within the geographic exclusion area that commences construction on or after July 1, 2008 and which would otherwise be eligible for the benefits of the Act, is only eligible if:

(i) not less than twenty percent of the onsite units in such multiple dwelling are GEA 60% AMI units; or

(ii) the construction of such multiple dwelling is carried out with substantial governmental assistance provided pursuant to a program for the development of affordable housing and not less than twenty percent of the onsite units in such multiple dwelling are GEA SGA units; or

(iii) such multiple dwelling has purchased negotiable certificates in order to entitle it to the benefits of the Act for a specified number of units in the geographic exclusion area; provided, however, that such negotiable certificates were generated by a Written Agreement with the Department entered into prior to December 28, 2007 pursuant to §6-08(b)(4) of this chapter.

(2) For thirty-five years from the completion of construction, all GEA 60% AMI units and GEA SGA units in multiple dwellings must (i) if they are owned and operated as rentals, remain rent stabilized and allow tenants holding a lease and in occupancy at the expiration of such thirty-five year period to remain as rent stabilized tenants for the duration of their occupancy, (ii) comply with the affordability requirement, and (iii) upon the renewal of leases or at any time during the term of the lease, be rented to existing tenants for the lesser of (A) the rents permitted under the Rent Stabilization Law of 1969 and the Emergency Tenant Protection Act of 1974 and all regulations promulgated in connection thereto (collectively, "Rent Stabilization Laws"), or (B) 30% of the applicable income limit for such GEA 60% AMI unit or GEA SGA unit, respectively, minus the amount of any applicable utility allowance, provided, however, that no increase authorized pursuant to 28 RCNY §6-04(b) of this chapter and no exemption or exclusion from any requirement of the Rent Stabilization Laws, including, but not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or other provisions of the Rent Stabilization Laws due to (a) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (b) the fact that tenant income and/or unit rent exceed prescribed maximum amounts, (c) the nature of the tenant, or (d) any other factor, may be applied to any such GEA 60% AMI unit or GEA SGA unit during such thirty-five year period. Furthermore, the lease for each such unit owned and operated as a rental and for the renewal thereof must contain a notice in at least twelve (12) point type stating the approximate date on which such thirty-five year period is expected to expire and informing such tenant that after such thirty-five year period, (i) the unit will no longer have to comply with the affordability requirement and (ii) if the tenant is holding a lease and in occupancy at the expiration of such thirty-five year period, such tenant shall have the right to remain as a rent stabilized tenant for the duration of such tenant's occupancy. The rent stabilization and lease rider requirements contained in §6-02(g) of this chapter shall continue to apply to the multiple dwellings owned and operated as a rental containing such GEA 60% AMI units or GEA SGA units to the extent that they do not conflict with this paragraph.

(3) Unless otherwise exempted pursuant to the Act, the owner of a multiple dwelling that is located within the geographic exclusion area and that commences construction on or after July 1, 2008:

(i) when filing an application for a Preliminary Certificate of Eligibility pursuant to §6-05(b) of this chapter, must submit (A) written certification that it meets the affordability requirement, or (B) if such multiple dwelling is qualifying for benefits pursuant to subparagraph (iii) of paragraph (2) of this subdivision, and subject to the provisions contained in §6-08(m)(1) of this chapter, submit either (a) a copy of a Written Agreement with the Department for the construction or substantial rehabilitation of housing units affordable to persons of low and moderate income on another site that meet the requirements of §6-08 of this chapter, or (b) the negotiable certificates issued pursuant to § 6-08 of this chapter, evidencing the bearer's entitlement to the benefits of the Act for the units for which the owner is seeking tax benefits.

(ii) when filing an application for a Final Certificate of Eligibility pursuant to §6-05(d) of this chapter for a multiple dwelling that contains GEA 60% AMI units or GEA SGA units, submit evidence satisfactory to the Office that a restrictive declaration in a form satisfactory to the Office (A) has been executed by all parties in interest, (B) has been recorded against the real property containing the multiple dwelling receiving benefits pursuant to the Act, and (C) provides that the GEA 60% AMI units or the GEA SGA units in such building must for thirty-five years from the completion of construction (1) comply with the affordability requirement, and (2) if such multiple dwelling is owned and operated as a rental, remain rent stabilized and allow tenants holding a lease and in occupancy at the expiration of such thirty-five year period to remain as rent stabilized tenants for the duration of their occupancy.

(iii) when filing an application for a Final Certificate of Eligibility pursuant to §6-05(d) of this chapter for a multiple dwelling that contains GEA 60% AMI units or GEA SGA units and unless the dwelling units in such multiple dwelling are marketed under the Department's monitoring, submit an affidavit from the owner containing such information as the Department may require to certify that such units will be marketed pursuant to a fair and open process in accordance with the Department's marketing guidelines, and that either (A) residents of the community board where the multiple dwelling for which benefits are being granted pursuant to the Act is located shall, upon initial occupancy, have priority for the purchase or rental of 50% of the GEA 60% AMI units or 50% of the GEA SGA units, respectively, or (B) such multiple dwelling does not have to comply with such community priority requirement because the community priority requirement is preempted by federal requirements that such owner has specified in such affidavit.

(iv) in addition to the record keeping requirements contained in §6-07 of this chapter, must retain all books, records and documents relating to the GEA 60% AMI units or GEA SGA units, including an annual schedule of rents for each such rental unit for thirty-five years from the completion of construction of such multiple dwelling, and a schedule of the initial sales prices for each such home ownership unit for six years from the completion of construction of such multiple dwelling, and make them available for inspection by the Department.

(4) In addition to the grounds for revocation provided pursuant to §6-07 of this chapter, the Commissioner of the Department of Finance or the Commissioner of the Department of Housing Preservation and Development may withdraw tax exemption granted to a building pursuant to the Act, retroactively or prospectively, upon its failure to comply with any of the provisions of this §6-09.

(5) Unless otherwise exempted pursuant to the Act, any multiple dwelling that commences construction on or after December 28, 2007 and which would otherwise be eligible for the benefits of the Act, is only eligible if: (i) such multiple dwelling contains at least four dwelling units as set forth in the certificate of occupancy, unless the construction of such multiple dwelling is carried out with substantial governmental assistance provided pursuant to a program for the development of affordable housing; and

(ii) if such new multiple dwelling is situated in (a) a Neighborhood Preservation Program Area as determined by the Department as of June 1, 1985, or (b) a Neighborhood Preservation Area as determined by the New York City Planning Commission as of June 1, 1985, or (c) an area that was eligible for mortgage insurance provided by the Rehabilitation Mortgage Insurance Corporation (REMIC) as of May 1, 1992, or (d) an area receiving funding for a neighborhood preservation project pursuant to the Neighborhood Reinvestment Corporation Act (42 U.S.C. Sections 8101 et seq.) as of June 1, 1985, such new multiple dwelling shall no longer be eligible for the benefits available pursuant to §421-a(2)(a)(iii) of the Act unless either (a) the construction is carried out with substantial governmental assistance provided pursuant to a program for the development of affordable housing, or (b) the Department has imposed a requirement or has certified that at least twenty percent of the onsite units in such multiple dwelling are affordable to and occupied by or affordable to and available for occupancy by individuals or families whose incomes at the time of initial occupancy do not exceed eighty percent of the area median incomes adjusted for family size, provided, however, that of such units, no more than a number equal to five percent of the number of units which commenced construction in buildings receiving tax benefits pursuant to the Act in the previous calendar year shall be affordable to and occupied by or affordable to and available for occupancy by individuals or families whose incomes at

the time of initial occupancy are between sixty percent and eighty percent of the area median incomes adjusted for family size.

(6) Unless otherwise exempted pursuant to the Act, any multiple dwelling that commences construction on or after July 1, 2008 and which would otherwise be eligible for benefits pursuant to the Act, shall be subject to the provisions of subdivision 9 of the Act imposing an exemption cap on such multiple dwelling.

(7) Eligible multiple dwellings that meet the requirements of paragraphs (1) or (5) (ii) of this subdivision (b) may receive a ten, fifteen, twenty or twenty-five year tax exemption, as described herein. In order to qualify for such benefits, the multiple dwelling must meet the eligibility requirements described below for each level of exemption.

(i) Only the ten year exemption is available to multiple dwellings located in Manhattan on tax lots now existing or hereafter created south of or adjacent to either side of 110th street if such multiple dwelling meets the requirements of subparagraph (iii) of paragraph (1) of this subdivision (b).

(ii) Only the fifteen year exemption is available to multiple dwellings located in the boroughs of the Bronx, Brooklyn, Queens, Staten Island and in Manhattan north of 110th Street if such multiple dwelling meets the requirements of subparagraph (iii) of paragraph (1) of this subdivision (b).

(iii) The twenty year exemption is available in the borough of Manhattan for buildings on tax lots now existing or hereafter created south of or adjacent to either side of one hundred tenth street only if such multiple dwelling meets the requirements of subparagraph (i) or (ii) of paragraph (1) of this subdivision (b) or the requirements of subparagraph (ii) of paragraph (5) of this subdivision (b).

(iv) The twenty-five year exemption is available to multiple dwellings located in the boroughs of the Bronx, Brooklyn, Queens, Staten Island or Manhattan north of 110th Street only if such multiple dwelling meets the requirements of subparagraph (i) or (ii) of paragraph (1) of this subdivision (b) or the requirements of subparagraph (ii) of paragraph (5) of this subdivision (b).

HISTORICAL NOTE

Section added City Record May 20, 2008 §9, eff. June 19, 2008. [See Note 1]

Section heading amended City Record Apr. 23, 2009 §2, eff. May 23, 2009. [See T28 §6-10 Note 1]

Subd. (a) Commence definition par (b) subpar (2) clause (iv) subclause (B) item (3) amended City Record June 12, 2009 §1, eff. July 12, 2009. [See Note 2]

Subd. (a) Commence definition par (c) added City Record Apr. 23, 2009 §3, eff. May 23, 2009. [See T28 §6-10 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 20, 2008:

These rule amendments provide regulatory guidance for the new affordability requirements for the expanded Geographic Exclusion Area and some of the new limitations on eligibility for benefits pursuant to Real Property Tax Law §421-a throughout the City of New York as enacted by Local Law 58 of 2006, Chapters 618, 619 and 620 of the Laws of 2007, and Chapter 15 of the Laws of 2008 (hereinafter "State Amendments").

Local Law 58 of 2006 eliminates as-of-right 25 year 421-a benefits for projects located in NPP/REMIC areas and

now provides that projects located in these areas will only get 25 years of benefits if they meet on-site affordability requirements or receive substantial governmental assistance pursuant to an affordable housing program. It also eliminates 421-a benefits for three-unit buildings unless they are constructed with substantial governmental assistance pursuant to an affordable housing program. Finally, Local Law 58 expands the boundaries of the Geographic Exclusion Area and eliminates the negotiable certificate program. Now, affordable units must be provided onsite in order for projects in the Geographic Exclusion Area to be eligible to receive 421-a real property tax exemption benefits. In order to ascertain which projects are subject to the new requirements, Local Law 58 refines the definition of "commencement of construction" and now requires not only an architect or professional engineer's certification that excavation and construction of initial footings and foundations has commenced in good faith after the issuance of a building or alteration permit based upon architectural, plumbing and structural plans, but also an architect or professional engineer's certification that such construction has been completed without undue delay.

The State Amendments, among other things, further expand the boundaries of the Geographic Exclusion Area. They also mandate specified income limits for buildings to qualify for benefits within the expanded Geographic Exclusion Area. If no substantial governmental assistance is utilized, at least 20% of the units must at initial rental or sale and at all subsequent rentals upon vacancy be affordable to individuals or families whose incomes are at or below 60% of area median income. If construction is carried out with substantial governmental assistance provided pursuant to a program for the development of affordable housing, at least 20% of the units must meet one of the following requirements: (a) initial and subsequent rentals in buildings with 25 units or less must be affordable to individuals or families whose incomes are at or below 120% of area median income, (b) initial and subsequent rentals in buildings with more than 25 units must be affordable to individuals or families whose incomes are at or below 120% of area median income and cannot exceed an average of 90% of area median income, or (c) homeownership units at initial sale must be affordable to individuals or families whose incomes are at or below 125% of area median income.

The State Amendments impose a requirement that residents of the community board in which the building receiving 421-a benefits is located be given priority for the purchase or rental of 50% of the affordable units. They also require the affordable units in the Geographic Exclusion Area to meet one of the following requirements unless they are otherwise preempted by federal requirements: (a) have a comparable number of bedrooms as market rate units and a unit mix proportional to market rate units, (b) at least 50% of the affordable units must have two or more bedrooms and no more than 50% of the remaining units can be smaller than one bedroom, or (c) the floor area of affordable units must be no less than 20% of the total floor area of all dwelling units. Furthermore, affordable rental units in the Geographic Exclusion Area must now be kept affordable and rent stabilized for 35 years, and after such 35 year period, tenants with leases may remain as rent stabilized tenants for the duration of their occupancy.

The State Amendments require buildings receiving 421-a benefits to pay their building service employees prevailing wages unless they contain less than 50 dwelling units or at least 50% of their units are affordable to persons at or below 125% of area median income and, where rental units, will remain affordable throughout the 421-a benefit period. They also impose an exemption cap on 421-a benefits for those buildings not entitled to extended 421-a benefits or that are not otherwise exempt.

The rule amendments address these aspects of Local Law 58 and the State Amendments in a new §6-09 and leave intact those provisions that remain applicable Citywide and in the preexisting Geographic Exclusion Area. In order to ensure that the mandated affordability requirements are met, they additionally stipulate the authorized rents to be charged at initial and subsequent occupancy of rental units and the initial sales prices of homeownership units. They also impose a Citywide requirement that substantial governmental assistance be pursuant to a program for the development of affordable housing and provide further definition of what constitutes an affordable housing program. Finally, they articulate which boundaries of the Geographic Exclusion Area are applicable at designated time periods prior to July 1, 2008, after which the boundaries will be statutorily defined, and conform the unit and bedroom mix requirements in the existing Geographic Exclusion Area to those that will apply elsewhere in the expanded Geographic Exclusion Area pursuant to the State Amendments.

2. Statement of Basis and Purpose in City Record June 12, 2009: These rule amendments address the current crisis in the financial markets by authorizing the Department, when it is determining whether a project has been completed without undue delay, to consider certain financial difficulties such as mortgage foreclosure or the inability to obtain the necessary financing to complete a project.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 6-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 6 TAX EXEMPTION PURSUANT TO §421-A OF THE REAL PROPERTY TAX LAW AND §11-245 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

§6-10 Applicability of Certain Provisions.

Except as otherwise specifically provided therein, the amendments to this chapter six that became effective on June 19, 2008, shall only apply to multiple dwellings that commence construction on or after July 1, 2008. For purposes of determining when any such multiple dwelling has commenced construction, the definition of "commence" in such amendments shall apply and, where it is determined that such multiple dwelling commenced construction on or after July 1, 2008, the definition of "commence" in such amendments shall supersede the definition of "commencement of construction" contained in §6-01 of this chapter.

HISTORICAL NOTE

Section added City Record Apr. 23, 2009 §4, eff. May 23, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 23, 2009:

These proposed rule amendments provide that the new construction requirements for affordable units created in accordance with 28 RCNY §6-08(b)(1) adopted by amendments that took effect on June 19, 2008 ("June 19 Amendments") apply to multiple dwellings that commence construction on or after December 28, 2007. They also clarify the title of §6-09, also added by the June 19th Amendments, because such amendments also relate to certain changes to the 421-a requirements pursuant to Local Law 58 of 2006, which took effect on December 28, 2007. The

proposed rule amendments revise the definition of "commence" in the June 19th Amendments by adding a provision that specifies that, under certain circumstances, such definition supersedes the definition of "commencement of construction" in §6-01 of the 421-a rules. Finally, the proposed rule amendments add a new applicability provision to Chapter 6 that relates specifically to the June 19 Amendments. Unless the June 19 Amendments specifically provide otherwise, they will only be applicble to multiple dwellings that commence construction on or after July 1, 2008 and the definition of "commence" in such amendments would then supersede the definition of "commencement of construction" in §6-01 of the 421-a rules."

On July 1, 2008, many major revisions to the Real Property Tax Law §421-a tax exemption program took effect. The new applicability provision would accomplish a more judicious implementation of the new requirements for benefits.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 6 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

APPENDIX A ANNUAL SCHEDULE OF REASONABLE COSTS

APPENDIX A ANNUAL SCHEDULE OF REASONABLE COSTS

(a) **Construction costs.** The construction cost component of the Total Project Cost, excluding land acquisition costs, site preparation costs, and off-site costs, shall be determined by the use of the latest available Calculator Valuation Guide, published by Calculator Inc., or a comparable publication designated by the Office. Applicants whose construction costs include unique and special costs and are therefore at variance with the Calculator Valuation Guide will be required to produce detailed documentation establishing these costs. Except in cases where such unique costs are approved, the Construction Costs Allowance will be limited to the maximum established by the Calculator Valuation Guide, minus the Builder's Fee.

(b) **Off-site and other costs.** In recognition of the fact that off-site costs, including but not limited to legal, engineering, and architectural fees, insurance, interest and taxes during construction, and title and mortgage fees, may vary greatly with the size of a project, these costs as well as such other amounts as are ordinarily incurred in connection with the construction, conversion or rehabilitation of a multiple dwelling, will be reviewed and analyzed independently with respect to each building.

(c) **Operating and maintenance schedule.** (1) **Real estate taxes.** Projected real estate taxes shall equal the actual assessed value of the property in the tax year prior to the start of construction multiplied by the projected tax rate for the tax year in which completion is expected. The projected tax rate shall be determined by increasing the current tax rate at the time the application is received by 5 percent for each year between such current year and the projected year of completion.

(2) **Replacement reserve.** The replacement reserve shall equal six-tenths of 1 percent of construction costs

approved pursuant to item (a) of the Annual Schedule of Reasonable Costs.

(3) **Other operating and maintenance expense maximum allowances.** The schedule of maximum allowances listed below shall apply except when the schedule amounts for each commodity shall be increased or decreased on a compounded annual basis for each year between publication of these rules and the year of projected project completion based upon the Price Indices of Operating Costs (PIOC) percentages published annually by the Rent Guidelines Board for each commodity. For the purposes of projecting future allowances in years for which the PIOC is not available, the Office will apply the percentage for the most recent year for which the Index is available for each subsequent year prior to the estimated completion date. The office will allow the lesser of the owner's claimed costs and the maximum allowance listed below for each commodity.

[See tabular material in printed version]

1. Categories are defined as specified by the Price Index of Operating Costs published by the Rent Guidelines Board.

2. To qualify for a Labor allowance, applicants must submit a list of all personnel to be employed in the maintenance and operation of each building along with corresponding projected wage and salary data. Projects with five units or less are not eligible for the Labor allowance.

3. Available only when the owner pays apartment gas bills.

4. Does not include electricity within apartments.

(d) **Vacancy reserve and management and administration fee.** The vacancy reserve allowance and the management and administration fee shall together be equal to 9 percent of the sum of the expenses determined pursuant to §§6-04(a)(1)(i), (iii), and (iv) of this Chapter less the amount determined pursuant to §6-04(a)(1)(v) of this Chapter.

(e) **Room calculation.** For purposes of this Appendix A's schedule of maximum allowances, the number of rooms shall be calculated in accordance with the definition of "room count" contained in subdivision (c) of §6-01 of this chapter.

HISTORICAL NOTE

Subd. (b) amended City Record Aug. 20, 1997 eff. Sept. 19, 1997. [See T28 §6-08 Note 1]

Subd. (e) added City Record July 18, 2003 §11, eff. Aug. 17, 2003. [See T28 §6-02 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 7 PARTIAL TAX EXEMPTION FOR PRIVATE DWELLINGS PURSUANT TO §421-B OF THE REAL PROPERTY TAX LAW

§7-01 Definitions.

The following terms shall have the following meaning:

Act. "Act" means §421-b of the Real Property Tax Law as amended.

Commencement of new construction. "Commencement of new construction" means the date upon which the foundation is started in good faith as certified in an affidavit by a licensed architect or professional engineer after the issuance of a new building permit by the Department of Buildings based upon plans approved by the Department of Buildings.

Commencement of reconstruction. "Commencement of reconstruction" means the date upon which work begins in good faith after the filing of a building notice with the Department of Buildings or the issuance of an alteration permit where required.

Commissioner. "Commissioner" means the Commissioner of the Department of Housing Preservation and Development of the City of New York or the chief executive officer of a successor thereto authorized to administer this chapter, or such representative of said Department as shall have been duly designated by the Commissioner to act on his behalf.

Completion of new construction. "Completion of new construction" means the date a Certificate of Occupancy is issued by the Department of Buildings for lawful residential use.

Completion of reconstruction. "Completion of reconstruction" means the date all work necessary to complete reconstruction is completed. Such completion may be confirmed by:

(1) Issuance or reissuance of a Certificate of Occupancy; or

(2) Issuance of a Letter of Completion by the Department of Buildings; or

(3) Issuance of a Certificate of Completion or Compliance or other evidence of completion by a City agency other than the Department of Buildings; or

(4) If none of the above is required by law, an affidavit by a registered architect, licensed professional engineer or attorney certifying to the date of completion or an affidavit by the applicant if the cost of work is less than five thousand ($5,000) dollars.

Department. "Department" means the Department of Housing Preservation and Development of the City of New York.

Office. "Office" means the Office of Development of the Department of Housing Preservation and Development of the City of New York or any successor thereto authorized to administer this chapter.

Prior assessed valuation. "Prior assessed valuation" means the total assessed value of a tax lot (land and improvements) during the tax year immediately preceding the tax year of Commencement of New Construction or Commencement of Reconstruction.

Private dwelling. "Private dwelling" means a building or structure, including the land upon which it is situated, which is designed and occupied exclusively for residence purposes by not more than two families living independently of each other with separate cooking facilities.

Reconstruction. "Reconstruction" means reconstruction, alteration or improvement of a Private Dwelling if the actual cost thereof is not less than forty (40%) percent of Prior Assessed Valuation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Department added City Record Sept. 22, 2006 §1, eff. Oct. 22, 2006. [See T28 §7-05 Note 1]

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28 RCNY 7-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 7 PARTIAL TAX EXEMPTION FOR PRIVATE DWELLINGS PURSUANT TO §421-B OF THE REAL PROPERTY TAX LAW

§7-02 General Applicability.

(a) **Eligible projects.** As used herein, eligible projects means private dwellings which are newly constructed or reconstructed provided such construction or reconstruction commences after July 1, 1978 but before July 1, 1980 and is completed no later than April 1, 1982.

(b) **Other tax exemptions.** No private dwelling shall be eligible for tax exemption pursuant to this chapter if it is receiving tax exemption under any other provision of law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 7 PARTIAL TAX EXEMPTION FOR PRIVATE DWELLINGS PURSUANT TO §421-B OF THE REAL PROPERTY TAX LAW

§7-03 Amount and Duration of Tax Exemption.

(a) **Taxes on prior assessed valuation not subject to exemption.** Taxes on prior assessed valuation are not eligible for exemption under the Act. The prior assessed valuation is subject to taxes at the tax rate in effect from time-to-time.

(b) **Exemption during construction or reconstruction.** (1) Eligible projects which have received a Preliminary Certificate of Eligibility shall be exempt from taxes (other than assessments for local improvements) upon any increase in assessed valuation over the prior assessed valuation for the period specified in paragraph (2) of this §7-03(b).

(2) The period of exemption shall commence upon the first day of the tax year immediately following the taxable status date (January 25th) after the commencement of construction or reconstruction and shall extend for two years after commencement of construction or reconstruction, unless construction or reconstruction is completed in less than two years in which case the period of exemption will terminate on the first day of the first tax year following completion of construction or reconstruction.

(c) **Exemption after construction or reconstruction.** Following the period specified in paragraph (2) of §7-03(b), an increase in assessed valuation over the prior assessed valuation of eligible projects which have received a Final Certificate of Eligibility shall be exempt from taxes (other than assessments for local improvements) for eight consecutive tax years pursuant to the following schedule:

[See tabular material in printed version]

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 7 PARTIAL TAX EXEMPTION FOR PRIVATE DWELLINGS PURSUANT TO §421-B OF THE REAL PROPERTY TAX LAW

§7-04 Revocation of Tax Exemption.

(a) **False or misleading application.** If the applicant has furnished information which is incorrect or misleading in any substantial respect or which fails to comply with these regulations and if the breach or omission has not been cured within ninety (90) days, or such lesser time as may be designated by the Office, after notice has been given to the applicant and any subsequent owner or mortgagee of the private dwelling registered with the Office, the Office shall revoke a Preliminary or Final Certificate of Eligibility.

(b) **Failure to complete within required time.** If the applicant fails to complete construction or reconstruction within the time provided in paragraph (2) of §7-03(b), the Office shall revoke a Preliminary Certificate of Eligibility.

(c) **Non-conforming use.** If the Office determines that a private dwelling is not being used for residential purposes at any time after two years of tax exemption received pursuant to these regulations, the Office shall revoke a Preliminary or Final Certificate of Eligibility.

(d) **Procedure upon revocation.** The Office shall advise the Department of Finance that a Preliminary or Final Certificate of Eligibility has been revoked. The Department of Finance shall prospectively withdraw tax exemption granted to an eligible project unless revocation occurred pursuant to §7-04(a) in which case the Department of Finance shall reinstate the amount of taxes which have been exempted, together with interest, at the rate of fifteen (15%) percent per annum to be calculated from the day on which such taxes would have been payable but for the exemption.

(e) **Criminal penalties.** In addition to revocation of tax exemption, applicants who submit applications which

contain false statements or false information may be subject to criminal penalties as provided in Article 175 of the Penal Law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 7 PARTIAL TAX EXEMPTION FOR PRIVATE DWELLINGS PURSUANT TO §421-B OF THE REAL PROPERTY TAX LAW

§7-05 Application Procedure.

(a) **General requirements.** All applicants must file an application for a Final Certificate of Eligibility. An application for a Preliminary Certificate of Eligibility must also be filed if tax exemption during new construction or reconstruction is requested. Applicants who do not file an application for a Preliminary Certificate of Eligibility shall be required to furnish the information required in an application for a Preliminary Certificate of Eligibility and pay the Preliminary Certificate of Eligibility filing fee at the time they submit their application for a Final Certificate of Eligibility. All applications must be filed with the Director of Tax Incentive Programs, 100 Gold Street, New York, N.Y. 10038 between March 16 and January 31. The Office will not accept applications between February 1 and March 15.

(b) **New construction: Preliminary Certificate of Eligibility.** An application for a Preliminary Certificate of Eligibility shall be filed within ninety (90) days of commencement of new construction and prior to the issuance of a Temporary Certificate of Occupancy or a Certificate of Occupancy. The application shall include:

(1) A non-refundable filing fee in the amount of one hundred twenty-five ($125) dollars for each newly constructed private dwelling.

(2) Applicant's affidavit in the form required by the Department which shall certify that plans have been submitted to and approved by the Department of Buildings.

(3) Proof to the satisfaction of the Office of the Eligible Project's Prior Assessed Valuation.

(4) An affidavit by a licensed architect or professional engineer as to the date of commencement of new construction.

(c) **Reconstruction: Preliminary Certificate of Eligibility.** An application for a Preliminary Certificate of Eligibility shall be filed within ninety (90) days of the date of Commencement of Reconstruction. The application shall include:

(1) A non-refundable filing fee in the amount of ten ($10) dollars for each reconstructed private dwelling.

(2) Applicant's certification as to the date of commencement of reconstruction and that the cost of reconstruction will be not less than forty (40%) percent of the prior assessed valuation.

(3) Applicant's certification of the cost or estimated cost of reconstruction and prior assessed valuation.

(d) **New construction: Final Certificate of Eligibility.** An application for a Final Certificate of Eligibility shall be filed within ninety (90) days of issuance of a Certificate of Occupancy. The application shall include:

(1) A copy of the building permit.

(2) A copy of the Certificate of Occupancy.

(e) **Reconstruction:Final Certificate of Eligibility.** An application for a Final Certificate of Eligibility shall be filed within ninety (90) days of completion of reconstruction. The application shall include:

(1) Confirmation of completion of reconstruction.

(2) Proof to the satisfaction of the Office that the actual cost of reconstruction is not less than forty (40%) percent of the prior assessed valuation which shall include but not be limited to: copies of paid bills, cancelled checks and work contracts.

(3) Copy of building permit or alteration permit where required.

(f) **Filing with the Department of Finance.** Upon receipt of the application for a Preliminary or Final Certificate of Eligibility, and upon the Office's determination that a private dwelling is entitled to tax exemption pursuant to the Act, the Office shall issue a Preliminary or Final Certificate of Eligibility. Applicants shall file with the Preliminary Certificate of Eligibility and the Final Certificate of Eligibility with the appropriate Borough officer of the Real Property Assessment Bureau of the Department of Finance on the next following February 1 through March 15 filing period, together with an application to said Department for tax exemption.

(g) All applicants for a Preliminary or Final Certificate of Eligibility must, in addition to the timely filing of an application, provide all of the required documentation for such application on or before December 31, 2010.

(h) Notwithstanding anything to the contrary contained in this section, the Department may waive the filing deadlines for an application for a Final Certificate of Eligibility set forth in §§7-05(d) and 7-05(e) of this chapter if (1) the Department, in its sole discretion, determines that the owner of such private dwelling reasonably relied upon a representation by the seller of such private dwelling that the seller would file or had filed the application for the Final Certificate of Eligibility, and (2) the owner of such private dwelling provides all of the required documentation for such application on or before December 31, 2010.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (g) amended City Record Sept. 18, 2009 §1, eff. Oct. 18, 2009. [See Note 3]

Subd. (g) amended City Record Sept. 5, 2008 §1, eff. Oct. 5, 2008. [See Note 2]

Subd. (g) added City Record Sept. 22, 2006 §2, eff. Oct. 22, 2006. [See Note 1]

Subd. (h) amended City Record Sept. 18, 2009 §1, eff. Oct. 18, 2009. [See Note 3]

Subd. (h) amended City Record Sept. 5, 2008 §1, eff. Oct. 5, 2008. [See Note 2]

Subd. (h) added City Record Sept. 22, 2006 §2, eff. Oct. 22, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 22, 2006:

HPD's rules require applications for Final Certificates of Eligibility for 421-b tax benefits to be filed within 90 days of issuance of a Certificate of Occupancy for a new private dwelling. The rule amendment allows HPD to waive the filing deadline for such applications in certain instances in order to ensure that homeowners who purchase private dwellings with the reasonable expectation that their new homes will be eligible for 421-b benefits are not penalized due to the seller's misrepresentations regarding the filing of a 421-b application. The rule amendments also provide that all of the required documentation for any application for a Preliminary or Final Certificate of Eligibility must be filed on or before December 31, 2008.

2. Statement of Basis and Purpose in City Record Sept. 5, 2008: The RPTL §421-b tax incentive program currently applies to residences which commence construction before July 1, 2006. The program was not extended by the Legislature, so its application has ceased with the exception of unfinished units, which were previously required to obtain a certificate of occupancy by July 1, 2008. However, the State Legislature recently extended the deadline for completion of projects eligible for RPTL §421-b benefits from July 1, 2008 to July 1, 2009. The reason for this extension was that the downturn in the housing market coupled with the difficulty involved in obtaining construction financing had prevented some builders from completing projects which were commenced in compliance with the RPTL §421-b program. In 2006, HPD adopted rule amendments that allowed it to waive the filing deadline for RPTL §421-b applications in certain instances in order to ensure that homeowners who purchase private dwellings with the reasonable expectation that their new homes will be eligible for 421-b benefits are not penalized due to the seller's misrepresentations regarding the filing of a 421-b application. The 2006 rule amendments also provided that all of the required documentation for any application for a Preliminary or Final Certificate of Eligibility must be filed on or before December 31, 2008. Due to the above-mentioned completion extension, HPD is now extending the deadline for filing required documentation for such tax exemption benefits from December 31, 2008 to December 31, 2009.

3. Statement of Basis and Purpose in City Record Sept. 18, 2009: The RPTL §421-b tax incentive program currently applies to residences which commence construction before July 1, 2006. The program was not extended by the Legislature, so its application has ceased with the exception of unfinished units, which were previously required to obtain a certificate of occupancy by July 1, 2009. However, the State Legislature recently extended the deadline for completion of projects eligible for RPTL §421-b benefits from July 1, 2009 to July 1, 2010. The reason for this extension was that the downturn in the housing market coupled with the difficulty involved in obtaining construction financing had prevented some builders from completing projects which were commenced in compliance with the RPTL §421-b program. In 2006, HPD adopted rule amendments that allowed it to waive the filing deadline for RPTL §421-b applications in certain instances in order to ensure that homeowners who purchase private dwellings with the reasonable expectation that their new homes will be eligible for 421-b benefits are not penalized due to the seller's misrepresentations regarding the filing of a 421-b application. The 2006 rule amendments also provided that all of the required documentation for any application for a Preliminary or Final Certificate of Eligibility must be filed on or before December 31, 2008. The State Legislature previously extended the completion deadline to July 1, 2009 and HPD

amended its rules accordingly to extend to deadline for submission of documentation to December 31, 2009. Due to the above-mentioned additional completion extension, HPD is now extending the deadline for filing required documentation for such tax exemption benefits from December 31, 2009 to December 31, 2010.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 8-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-01 Scope; Definitions.

Administrative Code §§11-301 et seq. and Administrative Code §§11-401 et seq. establish a procedure for sale of tax liens and a procedure for the Commissioner of Finance to deliver a deed conveying a tax delinquent property to a qualified Third Party after final judgment is rendered in an in rem foreclosure action. These rules clarify the circumstances under which certain property may be removed from tax lien sales and how Third Parties may be qualified and selected to acquire property from the Commissioner of Finance pursuant to a judgment rendered in an in rem foreclosure action.

Affiliate. "Affiliate" shall mean (a) any Person that has, directly or indirectly, a five percent (5%) or greater ownership interest in a Third Party, or any Person in which a Third Party, any partner or shareholder of a Third Party, or any partner or shareholder of any Person that is a partner or shareholder of a Third Party, has a five percent (5%) or greater ownership interest, and (b) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is an Affiliate, which includes for purposes of this definition a spouse, a domestic partner as defined in City Charter §1150(13), a brother or sister of the whole or half blood (including an individual related by or through legal adoption) of such individual or his/her spouse or domestic partner, a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing, or a trust for the benefit of any of the foregoing. Ownership of or by a Third Party referred to in this definition includes beneficial ownership effected by ownership of intermediate entities.

Distressed Property. "Distressed Property" shall mean any parcel of class one or class two real property that is subject to a tax lien or liens with a lien or liens to value ratio, as determined by the Commissioner of Finance, equal to

or greater than fifteen percent and that meets one of the following two criteria:

(a) such parcel has an average of five or more hazardous or immediately hazardous violations of record of the Housing Maintenance Code per dwelling unit; or

(b) such parcel is subject to a lien or liens for any expenses incurred by HPD for the repair or the elimination of any dangerous or unlawful conditions therein, pursuant to Administrative Code §27-2144, in an amount equal to or greater than one thousand dollars.

HPD. "HPD" shall mean the Department of Housing Preservation and Development.

Neighborhood Preservation Consultant. "Neighborhood Preservation Consultant" shall mean an organization under contract with HPD to undertake activities in connection with the Third Party Transfer Process within a particular area.

Not-for-profit Qualified Developer. "Not-for-profit Qualified Developer" shall mean a not-for-profit entity that has been found eligible by HPD to participate in the Third Party Transfer Process.

Person. "Person" shall mean any natural person, business entity, trust or estate, or any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

Regulatory Agreement. "Regulatory Agreement" shall mean an agreement between HPD and a Third Party selected for conveyance of property pursuant to the Third Party Transfer Process that restricts or conditions the use of such property.

Rules. "Rules" shall mean these Rules.

Tenants. "Tenants" shall mean legal residential Tenants of a property that is subject to the Third Party Transfer Process. Squatters and other unlawful occupants are not Tenants.

Third Party. "Third Party" shall mean an entity or individual that may be deemed qualified and selected by the Commissioner of HPD as eligible to acquire a property pursuant to the Third Party Transfer Process.

Third Party Transfer Process. "Third Party Transfer Process" shall mean the process under which certain properties are transferred to Third Parties pursuant to Administrative Code §§11-401 et seq. and these Rules.

HISTORICAL NOTE

Section added City Record July 17, 1998 eff. Aug. 16, 1998.

Not-for-profit Qualified Developer added City Record Apr. 8, 2002 eff. May 8, 2002. [See §8-06

Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth

standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-02 Procedures for Distressed Property.

(a) The Commissioner of Finance shall, not less than sixty days preceding the date of the sale of a tax lien or tax liens, submit to the Commissioner of HPD a description by block and lot, or by such other identification as the Commissioner of Finance may deem appropriate, of any parcel of class one or class two real property on which there is a tax lien that may be sold by the City. The Commissioner of HPD shall determine, and advise the Commissioner of Finance, not less than ten days preceding the date of the sale of a tax lien or tax liens, whether any such parcel is a Distressed Property as defined in §8-01 of these Rules. Any tax lien on a parcel so determined to be a Distressed Property shall not be included in such sale.

In connection with a subsequent sale of a tax lien or tax liens, the Commissioner of Finance may, not less than sixty days preceding the date of the sale, resubmit to the Commissioner of HPD a description by block and lot, or by such other identification as the Commissioner of Finance may deem appropriate, of any parcel of class one or class two real property that was previously determined to be a Distressed Property pursuant to these Rules and on which there is a tax lien that may be included in such sale. The Commissioner of HPD shall determine, and advise the Commissioner of Finance, not less than ten days preceding the date of the sale, whether such parcel remains a Distressed Property. If the Commissioner of HPD determines that the parcel is not a Distressed Property, then the tax lien on the parcel may be included in such sale.

(b) The Commissioner of HPD may periodically review whether a parcel of class one or class two real property remains a Distressed Property. If the Commissioner determines that the parcel is not a Distressed Property as defined in these Rules, then the tax lien on the parcel may be included in a tax lien sale.

(c) The Commissioner of HPD may recommend to the Commissioner of Finance that a tax lien on a parcel of property other than a Distressed Property should not be included in a tax lien sale. The Commissioner of Finance, may, in his or her sole discretion, exclude such tax lien on such parcel from a tax lien sale, in accordance with the recommendation of the Commissioner of HPD.

HISTORICAL NOTE

Section added City Record July 17, 1998 eff. Aug. 16, 1998.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

Rules of the City of New York

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28 RCNY 8-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-03 Qualification and Selection of a Third Party.

(a) In an in rem foreclosure action, the court shall make a final judgment authorizing the award of possession of any parcel of class one or class two real property described in the list of delinquent taxes not redeemed or withdrawn from the in rem foreclosure action as provided in Chapter 4 of Title 11 of the Administrative Code and as to which no answer is interposed as provided in such chapter, and authorizing the Commissioner of Finance to prepare, execute and cause to be recorded a deed conveying full and complete title to such property either to the City or to a Third Party deemed qualified and selected by the Commissioner of HPD.

(b) Such Third Party shall be deemed qualified and shall be selected pursuant to such criteria as are established in these Rules. The Commissioner of HPD shall not deem qualified any Third Party who has been finally adjudicated by a court of competent jurisdiction, within seven years of the date on which such Third Party would otherwise be deemed qualified, to have violated any section of articles one hundred fifty (relating to arson), one hundred seventy-five (relating to offenses involving false written statements), one hundred seventy-six (relating to insurance fraud), one hundred eighty (relating to bribery not involving public servants, and related offenses), one hundred eighty-five (relating to fraud on creditors) or two hundred (relating to bribery involving public servants and related offenses) of the Penal Law or any similar laws of another jurisdiction, or who has been suspended or debarred from contracting with the City or any agency of the City pursuant to §335 of the Charter, during the period of such suspension or debarment.

(c) Other bases for disqualification of a Third Party may include, but shall not be limited to, any of the following:

(1) Record of Housing Maintenance Code violations, including, but not limited to class B and class C violations,

legal proceedings to enforce the Housing Maintenance Code including, but not limited to, litigation by HPD's Housing Litigation Bureau, or Emergency Repair Program charges with respect to any real property owned or managed by a Third Party or such Third Party's spouse or domestic partner, as defined in City Charter §1150(13), or by any Affiliate of such Third Party or of such Third Party's spouse or domestic partner;

(2) Arrears on taxes, water and sewer charges, or other governmental charges or tax, mortgage, or lien foreclosure or enforcement proceedings with respect to any real property owned by a Third Party or such Third Party's spouse or domestic partner, as defined in City Charter §1150(13), or by any Affiliate of such Third Party or of such Third Party's spouse or domestic partner;

(3) Arrears or defaults on other governmental obligations;

(4) Default or poor performance on a government contract;

(5) Re-designation or termination of negotiations after selection for a government project or contract;

(6) Non-responsibility determination by a government agency;

(7) Conviction or pending charges of fraud, bribery, grand larceny, any other felony, arson, or tenant harassment;

(8) Any other similar facts which demonstrate to HPD that a Third Party is not qualified for selection.

(d) HPD may select a Third Party for conveyance of a property pursuant to the Third Party Transfer Process by any method which it determines will best meet the purposes of such process, including, without limitation, selection:

(1) by a request for qualifications process;

(2) by a request for proposals process;

(3) from a pre-qualified list;

(4) by a request for offer process; or

(5) by a direct selection of an entity judged by HPD to be qualified.

(e) In selecting a Third Party, HPD shall consider:

(1) residential management experience;

(2) financial capacity;

(3) rehabilitation experience;

(4) ability to work with government and community organizations;

(5) neighborhood ties;

(6) ability to finance or obtain financing for the required rehabilitation; (7) whether the Third party is a not for profit organization or neighborhood-based-for-profit individual or organization;

(8) intent and ability to improve, manage and maintain the property to be transferred;

(9) whether an application has been submitted under sponsorship of a Not-for-profit Qualified Developer on behalf of the Tenants for eventual ownership by the Tenants of a property that is subject to an in rem judgment of foreclosure.

(i) Such an application must be submitted to HPD in such form as HPD shall approve, on or before the date that is specified by HPD in the written notice to Tenants made pursuant to subdivision (c) of §8-04 of these rules; (ii) Such application must be sponsored by a Not-for-profit Qualified Developer and accompanied by a letter from such Not-for-profit Qualified Developer indicating that the Not-for-profit Qualified Developer is applying for transfer of the foreclosed property, is prepared to acquire, manage and rehabilitate the foreclosed property, and is sponsoring the Tenants in their effort to eventually own such property; and

(iii) Such application shall only be considered where: (A) the foreclosed property contains at least 10 residential units, (B) such property is at least 50 percent occupied; and (C) the application is signed by 60% of the Tenant households of such property; and

(10) any other factors that HPD deems relevant to such selection.

HISTORICAL NOTE

Section added City Record July 17, 1998 eff. Aug. 16, 1998.

Subd. (e) amended City Record July 18, 2008 §1, eff. Aug. 17, 2008. [See Note 2]

Subd. (e) par (7) amended City Record Apr. 8, 2002 eff. May 8, 2002. [See §8-06 Note 1]

Subd. (e) par (8) amended City Record Apr. 8, 2002 eff. May 8, 2002.

Subd. (e) par (9) added City Record Apr. 8, 2002 eff. May 8, 2002. [See §8-06 Note 1]

Subd. (e) par (9) subpar (i) amended City Record Sept. 30, 2005 §1, eff. Oct. 30, 2005. [See Note 1]

Subd. (e) par (10) renumbered (former par (9)) City Record Apr. 8, 2002 eff. May 8, 2002.

NOTE

1. Statement of Basis and Purpose in City Record Sept. 30, 2005:

These rules amend provisions relating to the timing of the notice provided to tenants of buildings that are in an **in rem** foreclosure action and setting the deadline for submission of tenant petitions. The Department of Housing Preservation and Development (HPD) sends a notice to tenants to inform them about the **in rem** action and about options that may be available to them under the Third Party Transfer Program. The proposed rules remove the specific time periods within which the notice must be sent and within which the deadline for submissions of tenant petitions must be set. Both time periods were tied to the date of entry of the foreclosure judgment. However, since the date of entry of the judgment is within the court's discretion and is generally not controlled by the agency, it has sometimes proved difficult to strictly adhere to the regulatory time periods. With these amendments HPD has the flexibility to continue to provide ample time for notification to tenants and submission of tenant petitions.

2. Statement of Basis and Purpose in City Record July 18, 2008: The proposed amendments clarify criteria for submission of a tenant petition application under sponsorship of a not-for-profit entity during the Third Party Transfer process. The amendments also clarify an interim evaluation period for buildings where a tenant petition application has been submitted, to ensure that the tenants in such buildings receive training and are made aware of the milestones that must be met for the building to eventually transfer to tenant ownership. Finally, the rules clarify the process for notifying tenants of buildings that are subject to a supplemental judgment of foreclosure.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-04 Third Party Transfer Process.

(a) After the four-month period following the entry of a final in rem judgment with respect to a parcel of real property, but prior to expiration of the time set forth in Administrative Code §§11-401 et seq. for the conveyance of title to such real property to a Third Party following such judgment, HPD may:

(1) request the Commissioner of Finance to execute a deed to a Third Party selected by HPD; or

(2) take such other action as may be permitted by Administrative Code §§11-401 et seq. as HPD deems appropriate.

(b) If HPD selects a Third Party to acquire a property, HPD may arrange a closing date and may deliver the deed to the Third Party provided that the proposed conveyance has not been disapproved pursuant to Administrative Code §11-412.2.

(c) HPD will provide a written notice to Tenants of properties that are the subject of an in rem judgment of foreclosure and eligible for the Third Party Transfer Program. Such notice will advise Tenants of the foreclosure action, briefly describe the Third Party Transfer Program, and advise Tenants of an opportunity to apply for eventual ownership of such property under the sponsorship of a Not-for-profit Qualified Developer. Such notice shall be provided prior to entry of such judgment for such property and will be posted in a common area of the property, provided, however, that in the case of a property that is subject to a supplemental judgment of foreclosure due to a default in an installment agreement or a property that is subject to a summary judgment of foreclosure due to dismissal of an owner answer, such

notice shall be provided prior to entry of such judgment or as soon as practicable thereafter. In addition, HPD will make an effort to place such notice beneath the doors of individual units in such properties.

HISTORICAL NOTE

Section added City Record July 17, 1998 eff. Aug. 16, 1998.

Subd. (c) amended City Record July 18, 2008 §2, eff. Aug. 17, 2008. [See T28 §8-03 Note 2]

Subd. (c) amended City Record Sept. 30, 2005 §2, eff. Oct. 30, 2005. [See T28 §8-03 Note 1]

Subd. (c) added City Record Apr. 8, 2002 eff. May 8, 2002. [See §8-06 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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***** Current through December 2009 ****

28 RCNY 8-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-05 Operation After Third Party Transfer Process.

(a) **Regulatory Agreement.** HPD may require that the Third Party selected for conveyance of property pursuant to the Third Party Transfer Process execute a Regulatory Agreement with HPD as a condition for such conveyance which shall be recorded and shall run with the land for the period set forth therein.

(b) **Use Restrictions.** Any conveyance of a property to a Third Party shall be for an existing use. HPD may impose additional restrictions upon the use of such property and may require a Third Party to agree to comply with such restrictions. Such use restrictions may be enforced by any means that HPD determines to be necessary or appropriate, including, but not limited to, provisions in any deed, land development agreement, regulatory agreement, note, mortgage, enforcement note, enforcement mortgage, security agreement, lien, restrictive declaration, or other legal document. HPD may require a Third Party to provide security for its compliance with use restrictions in such types and amounts as are determined by HPD to be necessary or desirable.

HISTORICAL NOTE

Section added City Record July 17, 1998 eff. Aug. 16, 1998.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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28 RCNY 8-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-06 Interim Evaluation Period.

(a) A property that has been transferred to a Third Party for which a Not-for-profit Qualified Developer has sponsored a Tenant application pursuant to §8-03(e)(9) of these rules shall be subject to an interim evaluation period during which progress toward eventual ownership by Tenants will be monitored by HPD.

(b) No later than thirty days after transfer to a Third Party of a property for which a Not-for-profit Qualified Developer has sponsored a Tenant application pursuant to §8-03(e)(9) of these rules, such Not-for-Profit Qualified Developer shall inform the Tenants that the property has entered into an interim evaluation period, and shall provide information to the Tenants about the process toward eventual ownership by the Tenants. Such Not-for-Profit Qualified Developer shall make training available to such Tenants, no later than ninety days after such transfer. The training may include courses in building management, maintenance, and managing building finances. HPD may also provide notice to the Tenants regarding commencement of the interim evaluation period.

(c) The interim evaluation period shall include certain milestones for achievement which shall form the basis for HPD to either permit the property to move forward toward eventual ownership by Tenants, or to remove the property from the process toward such ownership. HPD shall evaluate progress toward eventual ownership by Tenants using the following milestones:

(i) whether Tenants have cooperated with the Third Party and Not-for-Profit Qualified Developer in renewing leases or establishing new leases where none exists;

(ii) whether at least 80% of the Tenants are actively paying rent;

(iii) whether Tenants have cooperated with relocation plans, where applicable;

(iv) whether Tenants have attended training programs offered by the Not-for-Profit Qualified Developer; and

(v) any additional factors that HPD considers appropriate in evaluating the tenants' progress toward ownership, provided that HPD notifies the Tenants of any such additional factors.

(d) Such interim evaluation period shall commence upon transfer of the property to the Third Party and shall continue upon the transfer of the property to the Not-for-Profit Qualified Developer. Such interim evaluation period shall end when any required rehabilitation of the property has been completed and permanent loan conversion has taken place, or at the conclusion of such longer period as HPD shall determine with notice to the Tenants.

(e) HPD shall evaluate compliance with the milestones listed in subdivision (c) of this section at regular intervals, and shall inform Tenants and the Not-for-Profit Qualified Developer of its findings. HPD may at any time remove a property from the process toward eventual ownership by Tenants based upon its evaluation. If HPD has not removed the property from such process, at the completion of the interim evaluation period it shall make a determination for such property pursuant to §8-07 of these rules.

HISTORICAL NOTE

Section added (Subd. (b) formerly subd. (a)) City Record July 18, 2008 §3, eff. Aug. 17, 2008. [See

T28 §8-03 Note 2]

Section added City Record Apr. 8, 2002 eff. May 8, 2002. [See Note]1

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-07 Transfer from Not-for-Profit Qualified Developer to Tenant Ownership.

(a) Unless a determination has otherwise already been made, HPD shall make a determination whether or not to approve the transfer from a Not-for-Profit Qualified Developer to Tenant ownership upon completion of the interim evaluation period. HPD will consider the following criteria when making such determination:

(1) That an application was submitted to HPD pursuant to and in accordance with §8-03(e)(9) of these rules;

(2) The time period that has elapsed since transfer of the property to the Not-for-profit Qualified Developer;

(3) Whether the property has been rehabilitated and permanent loan conversion has taken place;

(4) The number of Tenants who have signed a petition affirming that there is a functioning tenant organization, that they wish to own the property, and that they understand the extent of the responsibilities of ownership of the property;

(5) The amount of time that a Tenant organization has been in existence at the property;

(6) The number of members of the Tenant organization who have participated in any training offered by HPD, including, but not limited to, courses in building management, maintenance, and managing building finances;

(7) The number of Tenants who have attended a presentation by HPD regarding ownership of the property;

(8) The level of Tenant interest in ownership as indicated through subscriptions to buy units;

(9) The record of payment of all existing loans, status of rent payments, and adequacy of management of the property;

(10) HPD's evaluation of the progress made toward tenant ownership during the interim evaluation period as set forth in §8-06 of these rules; and

(11) Any other criteria that HPD deems relevant to the request, including, but not limited to, any information provided to it by the Not-for-profit Qualified Developer.

HISTORICAL NOTE

Section so designated (former §8-06(b)) and amended City Record July 18, 2008 §3, eff. Aug. 17,

2008. [See T28 §8-03 Note 2]

DERIVATION

Former §8-06(b) added City Record Apr. 8, 2002 eff. May 8, 2002. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 8, 2002:

The rules amend Chapter 8 of Title 28 of the rules of the Department of Housing Preservation and Development (HPD) concerning tax liens and **in rem** foreclosure actions.

The amendments provide for a notice to be given to tenants of properties that are subject to an **in rem** foreclosure judgment and are eligible for the Third Party Transfer Program. The notice informs the tenants about HPD's Third Party Transfer Program. The rule provides a time frame for issuing the notice, the content of the notice and the manner of communicating it to the tenants. The amendments also prescribe an application process that will allow tenants interested in eventual ownership of their property to apply to HPD under sponsorship of a Not-for-profit Qualified Developer. Finally, the amendments provide criteria to be used to determine when consent will be given to transfer of title to a property in the Third Party Transfer Program to a tenant association that applied for eventual ownership under the sponsorship of a Not-for-profit Qualified Developer.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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28 RCNY 8-08

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Title 28 Housing Preservation and Development

CHAPTER 8*1 TAX LIEN SALES AND IN REM FORECLOSURE AFFECTING DISTRESSED PROPERTIES AND CERTAIN OTHER PROPERTIES

§8-08 Miscellaneous Provisions.

(a) **HPD Discretion.** All determinations to be made by HPD in accordance with these Rules shall be in the sole discretion of HPD.

(b) **Statutory Authority Not Limited.** Nothing in these Rules shall be deemed to limit HPD's authority pursuant to applicable laws.

(c) **Technical Violations.** Provided that there has been a reasonable good faith effort to comply with these Rules, technical violations of these Rules shall not invalidate any action taken pursuant to these Rules, nor shall such technical violation give rise to any rights, claims, or causes of action.

HISTORICAL NOTE

Section renumbered (former §8-07) and amended City Record July 18, 2008 §3, eff. Aug. 17, 2008.

[See T28 §8-03 Note 2]

DERIVATION

Former §8-07 renumbered (former §8-06) City Record Apr. 8, 2002 eff. May 8, 2002.

Section added City Record July 17, 1998 eff. Aug. 16, 1998.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 17, 1998 eff. Aug. 16, 1998. Note: Statement of Basis and Purpose. The Rules are being promulgated pursuant to City Charter §1802(6) and Administrative Code §§11-401 et seq. and in order to comply with the City Administrative Procedure Act. The Rules set forth standards for (i) identification of Distressed Properties, (ii) procedures for qualification and selection of Third Parties, (iii) dispositions of properties to Third Parties after a judgment is rendered in an in rem foreclosure action, and (iv) post-conveyance restrictions on properties.

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28 RCNY 9-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 9 REMOVAL OF VIOLATIONS ISSUED PURSUANT TO THE HOUSING MAINTENANCE CODE

§9-01 General Provisions.

The purpose of the Dismissal Request Program is to provide owners of multiple dwellings, private dwellings, and co-operative and condominium units, in New York City with a mechanism for obtaining re-inspections of their properties for the purpose of removing corrected housing code violations from the records of the Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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28 RCNY 9-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 9 REMOVAL OF VIOLATIONS ISSUED PURSUANT TO THE HOUSING MAINTENANCE CODE

§9-02 Eligible Applicants.

(a) The Department will accept Dismissal Requests from owners or managing agents for re-inspections of properties in each of the five boroughs of the City of New York.

(1) Owners and managing agents of multiple dwellings must be registered with the Department in accordance with the provisions of §§27-2097 through 27-2099 of the Housing Maintenance Code in order to submit a Dismissal Request.

(2) Owners of co-operative and condominium units and private dwellings must submit proof of ownership satisfactory to the Department in order to submit a Dismissal Request.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) open par amended City Record Sept. 9, 1997 eff. Oct. 9 1997.

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28 RCNY 9-03

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Title 28 Housing Preservation and Development

CHAPTER 9 REMOVAL OF VIOLATIONS ISSUED PURSUANT TO THE HOUSING MAINTENANCE CODE

§9-03 Fee.

Each Dismissal Request must be accompanied by a certified check or money order, made payable to the New York City Commissioner of Finance, for a scheduled amount based on the dwelling classification and number of open violations at the time the Dismissal Request form is submitted to the Borough Code Enforcement Office, as follows:

Dwelling Classification Fee

Private Dwelling $250

Multiple Dwelling with 1-300 open violations $300

Multiple Dwelling with 301-500 open violations $400

Multiple Dwelling with 501 or more open violations $500

HISTORICAL NOTE

Section amended City Record Dec. 7, 2006 §1, eff. Jan. 6, 2007. [See Note 1]

Section amended City Record Sept. 9, 1997 eff. Oct. 9 1997.

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 7, 2006:

The adopted rules amend certain sections of the Department's rules relating to removal of violations issued pursuant to the Housing Maintenance Code. The rules establish a new fee schedule for Dismissal Request applications based upon the dwelling classification and the number of violations subject to the re-inspection. The fee schedule reflects additional costs to the Department as the scope of a re-inspection broadens. The rules also provide for a longer time for completion of the re-inspection during the period from October 1st to May 31st, when the Department's inspectors are responding to critical complaints of lack of heat and hot water. The rules also add unpaid emergency repair charges to the list of circumstances for which the Department may reject a Dismissal Request application. Finally, the rules make certain other technical changes.

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28 RCNY 9-04

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CHAPTER 9 REMOVAL OF VIOLATIONS ISSUED PURSUANT TO THE HOUSING MAINTENANCE CODE

§9-04 Re-inspection.

(a) The Department shall use its best efforts to re-inspect the premises within 45 business days of the date of receipt of the Dismissal Request and shall place in the mail to the applicant a copy of the inspection report indicating the results of such re-inspection within 45 business days of the date of receipt of the Dismissal Request in the Code Enforcement Borough Office, provided, however, that during the period of October 1st through May 31st, the Department shall use its best efforts to re-inspect the premises and place in the mail to the applicant a copy of the inspection report indicating results of re-inspection within 90 business days of the date of receipt of the Dismissal Request in the Code Enforcement Borough Office.

(b) In the event that the Department does not inspect and mail a copy of such inspection report within the aforementioned time periods, the fee shall, upon written application to the Department by the applicant, be returned to the owner. Notwithstanding the refund of the fee, the Dismissal Request shall continue to be processed in the regular course of business. A re-inspection of the property will be made and a copy of the inspection report indicating the results of the re-inspection will then be mailed to the owner.

(c) The applicant may request an inspection date that exceeds the aforementioned time periods, provided, however, that such a request and waiver of any refund for the fee be in writing signed by the applicant and received within 15 business days of the date of receipt of the Dismissal Request in the Code Enforcement Borough Office.

HISTORICAL NOTE

Section amended City Record Dec. 7, 2006 §2, eff. Jan. 6, 2007. [See T28 §9-03 Note 1]

Section in original publication July 1, 1991.

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Title 28 Housing Preservation and Development

CHAPTER 9 REMOVAL OF VIOLATIONS ISSUED PURSUANT TO THE HOUSING MAINTENANCE CODE

§9-05 Submission of Dismissal Requests.

(a) A Dismissal Request must be submitted on a form that can be obtained at any Code Enforcement Borough Office, either in person or by mail request, or on the Department's website at hpd/nyc.gov.

(b) The Dismissal Request form, together with the fee, must be submitted either in person or by mail to the Borough Code Enforcement Office in the borough in which the property is located, provided, however, that for property located in Staten Island, such form may be submitted to the Manhattan Code Enforcement Office.

HISTORICAL NOTE

Section amended City Record Dec. 7, 2006 §3, eff. Jan. 6, 2007. [See T28 §9-03 Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 9, 1997 eff. Oct. 9 1997.

Subd. (b) open par amended City Record Sept. 9, 1997 eff. Oct. 9 1997.

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28 RCNY 9-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 9 REMOVAL OF VIOLATIONS ISSUED PURSUANT TO THE HOUSING MAINTENANCE CODE

§9-06 Exceptions to the Dismissal Request Procedure.

(a) The application for a Dismissal Request by an owner or managing agent who is otherwise eligible to apply for a Dismissal Request pursuant to the foregoing provisions may be rejected by the Department where the building that is the subject of the application is a building for which:

(1) there is pending Department-related litigation; or

(2) there is an uncollected judgment arising from Department-related litigation; or

(3) there is an unpaid emergency repair charge for repairs performed by or on behalf of the Department.

HISTORICAL NOTE

Section amended City Record Dec. 7, 2006 §4, eff. Jan. 6, 2007. [See T28 §9-03 Note 1]

Section amended City Record Sept. 9, 1997 eff. Oct. 9 1997.

Section in original publication July 1, 1991.

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28 RCNY 10-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 10 ADMINISTRATION OF APPLICATIONS FOR CERTIFICATIONS OF NO HARASSMENT*1

§10-01 Definitions.

Whenever used in this chapter:

Administrative Code. "Administrative Code" shall mean the New York City Administrative Code.

Access authorizer. "Access authorizer" shall mean the person who authorizes HPD to enter the property, which person shall be an individual natural person who either (i) has legal possession of all common areas of the property, or (ii) is authorized to sign on behalf of and bind the persons or entities who have legal possession of all common areas of the property.

Affidavit of no future harassment. "Affidavit of no future harassment" shall mean an affidavit affirming that no future harassment will occur at the property during the period for which a certification or waiver remains in effect.

Applicant. "Applicant" shall mean the person who executes an application, which person shall be an individual natural person who is either (i) an owner, or (ii) a principal or officer of an owner who is authorized to sign on behalf of and bind such owner.

Application. "Application" shall mean an application for a certification, waiver, or exemption submitted to HPD, unless the context clearly indicates reference to an application for a permit submitted to DOB.

Building loan contract. "Building loan contract" shall have the meaning set forth in §22 of the Lien Law.

Certification. "Certification" shall mean a certification of no harassment.

Commencement of substantial work. "Commencement of substantial work" shall mean (i) if the alterations and/or demolition work for which a certification or waiver was granted is financed by a recorded building loan contract, the date upon which a lender has advanced funds in an amount that is not less than 50% of the total amount of such building loan contract and actual construction work has commenced at the property using such funds, or (ii) if the alterations and/or demolition work for which a certification or waiver was granted is not financed by a building loan contract, the actual performance and payment of not less than 50% of the total cost of such alteration and/or demolition work.

Commissioner. "Commissioner" shall mean the Commissioner of HPD or his or her designee.

DHCR. "DHCR" shall mean the Division of Housing and Community Renewal of the State of New York.

DOB. "DOB" shall mean the Department of Buildings of the City of New York.

Dwelling unit. "Dwelling unit" shall mean a dwelling unit or rooming unit, as such terms are defined in Administrative Code §27-2004.

Exemption. "Exemption" shall mean a determination by HPD that a certification pursuant to the terms of the Administrative Code or the Zoning Resolution is not required.

Fee. "Fee" shall mean a sum in the amount of (i) $500 if the property contains 1 to 10 dwelling units, (ii) $1,500 if the property contains 11 to 30 dwelling units, (iii) $2,500 if the property contains 31 to 50 dwelling units, and (iv) $3,500 if the property contains more than 50 dwelling units, which amount is a fee to offset all or part of the administrative cost to HPD of processing the application.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.

Inquiry period. "Inquiry period" shall mean (i) with respect to an application submitted pursuant to any provision of the Zoning Resolution, the period of time therein defined as the inquiry period, and (ii) with respect to an application submitted pursuant to Administrative Code §28-107.1 et seq. and Administrative Code §27-2093, a period commencing three years prior to submission of the application and ending on the date that HPD issues a final determination on the application.

Luxury hotel. "Luxury hotel" shall mean a single room occupancy multiple dwelling in which the rent on May 5, 1983, exclusive of governmentally assisted rental payments, charged for 75% or more of the total number of occupied individual dwelling units was more than 55 dollars per day for each unit rented on a daily basis, or more than 250 dollars per week for each unit rented on a weekly basis or more than 850 dollars per month for each unit rented on a monthly basis. For computation purposes, the rental value of units which were vacant on May 5, 1983 shall be deemed to be the rent charged for comparable occupied units in the property on such date.

Owner. "Owner" shall mean (i) the holder of title to the property, (ii) a contract vendee of title to the property, or (iii) the lessee pursuant to a net lease of the entire property with an unexpired term of not less than ten years from the date of submission of the application.

Property. "Property" shall mean the real property that is the subject of an application.

Residential kitchen. "Residential kitchen" shall mean (i) a kitchen that is located within a dwelling unit, or (ii) a kitchen serving residential occupants that is not located within a dwelling unit.

Residential bathroom. "Residential bathroom" shall mean (i) a bathroom that is located within a dwelling unit, or (ii) a bathroom serving residential occupants that is not located within a dwelling unit.

Waiver. "Waiver" shall mean a waiver of the requirement for a certification pursuant to the terms of the Administrative Code.

Zoning Resolution. "Zoning Resolution" shall mean the New York City Zoning Resolution, as amended.

HISTORICAL NOTE

Section repealed and added (former §10-02) City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10 footnote]

Inquiry period amended City Record Jan. 29, 2009 §1, eff. Feb. 28, 2009. [See Note 1]

DERIVATION

Former §10-02 in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Jan. 29, 2009:

These rules make technical corrections to internal citations of the Administrative Code of the City of New York to ensure their accuracy.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Under this section, as amended, the inquiry ends on the date of the Commissioner's final determination. Therefore, SRO owner's post-filing acts and omissions may be considered for evidence of harassment. **Dep't of Housing Preservation & Development v. Avid,** OATH Index No. 801/08 (Apr. 4, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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28 RCNY 10-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 10 ADMINISTRATION OF APPLICATIONS FOR CERTIFICATIONS OF NO HARASSMENT*1

§10-02 Scope of Rule.

(a) The requirements of this chapter apply to certifications, exemptions, and waivers pursuant to Administrative Code §28-107.1 et seq., Administrative Code §27-2093, Zoning Resolution §96-110, Zoning Resolution §93-90, Zoning Resolution §98-70, Zoning Resolution §23-013, and any subsequently enacted provision of the Administrative Code or Zoning Resolution which authorizes HPD to make determinations concerning certifications, exemptions, or waivers.

(b)(1) With regard to single room occupancy multiple dwellings, a certification shall be required where mandated pursuant to Administrative Code §28-107.1 et seq. and Administrative Code §27-2093. In accordance with the authority of the Commissioner pursuant to Administrative Code §28-107.3(4) to prescribe by regulation other types of alteration work, a certification shall be required where the application and plans filed with DOB seek to:

(i) increase or decrease the number of dwelling units;

(ii) alter the layout, configuration or location of any portion of a dwelling unit;

(iii) increase or decrease the number of residential kitchens or residential bathrooms;

(iv) alter the layout, configuration or location of any portion of a residential kitchen or residential bathroom;

(v) demolish or change the use or occupancy of any dwelling unit and/or any portion of the building serving the dwelling units.

(2) Where the application and the accompanying plans submitted to DOB do not provide for any such changes, a

certification shall not be required pursuant to Administrative Code §28-107.3(4), but may be required pursuant to other provisions of Administrative Code §28-107.1 et seq. or pursuant to the Zoning Resolution.

(c) With regard to properties located in the Special Clinton District defined in Article XI, Chapter 6 of the Zoning Resolution (§96-00 et seq.), a certification shall be required where mandated pursuant to the terms of such Article and Zoning Resolution §96-110.

(d) With regard to multiple dwellings located in the anti-harassment area defined in Zoning Resolution §93-90 (Hudson Yards/Garment Center), a certification shall be required where mandated pursuant to the terms of such section.

(e) With regard to multiple dwellings located in the anti-harassment area defined in Zoning Resolution §23-013 (Greenpoint-Williamsburg), a certification shall be required where mandated pursuant to the terms of such section and New York City Zoning Resolution §93-90.

(f) With regard to multiple dwellings located in the anti-harassment area defined in Zoning Resolution §98-70 (West Chelsea), a certification shall be required where mandated pursuant to the terms of such section and New York City Zoning Resolution §93-90.

HISTORICAL NOTE

Section repealed and added (former §10-01) City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See

Chapter 10 footnote]

Subd. (a) amended City Record Jan. 29, 2009 §2, eff. Feb. 28, 2009. [See T28 §10-01 Note 1]

Subd. (b) amended City Record Jan. 29, 2009 §2, eff. Feb. 28, 2009. [See T28 §10-01 Note 1]

DERIVATION

Former §10-01 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 10 ADMINISTRATION OF APPLICATIONS FOR CERTIFICATIONS OF NO HARASSMENT*1

§10-03 Application.

(a) An application shall contain such information, in such form, as HPD shall require.

(b) An application shall be executed by an applicant. If the applicant is not an access authorizer, the application shall also be executed by an access authorizer.

(c) An application may be submitted to HPD (i) by hand delivery on business days, during such hours and in such location as HPD shall determine, (ii) by mail, or (iii) by private courier.

(d) The submission of any application shall be accompanied by certified check, bank check, or money order in the amount of the fee made payable to New York City Department of Finance.

(e) Following the submission of an application, HPD may request any additional information that HPD determines is relevant to the certification. If HPD sends a written request for additional information to the applicant by regular or certified mail at the address of the applicant set forth in the application, and HPD does not receive such additional information within thirty days following the mailing of such request, HPD may (i) reject the application, or (ii) review the application without such information and draw a negative inference with respect to the missing information.

(f) An application shall be deemed to be complete when the completed application, the fee, and the necessary supporting documentation have been received and acknowledged as sufficient by HPD.

(g) If HPD determines at any time that an application contains a material misstatement of fact, HPD may reject

such application and bar the submission of a new application for a period not to exceed three years.

(h) HPD may refuse to accept, or to act upon, an application for a certification pursuant to the Zoning Resolution where HPD finds at any time that (i) taxes, water and sewer charges, emergency repair program charges, or other municipal charges remain unpaid with respect to the multiple dwelling, (ii) the multiple dwelling has been altered either without proper permits from DOB or in a way that conflicts with the certificate of occupancy for the multiple dwelling (or, where there is no certificate of occupancy, any record of HPD indicating the lawful configuration of the multiple dwelling) and such unlawful alteration remains uncorrected; or (iii) HPD has previously denied an application pursuant to the Zoning Resolution.

(i) If any information stated in an application changes at any time before HPD makes a final determination, the applicant shall promptly update the application with such new information and submit it to HPD. If such changed information includes any facts that would render the original applicant ineligible to submit the application, HPD may require that the amended application be executed by an individual who is at that time eligible to submit the application.

HISTORICAL NOTE

Section repealed and added (former §10-03) City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See

Chapter 10 footnote]

DERIVATION

Former §10-03 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 10-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 10 ADMINISTRATION OF APPLICATIONS FOR CERTIFICATIONS OF NO HARASSMENT*1

§10-04 Investigation.

(a) Except as otherwise provided in these rules, HPD shall conduct an investigation of each application for a certification.

(b) HPD shall publish a notice in The City Record and such other publications as HPD shall determine seeking public comment regarding whether there has been harassment of the lawful occupants of the property during the inquiry period.

(c) HPD shall send notices to the local Community Board and such other organizations as HPD shall determine seeking comments on any application for a certification.

HISTORICAL NOTE

Section repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10

footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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§10-05 Initial Determination.

(a) Upon the completion of the investigation of an application for a certification, HPD shall either (i) reject such application as provided in §10-03 of this Chapter, (ii) determine that there is not reasonable cause to believe that harassment occurred during the inquiry period at the property, (iii) determine that there is reasonable cause to believe that harassment occurred during the inquiry period at the property, or (iv) determine that DHCR or a court having jurisdiction has found that there has been harassment, unlawful eviction, or arson at the property during the inquiry period.

(b) If HPD rejects an application as provided in §10-03 of this Chapter, HPD shall send written notice of such determination to the applicant.

(c) If HPD determines that there is not reasonable cause to believe that harassment occurred during the inquiry period at the property, HPD shall (i) send written notice of such determination to the applicant, and (ii) grant the certification in accordance with the terms of §10-08 of this Chapter.

(d) If HPD determines that there is reasonable cause to believe that harassment occurred during the inquiry period at the property, HPD shall send written notice of such determination to the applicant and shall comply with the procedures set forth in §10-06 and §10-07 of this Chapter.

(e) If HPD determines that DHCR or a court having jurisdiction has found that there has been harassment, unlawful eviction, or arson at the property during the inquiry period, HPD may deny the certification without a hearing and issue a final determination in accordance with §10-07 of this Chapter. In such event, HPD may combine the initial

determination pursuant to this section and the final determination pursuant to §10-07 of this Chapter into a single document.

HISTORICAL NOTE

Section repealed and added (former §10-05) City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10 footnote]

DERIVATION

Former §10-05 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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CHAPTER 10 ADMINISTRATION OF APPLICATIONS FOR CERTIFICATIONS OF NO HARASSMENT*1

§10-06 Hearing.

(a) When HPD has determined in accordance with §10-05(d) of this Chapter that there is reasonable cause to believe that harassment occurred at the property during the inquiry period, HPD shall schedule a hearing before the Office of Administrative Trials and Hearings at which the applicant will have an opportunity to challenge such determination.

(b) HPD shall serve a notice of hearing by regular mail upon the applicant and any other individual or entity as determined by HPD. Such notice shall state the date, time, and location of hearing and shall inform the applicant that he or she may be represented by counsel and may present witnesses and other evidence.

(c) Upon conclusion of such hearing, the hearing officer shall make a report and recommendation to the Commissioner whether an application should be granted or denied.

(d) Notwithstanding anything to the contrary in this section or these rules, an applicant may waive its right to a hearing before the Office of Administrative Trials and Hearings.

HISTORICAL NOTE

Section repealed and added (former §10-06) City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See

Chapter 10 footnote]

DERIVATION

Former §10-06 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

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§10-07 Final Determination.

(a) When HPD has determined in accordance with §10-05(d) of this Chapter that there is reasonable cause to believe that harassment occurred at the property during the inquiry period and a hearing has been held before the Office of Administrative Trials and Hearings in accordance with §10-06 of this Chapter, the Commissioner shall review the report and recommendation of the hearing officer and make a final determination to grant or deny the application.

(b) When HPD has determined in accordance with §10-05(d) of this Chapter that there is reasonable cause to believe that harassment occurred at the property during the inquiry period and the applicant has waived its right to a hearing before the Office of Administrative Trials and Hearings in accordance with §10-06(d) of this Chapter, the Commissioner shall make a final determination to grant or deny the application.

(c) When HPD has determined in accordance with §10-05(e) of this Chapter that DHCR or a court having jurisdiction has found that there has been harassment, unlawful eviction, or arson at the property during the inquiry period, the Commissioner shall make a final determination to grant or deny the application. In such event, HPD may combine the initial determination pursuant to §10-05 of this Chapter and the final determination pursuant to this section into a single document.

(d) HPD shall provide the applicant with written notice of the final determination.

HISTORICAL NOTE

Section repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10

footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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CHAPTER 10 ADMINISTRATION OF APPLICATIONS FOR CERTIFICATIONS OF NO HARASSMENT*1

§10-08 Certification.

(a) A certification shall be effective for three years from the date upon which such certification is signed by the Commissioner, which period shall be stated in such certification. Such certification shall apply to any plan approval, any alteration or demolition permit application, or any renewal of a permit issued for such plan approval, alteration or demolition permit application that is submitted to DOB during such period.

(b) HPD shall not issue a certification unless HPD has received an affidavit of no future harassment executed by one or more individual natural persons who are, at the time of execution of such affidavit, either (i) all of the owners of the property, or (ii) principals or officers of all of the owners of the property who are authorized to sign on behalf of and bind such owners.

HISTORICAL NOTE

Section repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10

footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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§10-09 Waiver or Exemption.

(a) Notwithstanding any provision of these rules to the contrary, if an application is for a waiver or exemption, (i) HPD may, but shall not be required to, waive the fee, and (ii) if HPD does not waive the fee, but subsequently grants such waiver or exemption, HPD may, but shall not be required to, return such check or money order to the applicant.

(b) Notwithstanding any provision of these rules to the contrary, HPD may grant a waiver or exemption at any point following the submission of an application therefor.

(c) A waiver or exemption shall be effective for such period and subject to such conditions as HPD shall determine, which period and conditions, if any, shall be stated in such waiver or exemption. Such waiver or exemption shall apply to any plan approval, any alteration or demolition permit application, or any renewal of a permit issued for such plan approval, alteration or demolition permit application that is submitted to DOB during such period which complies with such conditions, if any.

(d) HPD shall not issue a waiver unless, in accordance with Administrative Code §27-2093(e), the current title holder of record of the property (i) was the title holder of record of the property prior to May 5, 1983, (ii) entered into a contract of sale for the purchase of the property which was recorded prior to May 5, 1983, (iii) held a mortgage on the property recorded prior to May 5, 1983 and thereafter acquired the property as a result of the foreclosure of such mortgage, or (iv) is a lending organization described in Administrative Code §27-2093(e)(2)(ii), granted a mortgage commitment on the property recorded prior to May 5, 1983, thereafter granted a mortgage on the property pursuant to such commitment, and thereafter acquired the property as a result of the foreclosure of such mortgage.

(e) HPD shall not issue a waiver unless HPD has received an affidavit of no future harassment executed by one or more individual natural persons who are either (i) all of the owners of the property, or (ii) principals or officers of all of the owners of the property who are authorized to sign on behalf of and bind such owners.

HISTORICAL NOTE

Section added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10 footnote]

Subd. (d) amended City Record Jan. 29, 2009 §3, eff. Feb. 28, 2009. [See T28 §10-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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§10-10 Suspension and Rescission.

(a) HPD may rescind a certification, waiver, or exemption at any time if HPD determines that the application for such certification, waiver, or exemption contained a material misstatement of fact.

(b) If HPD determines that there is reasonable cause to believe that harassment has occurred after the date that HPD issued a certification or a waiver, HPD may suspend such certification or waiver. If the certification or waiver was granted solely pursuant to the Administrative Code, HPD shall not suspend such certification or waiver pursuant to the preceding sentence unless HPD determines that there is reasonable cause to believe that such harassment occurred before commencement of substantial work.

(1) If HPD determines that there is reasonable cause to believe that harassment has occurred after the date that HPD issued a certification or a waiver, HPD shall deliver a notice of suspension to the applicant and to the owner and will refer the matter for hearing at the Office of Administrative Trials and Hearings.

(2) HPD shall serve a notice of hearing by regular mail upon the applicant and any other individual or entity as determined by HPD. Such notice shall state the date, time, and location of hearing and shall inform the applicant that he or she may be represented by counsel and may present witnesses and other evidence.

(3) Upon conclusion of such hearing, the hearing officer shall make a recommendation to the Commissioner whether or not the certification should be rescinded.

(4) The Commissioner shall make a final determination whether to rescind such certification, and shall provide the

applicant with written notice of such determination.

HISTORICAL NOTE

Section added (former §10-08) City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10

footnote]

DERIVATION

Former §10-08 in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. ALJ permitted employees of tenants' advocacy group to testify about statements made by deceased tenant because rules permit "any person" to submit information about harassment after a certificate of no harassment has been issued. Group was not appearing as counsel for the deceased tenant but as an interested person. **Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC**, OATH Index No. 912/06, mem. dec. (Dec. 29, 2006).

¶ 2. HPD may rescind a certificate of no harassment if it can show that harassment occurred after the certificate was issued but before substantial work has commenced. SRO building owner failed to show substantial work had commenced, as defined in this section. **Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC**, OATH Index No. 912/06, mem. dec. (Dec. 29, 2006).

¶ 3. Substantial work has commenced upon the payment of the first advance by a lender on a building loan contract which is financing the alterations or demolition for which a certificate of no harassment or waiver was granted. SRO owner did not establish substantial work as loan received was not a building loan contract, as defined in section 2(13) of the Lien Law because the loan was not secured by a mortgage on the property, nor was it duly acknowledged or filed with the county clerk. **Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC**, OATH Index No. 912/06, mem. dec. (Dec. 29, 2006).

¶ 4. Substantial work may be established under this section by proof of actual expenditure of more than fifty percent of the total cost of the alteration or demolition. Although the rule states that substantial work has occurred upon an "actual expenditure of more than fifty percent of the total cost of alteration or demolition," ALJ finds that clause is modified by the phrase "for which a certificate of no harassment or waiver was granted," included in the previous sentence. ALJ rejected SRO building owner's argument that proof of expenditure of more than fifty percent of the total cost of the demolition establishes substantial work where the owner expended less than 50 percent of the total cost of the work to be done (demolition and construction) under the certificate of no harassment. **Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC**, OATH Index No. 912/06, mem. dec. (Dec. 29, 2006).

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

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The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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§10-11 Miscellaneous.

(a) Any determination by HPD pursuant to this Chapter shall be in the sole discretion of HPD.

(b) An application may not be withdrawn after HPD issues either (i) an initial determination that there is reasonable cause to believe that harassment occurred during the inquiry period at the property, or (ii) a final determination that harassment occurred during the inquiry period at the property.

HISTORICAL NOTE

Section added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. [See Chapter 10 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Nov. 13, 2007 §1, eff. Dec. 13, 2007. Note: Statement of Basis and Purpose.

These rules repeal and replace former Chapter 10 governing processing of applications for certifications of no harassment for single room occupancy multiple dwellings by the Department of Housing Preservation and Development pursuant to the Administrative Code. The rules update and consolidate the procedure to process all

applications for certifications of no harassment pursuant to the Administrative Code and the Zoning Resolution. The Zoning Resolution was amended to include new harassment provisions for three zoning districts, and the harassment provisions for one other district were amended as well. The rules implement the new and amended provisions.

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28 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-01 Definitions.

Whenever used in this chapter:

(a) Abatement. "Abatement" shall mean any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes: (i) the removal of lead-based paint and dust lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and (ii) all preparation, cleanup, disposal and post abatement clearance testing associated with such measures. Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(b) Applicable age. "Applicable age" shall mean under seven years of age for at least one calendar year from August 2, 2004. Upon the expiration of such one year period, in accordance with the procedures by which the health code is amended, the board of health may determine whether or not the provisions of article 14 of the housing maintenance code should apply to children of age six, and based on this determination, may redefine "applicable age" for the purposes of some or all of the provisions of such article 14 to mean under six years of age. In the event that the board of health makes such determination, the term "applicable age" shall mean under six years of age.

(c) CFR. "CFR" shall mean the Code of Federal Regulations.

(d) Chewable surface. "Chewable surface" shall mean a protruding interior window sill in a dwelling unit in a multiple dwelling where a child of applicable age resides and which is readily accessible to such child. "Chewable surface" shall also mean any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, such as a rail or stair, where there is evidence that such other edge or protrusion has been chewed or where an occupant has notified the owner that a child of applicable age who resides in that multiple dwelling has mouthed or chewed such edge or protrusion.

(e) Commissioner. "Commissioner" shall mean the Commissioner of the New York city department of housing preservation and development or of its successor agency.

(f) Common area. "Common area" shall mean a portion of a multiple dwelling that is not within a dwelling unit and is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling.

(g) Contractor. "Contractor" shall mean any person engaged to perform work that disturbs lead-based paint pursuant to this chapter.

(h) Department. "Department" shall mean the New York city department of housing preservation and development or its successor agency.

(i) Deteriorated subsurface. "Deteriorated subsurface" shall mean an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including, but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.

(j) Disturb. "Disturb" shall mean any action taken, which breaks down, alters or changes lead-based paint. Lead-based paint disturbances shall include, but not be limited to wet sanding or scraping or routine painting and maintenance.

(k) Door. "Door" shall mean every door in a dwelling unit including, but not limited to, the entrance door to the unit, closet doors, and cabinet doors where such cabinets are affixed to the walls of the dwelling unit.

(l) Encapsulation. "Encapsulation" shall mean the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent. Only encapsulants approved by the New York state department of health or by another federal or state agency or jurisdiction which the department has designated as acceptable may be used for performing encapsulation.

(m) Enclosure. "Enclosure" shall mean the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

(n) Firm. "Firm" shall mean a company, partnership, corporation, sole pro- prietorship, association, or other business entity that performs lead-based paint activities to which the United States environmental protection agency has issued a certificate of approval pursuant to 40 CFR 745.226(f).

(o) Friction surface. "Friction surface" shall mean any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape, or bind when in relative motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.

(p) HEPA-vacuum. "HEPA-vacuum" shall mean a vacuum cleaner device equipped with a high efficiency particulate air filter capable of filtering out monodispersive particles of 0.3 microns or greater in diameter from a body of air at 99.97 percent efficiency or greater.

(q) Housing maintenance code. "Housing maintenance code" shall mean chapter two of title 27 of the administrative code of the city of New York.

(r) Impact surface. "Impact surface" shall mean any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

(s) Lead-based paint hazard. "Lead-based paint hazard" shall mean any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

(t) Lead-based paint. "Lead-based paint" shall mean paint or other similar surface coating material containing 1.0 milligrams of lead per square centimeter or greater, as determined by laboratory analysis, or by an x-ray fluorescence analyzer. If an x-ray fluorescence analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings shall be classified as positive, negative or inconclusive in accordance with the United States department of housing and urban development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (June 1995, revised 1997) and the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings that fall within the inconclusive zone, as determined by the performance characteristic sheets, shall be confirmed by laboratory analysis of paint chips, results shall be reported in milligrams of lead per square centimeter and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in milligrams of lead per square centimeter. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, a laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface-coating material.

(u) Lead-contaminated dust. "Lead-contaminated dust" shall mean dust containing lead at a mass per area concentration of 40 or more micrograms per square foot on a floor, 250 or more micrograms per square foot on window sills, and 400 or more micrograms per square foot on window wells, or such more stringent standards as may be adopted by the department of health and mental hygiene.

(v) Lead contaminated dust clearance test. "Lead contaminated dust clearance test" shall mean a test for lead-contaminated dust on floors, window wells, and window sills in a dwelling, that is made in accordance with §27-2056.11 of the housing maintenance code.

(w) Peeling. "Peeling" shall mean that the paint or other surface-coating material is curling, cracking, scaling, flaking, blistering, chipping, chalking or loose in any manner, such that a space or pocket of air is behind a portion thereof or such that the paint is not completely adhered to the underlying surface.

(x) Permanent. "Permanent" shall mean an expected design life of at least 20 years.

(y) Remediation or Remediate. "Remediation" or "Remediate" shall mean the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the commissioner of the department of health and mental hygiene.

(z) Removal. "Removal" shall mean a method of abatement that completely eliminates lead-based paint from surfaces.

(aa) Replacement. "Replacement" shall mean a strategy or method of abatement that entails the removal of

building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

(bb) Rule or rules. "Rule" or "rules" shall mean a rule or rules promulgated pursuant to §1043 of the New York city charter.

(cc) Stabilization. "Stabilization" means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, and removing loose paint and other material from the surface to be treated.

(dd) Substrate. "Substrate" shall mean the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

(ee) Turnover. "Turnover" shall mean the occupancy of a dwelling unit subsequent to the termination of a tenancy and the vacatur by a prior tenant of such dwelling unit. Such term shall not mean temporary relocation of an occupant for purposes of performing work pursuant to article 14 of the housing maintenance code.

(ff) Underlying defect. "Underlying defect" shall mean a physical condition in a dwelling or dwelling unit that is causing or has caused paint to peel or a painted surface to deteriorate or fail, such as a structural or plumbing failure that allows water to intrude into a dwelling or dwelling unit.

(gg) Wet sanding or wet scraping. "Wet sanding" or "wet scraping" shall mean a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

(hh) Window. "Window" shall mean the non-glass parts of a window, including but not limited to any window sash, window well, window jamb, window sill, or window molding.

(ii) Work. "Work" shall mean any activity performed in accordance with article 14 of the housing maintenance code that disturbs paint.

(jj) Work area. "Work area" shall mean that part of a building where paint is being disturbed.

HISTORICAL NOTE

Section repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

DERIVATION

Section repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of

lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-02 Owner's Responsibility to Remediate.

An owner shall remediate all lead-based paint hazards and underlying defects in a dwelling unit where a child of applicable age resides in accordance with the applicable work practices set forth in §11-06 of these rules.

HISTORICAL NOTE

Section repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

DERIVATION

Former §11-02 Lead Based Paint Hazard repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading

supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-03 Notice Inquiring About the Residency of a Child of Applicable Age.

(a) Notice upon signing of a lease, including a renewal lease, if any, or upon any agreement to lease or at the commencement of occupancy if there is no lease.

(1) The owner of a multiple dwelling erected prior to January first, nineteen hundred sixty or of a multiple dwelling erected on or after January first, nineteen hundred sixty and before January first, nineteen hundred seventy-eight, where an owner has actual knowledge of the presence of lead-based paint, shall provide to an occupant of a dwelling unit at the signing of a lease, including a renewal lease, if any, or upon any agreement to lease, or at the commencement of occupancy if there is no lease, a notice in English and Spanish inquiring whether a child of applicable age resides or will reside therein. If there is a lease, such notice will be attached as a rider to the lease. In addition, such owner shall deliver to the occupant at the time the occupant signs a lease, if any, or upon any agreement to lease, or, at the commencement of occupancy if there is no lease, the pamphlet developed by the department of health and mental hygiene pursuant to §17-179(b) of the administrative code of the city of New York. Such notice shall be printed on a single form, the content of which shall be as specified in Appendix A hereto, and shall be printed in not less than ten point type, and shall bear the title "Prevention of Lead-based Paint Hazards-Inquiry Regarding Child". Such notice shall be in duplicate, one copy of which will be for the occupant's records, and one copy of which will be returned to the owner. Such notice shall be kept for a period of ten years from the date of receipt by the owner or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request. The notice provided at the signing of a lease, or upon any agreement to lease, or at the commencement of occupancy if there is no lease, shall also contain a statement, signed by such owner, stating that he or she has complied with the provisions concerning apartments at turnover pursuant to §27-2056.8 of Article 14

of the housing maintenance code and §11-05 of these rules, and that he or she has delivered such pamphlet developed by the department of health and mental hygiene to the occupant.

(2) No occupant in a dwelling unit in such multiple dwelling shall refuse or unreasonably fail to provide accurate and truthful information regarding the residency of a child of applicable age therein, nor shall an occupant refuse access to the owner at a reasonable time and upon reasonable prior notice to any part of the dwelling unit for the purpose of investigation and repair of lead-based paint hazards.

(3) Where an occupant has responded to the notice provided by the owner pursuant to paragraph (1) of this subdivision by indicating that no child of applicable age resides therein or has failed to respond to such notice, if a child of applicable age subsequently comes to reside in such dwelling unit at any time during the immediately following year prior to the delivery of the annual notice by the owner pursuant to subdivision (b) of this section, the occupant shall have the duty to inform the owner in writing that such child has come to reside therein.

(b) **Annual Notice.**

(1) Each year an owner of a multiple dwelling erected prior to January first, nineteen hundred sixty shall cause to be delivered to each residential unit a notice in English and Spanish inquiring as to whether a child of applicable age resides therein and advising the occupant of his or her duty to report the presence of such child in writing.

(2) Such notice shall be delivered as provided in §27-2056.4(e) of article 14 of the housing maintenance code, no earlier than January first and no later than January sixteenth, provided, however, that if such notice is enclosed with the January rent bill, such notice may be delivered no sooner than December fifteenth and no later than January sixteenth.

(3) Such notice shall be printed on a single form, the content of which shall be as specified in Appendix B hereto, and shall be printed in not less than ten point type, and shall bear the title "Prevention of Lead-based Paint Hazards-Inquiry Regarding Child". Such notice may be combined with the annual window guard notice required by 24 RCNY Chapter 12 in a form approved by the department of health and mental hygiene. Such notice shall be in duplicate, one copy of which will be for the occupant's records, and one copy of which will be returned to the owner. Such notice shall be kept for a period of ten years from the date of receipt by the owner or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request.

(4) Upon receipt of such notice, the occupant shall have the duty to deliver a written response to the owner indicating whether a child of applicable age resides in the dwelling unit, by February fifteenth of the year in which the notice is sent. Where an occupant has responded to the notice provided by the owner pursuant to paragraph one of this subdivision by indicating that no child of applicable age resides therein, or has failed to respond to such notice, if a child of applicable age subsequently comes to reside in such dwelling unit at any time prior to delivery of the next annual notice, the occupant shall have the duty to inform the owner in writing that such child has come to reside therein.

(5) If, subsequent to the delivery of such annual notice, the owner does not receive a written response by February fifteenth, and does not otherwise have actual knowledge as to whether a child of applicable age resides therein, then the owner shall at reasonable times and upon reasonable notice inspect the occupant's dwelling unit to ascertain whether a child of applicable age resides therein. Where, between February sixteenth and March first of that year the owner has made reasonable attempt to gain access to the dwelling unit and was unable to gain access, the owner shall notify the department of health and mental hygiene of that circumstance in writing.

(c) The wording of the notices specified in this section shall not be altered or varied in any manner, unless otherwise approved by the department or the department of health and mental hygiene, provided, however, that such owner may provide such notice in any languages in addition to English and Spanish as such owner believes will be of assistance in ensuring communication of the content of such notice to the occupants of the multiple dwelling.

HISTORICAL NOTE

Section repealed and added (formerly §11-04) City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

DERIVATION

Former §11-04 repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

Former §11-03 Owner's Duty Upon Vacancy

FOOTNOTES

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[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-04 Investigation for Lead-based Paint Hazards.

(a) In any dwelling unit in a multiple dwelling erected prior to January first, nineteen hundred sixty where a child of applicable age resides, and in any dwelling unit in a multiple dwelling erected on or after January first, nineteen hundred sixty and before January first, nineteen hundred seventy-eight, where a child of applicable age resides and the owner has actual knowledge of the presence of lead-based paint, and in common areas of such multiple dwellings, the owner shall cause a visual inspection to be made for peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces and impact surfaces. A visual inspection for lead-based paint hazards shall include every surface in every room in the dwelling unit, including the interiors of closets and cabinets. Such inspection shall be undertaken at least once a year and more often if necessary, such as when, in the exercise of reasonable care, an owner knows or should have known of a condition that is reasonably foreseeable to cause a lead-based paint hazard, or an occupant makes a complaint concerning a condition that is likely to cause a lead-based paint hazard or requests an inspection, or the department issues a notice of violation or orders the correction of a violation that is likely to cause a lead-based paint hazard.

(b) An owner shall maintain or transfer to a subsequent owner records of inspections of dwelling units performed pursuant to this section. Such records shall include the location of such inspection and the results of such inspection for each surface in each room, as specified in subdivision (a) of this section, and the actions taken as a result of such inspection pursuant to §11-02 of these rules. If an owner claims an inability to gain access to the unit for such inspection, such records shall contain a statement describing the attempt made to gain access, including, but not limited to providing a written notice to the tenant, delivered by certified or registered mail, or by first class mail with proof of mailing from the United States Postal Service, informing the tenant of the necessity of access to the dwelling unit to

perform the inspection, and the reason why access could not be gained. Such records shall be kept for a period of ten years from either the date of completion of the inspection, or from the date of the last attempt to gain access by the owner, or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request. In addition, the owner shall make such records available to the occupant of such dwelling unit upon request.

(c) Nothing in this section shall be deemed to preclude an owner from conducting any additional types of inspections for lead-based paint hazards, provided, however, that such owner shall correct any lead-based paint hazards identified pursuant to such inspection in accordance with the work practices specified in §11-06 of these rules.

HISTORICAL NOTE

Section repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

DERIVATION

Former §11-04 Notice of Inquiry Regarding the Presence of a Child repealed and added City

Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-05 Turnover of Dwelling Units.

(a) Upon turnover of any dwelling unit in a multiple dwelling erected prior to January first, nineteen hundred and sixty, or of a dwelling unit in a private dwelling erected prior to January first, nineteen hundred and sixty where each dwelling unit is to be occupied by persons other than the owner or the owner's family, the owner shall within such dwelling unit have the responsibility to:

(1) remediate all lead-based paint hazards and any underlying defects, when such underlying defects exist;

(2) make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable;

(3) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all doors and door frames; and

(4) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all windows, or provide for the installation of replacement window channels or slides on all lead-based painted friction surfaces on all windows.

(b) Such work shall be performed in the time period commencing with the vacancy of the unit and shall be completed prior to reoccupancy of such unit. All work performed pursuant to this section shall be performed using the applicable safe work practices set forth in §11-06(g)(3) of these rules.

(c) An owner shall maintain or transfer to a subsequent owner records of work performed in dwelling units

pursuant to this section in accordance with the recordkeeping requirements of §11-06(c) of these rules. In addition, the owner shall make such records available to the new occupant of such dwelling unit upon request.

(d) An owner shall certify that he or she has complied with §27-2056.8 of article 14 of the housing maintenance code and this section in the notice provided to an occupant upon signing of lease, if any, or upon any agreement to lease, or at the commencement of occupancy if there is no lease pursuant to subdivision (a) of §11-03 of these rules.

HISTORICAL NOTE

Section repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

DERIVATION

Former §11-05 Owner's Duty to Inspect repealed and added City Record Oct. 13, 1999 eff. Nov.

12, 1999.

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-06 Safe Work Practices.

(a) **Filing procedures.** Not less than ten days prior to commencement of work that will disturb lead-based paint pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code, an owner shall file with the department of health and mental hygiene a notice of the commencement of the work. Such notice shall be signed by the owner or by a representative of the firm performing the work. Where work is required to be commenced in a lesser period of time than that specified herein for the filing of a notice of commencement of work, then such filing shall be made as soon as practicable but prior to the commencement of work. Such notice shall be in a form satisfactory to or prescribed by the department of health and mental hygiene and shall set forth at a minimum the following information:

(1) The name, address and telephone number of the owner of the premises in which the lead-based paint work is to be performed;

(2) The address of the building and the specific location of the lead-based paint work within the building;

(3) The name, address and telephone number of the firm who will be responsible for performing the work;

(4) The date and time of commencement of the work, working or shift hours, and the expected date of completion;

(5) A complete description and identification of the surfaces and structures, and surface areas, subject to the work; and

(6) Any changes in the information contained in the notice required by this section shall be filed with the

department of health and mental hygiene prior to commencement of work, or if work has already commenced, within 24 hours of any such change.

(b) **Licensing and training.**

(1) **Abatement.** All work conducted as part of an abatement as defined in this chapter shall be performed by firms and personnel certified to perform lead-based paint activities in accordance with regulations issued by the United States environmental protection agency at subpart L of 40 CFR part 745 for the abatement of lead hazards, or successor rule.

(2) Work ordered by the department to correct a lead-based paint hazard violation in accordance with §27-2056.11(a)(1) of article 14 of the housing maintenance code, or work performed pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code, shall be performed in accordance with the following requirements:

(i) **Firm requirements.** Firms conducting such work shall be certified to perform lead abatement by the United States environmental protection agency in accordance with subpart L of 40 CFR part 745 for the abatement of lead hazards, or successor rule.

(ii) **Worker requirements.** Workers conducting such work shall be trained, at a minimum, in accordance with the regulations issued by the United States department of housing and urban development at 24 CFR §35.1330(a)(4), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(iii) **Clearance dust testing.** No person shall perform a lead-contaminated dust clearance test pursuant to this section unless such person is a third party, who is independent of the owner and any individual or firm that performs such work. All personnel performing lead-contaminated dust clearance testing after completion of such work shall be trained, at a minimum, in accordance with regulations issued by the United States department of housing and urban development at 24 CFR §35.1340(b)(1), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(3) Work performed in accordance with §27-2056.11(a)(2)(i) of article 14 of the housing maintenance code, shall be performed in accordance with the following requirements:

(i) **Worker requirements.** Workers conducting such work shall be trained under regulations issued by the United States department of housing and urban development at 24 CFR §35.1330(a)(4), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(ii) **Clearance dust testing.** No person shall perform a lead-contaminated dust clearance test pursuant to this section unless such person is a third party, who is independent of the owner and any individual or firm that performs such work. Personnel performing lead-contaminated dust clearance testing after completion of such work shall be trained in accordance with regulations issued by the department of housing and urban development at 24 CFR §35.1340(b)(1), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(4) Work performed in a dwelling unit upon turnover in accordance with §27-2056.8 of article 14 of the housing maintenance code. No person shall perform a lead-contaminated dust clearance test pursuant to this paragraph unless such person is a third party, who is independent of the owner and any individual or firm that performs the work upon turnover. Personnel performing lead-contaminated dust clearance testing after completion of such work shall be trained in accordance with regulations issued by the department of housing and urban development at 24 CFR §35.1340(b)(1), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(c) **Recordkeeping.** An owner shall keep a record of the following information for all work performed pursuant to

this section:

(1) The name, address, and telephone number of the person or entity who performed the work; the start date and completion date for the work;

(2) A copy of all licenses and training certificates, required pursuant to subdivision (b) of this section, for the firms and personnel who performed work and lead-contaminated dust clearance testing;

(3) The location of the work performed in each room including a description of such work and invoices for payment for such work;

(4) Results of lead-contaminated dust clearance tests analyzed by an independent laboratory certified by the state of New York;

(5) Checklists completed pursuant to (g)(1)(ix)(F)**(f)** when occupants are allowed temporary access to a work area; and

(6) Such records shall be maintained by such owner for a period of ten years from the date of completion of such work or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request.

(d) **Work methods.**

(1) **Minimizing dust dispersion.** Work that disturbs lead-based paint as defined in this chapter shall be carried out in such a manner as to minimize the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building or adjacent outdoor areas.

(2) An area designated as a clean changing area shall be segregated from the work area by a physical barrier to prevent the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building and to prevent occupant exposure to materials containing lead.

(3) Repair of lead-based paint hazard violations may be performed by wet sanding, wet scraping, removal, enclosure, encapsulation, replacement or abatement except where otherwise specified in article 14 of the housing maintenance code or these rules.

(e) **Prohibited methods.** The following methods shall not be used while performing work in accordance with these rules that disturbs lead-based paint or paint of unknown lead content:

(1) Open flame burning or torching.

(2) Machine sanding or grinding without HEPA local exhaust control.

(3) Abrasive blasting or sandblasting without HEPA local exhaust control.

(4) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.

(5) Dry sanding or dry scraping.

(6) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the United States consumer product safety commission at 16 CFR §1500.3, and/or a hazardous chemical in accordance with the United States occupational safety and health administration regulations at 29 CFR §§1910.1200 or 1926.59, as applicable to the work.

(f) **Work practices and surface finishing.**

(1) All tools and materials used when disturbing paint shall be used in accordance with the manufacturer's instructions.

(2) Wet sanding, wet scraping, removal, enclosure, encapsulation, replacement, abatement and other maintenance and repair activities shall be performed using standard construction and treatment methods, and in accordance with manufacturer's instructions, where applicable.

(3) All surfaces where paint has been disturbed shall be sealed and finished with appropriate materials. Underlying surface substrates shall be dry and protected from future moisture before applying a new protective coating or paint, and all paints and coatings shall be applied in accordance with the manufacturer's recommendations.

(g) **Occupant protection.**

(1) **Work ordered by the Department to correct a lead-based paint hazard violation in accordance with §27-2056.11(a)(1) of article 14 of the housing maintenance code, or work performed pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code.**

(i) **Postings.** The following information shall be conspicuously posted no later than twenty-four hours prior to beginning work and shall remain in place until the work area has been cleared for re-occupancy:

(A) Notice of commencement of work information submitted to the department of health and mental hygiene pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code. Such information shall be posted at the entrance to the dwelling and at the entrance to the dwelling unit.

(B) A warning sign of at least 8-1/2" by 11" with letters at least one inch high, reading as follows: WARNING: LEAD WORK AREA-POISON-NO SMOKING OR EATING. Such information shall be posted adjacent to the work area.

(ii) **Pre-cleaning and protecting moveable items.** All floors, moveable furniture, draperies, carpets, or other objects in the work area shall be HEPA-vacuumed or washed; all moveable items shall then be moved out of the work area or otherwise covered with two layers of six-mil disposable polyethylene sheeting before work begins. Such sheeting shall be taped together with waterproof tape, and taped to the floors or bottom of the walls or baseboards, so as to form a continuous barrier to the penetration of dust.

(iii) **Sealing vents.** Forced-air systems within the room where work that disturbs lead-based paint is occurring shall be turned off and covered with two layers of six-mil polyethylene sheeting and waterproof tape to prevent lead contamination and lead dispersal to other areas.

(iv) **Affixing doorway entrance flap.** After all moveable objects have been removed, the work area shall be sealed off from non-work areas by taping with waterproof tape, two layers of disposable, six-mil polyethylene sheeting over every entrance or doorway to the work area, as follows: To deter the dispersal of lead dust one sheet shall be taped along all sides of the doorway and a slit shall be cut down the middle of the sheeting, leaving intact at least six inches of sheeting on the top and six inches of sheeting on the bottom of the doorway. A second sheet of polyethylene large enough to cover the doorway, shall be attached to the top of the doorway in the room or area where work is being conducted and shall act as a flap opening into the work area.

(v) **Covering floors.** The floor of the work area shall be covered with at least two sheets of disposable six-mil polyethylene sheeting. Such sheeting shall be taped together with waterproof tape, and taped to the bottom of the walls or baseboard, so as to form a continuous barrier to the penetration of dust to the floor. The furniture and non-moveable furnishings, such as counters, cabinets, and radiators in the work area shall be removed or covered with such taped

sheeting.

(vi) **Sealing openings.** All openings, including windows, except those required to be open for ventilation, not sealed off or covered in accordance with subdivision (g)(1)(iii) of the section, shall be sealed with two layers of six-mil polyethylene sheeting and waterproof tape to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

(vii) **Instructing occupants.** Occupants shall be instructed by the owner and contractor to avoid entering the work area until final clearance levels have been achieved.

(viii) **Hazardous materials.** All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

(ix) **Clean-up and lead-contaminated dust clearance testing procedures.**

(A) **Daily clean-up.** At the completion of work each day, the work area shall be thoroughly wet-mopped or HEPA-vacuumed. No polyethylene sheeting, drop cloths, or other materials that are potentially hazardous to young children or infants shall be accessible outside the work area. In addition, any work area and other adjoining area exposed to lead or lead-contaminated materials shall be cleaned as follows:

(a) Large debris. Large demolition-type debris (e.g., door, windows, trim) shall be wrapped in six-mil polyethylene, sealed with waterproof tape, and moved to the area designated for trash storage on the property to be properly disposed of in a lawful manner.

(b) Small debris. Small debris shall be HEPA-vacuumed or wet swept and collected. Before wet sweeping occurs, the affected surfaces shall be sprayed with a fine mist of water to keep surface dust from becoming airborne. Dry sweeping is prohibited. The swept debris and all disposable clothing and equipment shall be placed in double four-mil or single six-mil plastic bags which shall be sealed and stored with other contaminated debris in the work area and shall be properly disposed of in a lawful manner.

(c) Clean-up adjacent to the work area. On a daily basis, as well as during final clean-up, the area adjacent and exterior to the work area shall be examined visually to ensure that no lead debris has escaped containment. Any such debris shall be wet swept and HEPA-vacuumed, collected and disposed of as described above.

(d) Supply storage. Upon finishing work for the day, all rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint shall be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(B) **Final clean-up.** Final cleaning shall be performed as follows, in the following sequence:

(a) The final cleaning process shall start no sooner than one (1) hour after lead-based paint disturbance activities have been completed, but before repainting, if necessary.

(b) First, all polyethylene sheeting shall be sprayed with water mist and swept prior to removal. Polyethylene sheeting shall be removed by starting with upper-level polyethylene, such as that on windows, cabinets and counters, folding the corners, ends to the middle, and placing in double four-mil or single six-mil plastic bags. Plastic bags shall be sealed and properly disposed of in a lawful manner.

(c) Second, all surfaces in the work area shall be HEPA-vacuumed. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(d) Third, all surfaces in the work area shall be washed with a detergent solution. Washing shall begin with the ceiling and proceed down the walls to the floor. Wash water shall be properly disposed of in a lawful manner.

(e) Fourth, all surfaces exposed to lead dust generated by the lead-based paint disturbance process shall be HEPA-vacuumed again. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(f) Fifth, all surfaces shall be inspected to ensure that all surfaces have been cleaned and all visible dust and debris have been removed. If all visible dust and debris have not been removed, affected surfaces shall be re-cleaned.

(C) **Final inspection.** After final clean-up, and re-painting if necessary, has been completed, a final inspection shall be made by a third party retained by the owner who is independent of the owner and the contractor. The final clearance evaluation shall include a visual inspection and lead-contaminated dust clearance testing. Three wipe samples shall be collected and tested from each room or area where work has been conducted; one wipe sample contaminated dust clearance samples shall be collected and tested from the floor in rooms or areas immediately adjacent to the work area.

(D) **Clearance for re-occupancy.** Lead-contaminated dust levels in excess of the following constitute contamination and require repetition of the clean-up and testing process in all areas where such levels are found. Areas where every lead-contaminated dust sample result is below the following levels may be cleared for re-occupancy:

Floors: 40 micrograms of lead per square foot.

Window Sills: 250 micrograms of lead per square foot.

Window Wells: 400 micrograms of lead per square foot.

Only upon receipt of laboratory test results showing that the above dust lead levels are not exceeded in the dwelling may the work area be cleared for permanent re-occupancy. However, temporary access to work areas may be allowed, provided that clean-up is completed and dust test samples have been collected in compliance with this section. The owner shall provide all lead-contaminated dust clearance test results to the occupants of the dwelling or dwelling unit.

(E) **Relocation.** An owner shall request that an occupant temporarily relocate from a unit pending completion of work where it appears that work cannot be performed safely with occupants in residence. Such owner shall offer a suitable, decent, safe and similarly accessible dwelling unit that does not have lead-based paint hazards to such occupants for temporary relocation. Unreasonable refusal by such occupants to relocate pursuant to such offer shall constitute a refusal of access under housing maintenance code §§27-2009 and 27-2056.4(b), and, where applicable, 9 NYCRR §2524.3(e). Relocation shall not be required provided that work can be done safely with occupants in residence, and provided further that at the end of each day of work, the work area is properly cleaned as specified in subdivision (g)(1)(ix)(A) of this section; occupants have safe access to areas adequate for sleeping; occupants have bathroom and kitchen facilities available to them; occupants have safe access to entry/egress pathways; and the work does not create other safety hazards (e.g., exposed electrical wiring or holes in the floor).

(F) **Temporary access to the work area when occupants not relocated.** When occupants are not relocated, temporary access may be allowed to areas in which work is in progress after work has ceased for the day, provided that at the end of each work day: **(a)** Any work area to be accessed is properly cleaned as specified in the daily clean-up requirements of subdivision (g)(1)(ix)(B)**(b)** through **(d)** and **(f);**

(b) There are no safety hazards (including, but not limited to, exposed electric wiring or holes in the floor) or covered vents;

(c) Floor coverings containing leaded dust and debris and hazardous materials are removed;

(d) Floors in the work area are re-covered with a non-skid floor covering securely taped to the floor;

(e) Work areas are prepared in accordance with the requirements above when work recommences; and

(f) At the end of each workday, and before access is permitted, a checklist indicating compliance with these conditions is completed and signed by the person responsible for overseeing the work. No person shall make a false, untrue or misleading statement or forge the signature of another person on any document or record required to be prepared pursuant to these rules.

(g) Temporary access in accordance with these provisions may be allowed for no longer than five days. If work has not resumed within five days, temporary access may continue only if the person responsible for overseeing the work has repeated the actions required by clauses **(a)** through **(f)** of this subparagraph (F). Nothing herein shall extend the time for compliance with any violation issued pursuant to article 14 of the housing maintenance code.

(2) **Work performed in accordance with §27-2056.11(a)(2)(i) of article 14 of the housing maintenance code that disturbs lead-based paint.**

(i) **Postings.** A warning sign shall be posted in accordance with subdivision (g)(1)(i)(B) of this section and caution tape shall be placed across the entrance to the work area.

(ii) **Pre-cleaning and protecting moveable items.** All floors, moveable furniture, draperies, carpets, or other objects in the work area shall be HEPA-vacuumed or washed; all moveable items shall then be moved out of the work area or otherwise covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work.

(iii) **Covering floors.** The floor of the work area shall be covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work. Multiple layers of polyethylene sheeting shall be used as needed to prevent dust from contaminating the floor.

(iv) **Sealing openings.** Where applicable, forced air systems in the work area shall be turned off and any openings in the work area shall be sealed with polyethylene or equivalent sheeting to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

(v) **Instructing occupants.** Occupants shall be instructed by the owner and contractor to avoid entering the work area until final clean up has been completed.

(vi) **Hazardous materials.** All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

(vii) Clean-up and lead-contaminated dust clearance testing shall be conducted in accordance with subdivision (g)(1)(ix) of this section.

(viii) Relocation and temporary access to work areas when occupants are not relocated, where provided, shall be performed in accordance with (g)(1)(ix)(E) and (F) of this section.

(3) **Work performed in a dwelling unit on turnover in accordance §27-2056.8 of article 14 of the housing maintenance code.**

(i) **Preparation.** The procedures described in subdivision (g)(2)(i)-(iv) of this section shall be followed.

(ii) **Clean-up.** At the completion of work, the work area shall be thoroughly wet-mopped or HEPA-vacuumed and a visual examination shall be conducted in the work area and the area adjacent and exterior to the work area. Any noted lead-contaminated dust or debris shall be wet-mopped or HPEA-vacuumed. All rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint shall be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(iii) **Lead-contaminated dust clearance testing.** Lead-contaminated dust clearance testing shall be conducted in accordance with subdivision (g)(1)(ix)(C)-(D) of this section.

HISTORICAL NOTE

Section repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

DERIVATION

Former §11-06 Presumption repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-07 Presumption.

(a) In any multiple dwelling erected prior to January first, nineteen hundred sixty, it shall be presumed that the paint or other similar surface-coating material in any dwelling unit where a child of applicable age resides or in the common areas of such multiple dwelling is lead-based paint.

(b)(1) The presumption established in this section may only be rebutted as provided in paragraph (2) of this subdivision by the registered owner, registered officer or director of a corporate owner or by a registered managing agent of such multiple dwelling by submitting to the department:

(i) a sworn written statement, supported by lead-based paint testing or sampling results, including a description of the testing methodology and manufacturer and model of instrument used to perform such testing or sampling;

(ii) a sworn written statement by the person who performed the testing if performed by an employee or agent of the owner which shall include a copy of the certificate of training as a certified lead-based paint inspector or risk assessor as provided in subdivision (d) of this section;

(iii) a copy of the inspection report provided by the person who performed the testing or sampling which shall include a description of the surfaces in each room where such testing or sampling was performed; and

(iv) a copy of the results of such testing and/or such laboratory tests of paint chip samples performed by an independent laboratory certified by the state of New York where such testing has been performed.

(2) Such written statement and all supporting documentation shall be submitted to the department not later than six (6) days before the date set for correction in the notice of violation in accordance with paragraph (1) of this subdivision, and may only be submitted to rebut the presumption where the department has not performed an XRF test prior to issuing such violation. Receipt by the department of a complete application in accordance with this subdivision including such written statement and such supporting documentation shall toll the time period to correct the violation. Receipt of an incomplete application shall not toll the time period for correction of the violation.

(3) The department shall notify the registered owner, registered officer or director of a corporate owner or registered managing agent of such multiple dwelling of its determination in writing, and, if the department determines that such presumption has not been rebutted, such notice shall set a date for correction of the violation.

(c) Where testing or sampling is performed to rebut the presumption established in this section, the performance of such testing shall be in accordance with the definition for lead-based paint established in §11-01(s) of these rules and §27-2056.2(7) of article 14 of the housing maintenance code. Laboratory analysis for paint chip samples shall be permitted only where XRF tests fall within the inconclusive zone for the particular XRF machine or where the configuration of the surface or component to be tested is such that an XRF machine cannot accurately measure the lead content of such surface or component. Laboratory tests of paint chip samples, where performed, shall be reported in mg/cm^2, unless the surface area of a paint chip sample cannot be accurately measured, or if an accurately measured paint chip sample cannot be removed, in which circumstance the laboratory test may be reported in percent by weight. Where paint chip sampling has been performed, the sworn written statement by the person who performed the testing shall include a statement that such sampling was done in accordance with 40 CFR §745.227 or successor provisions.

(d) Testing performed to rebut the presumption may only be performed by a person who has been certified as a lead-based paint inspector or risk assessor in accordance with subparts L and Q of 40 CFR part 745 or successor provisions and such testing shall be performed in accordance with 40 CFR §745.227(a) and (b) or successor provisions.

HISTORICAL NOTE

Section repealed and added (formerly §11-06) City Record July 2, 2004 eff. Aug. 1, 2004. [See

Chapter 11 footnote]

DERIVATION

Former §11-06 repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

Section in original publication July 1, 1991.

Former §11-07 Exemption from Presumption

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation

for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-08 Exemption from Presumption.

(a) A registered owner or registered officer or director of a corporate owner or registered managing agent of a multiple dwelling erected prior to January first, nineteen hundred sixty or, where title to such multiple dwelling is held by a cooperative housing corporation or the units in such multiple dwelling are owned as condominium units, a representative of the corporation or the condominium board of managers may apply to the department, in writing, for an exemption of the application of the presumption established under article 14 of the housing maintenance code and §11-07 of these rules with respect to such multiple dwelling or any part thereof, provided further, that where title to such multiple dwelling is held by a cooperative housing corporation or the units in such multiple dwelling are owned as condominium units, the shareholder of record on the proprietary lease or the owner of record of such condominium unit, as is applicable, may apply to the department for such exemption for his or her individual unit where such presumption is or may become applicable.

(b) Except as otherwise provided in subdivision (c), such exemption shall be granted only where such owner or such other person specified in subdivision (a) of this section submits a written determination made by a lead-based paint inspector or risk assessor certified pursuant to subparts L and Q of 40 CFR part 745 or successor provisions, and in accordance with 40 CFR §745.227(b), or Chapter 7 of the department of housing and urban development's Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing that each tested surface and component in each dwelling unit in such multiple dwelling or in the individual dwelling unit, if applying for an exemption of a particular dwelling unit in such multiple dwelling, is free of lead-based paint as defined in §11-01(s) of these rules and §27-2056.2(7) of article 14 of the housing maintenance code, or, that as a result of a substantial alteration of each dwelling unit such lead-based paint on each surface and component in each dwelling unit has been contained so that

each surface tested is negative for such lead-based paint. Where surfaces or components within the dwelling unit can be demonstrated by the owner, to the satisfaction of the department, to have a common construction and painting history, the lead-based paint inspector or risk assessor performing such testing may test a sample of the surfaces and components having such common construction and painting history within the dwelling unit to make such determination, in accordance with 40 CFR §745.227(b), or Chapter 7 of the department of housing and urban development's Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing. For purposes of this section, the term "contained" shall mean that every surface containing lead-based paint has been permanently covered, enclosed and sealed with sheetrock or similar durable construction material to eliminate gaps which may allow access to or dispersion of dust or other matter from the underlying surface.

(c) For any surface within a dwelling unit or dwelling where encapsulation has been applied to a surface for the purpose of qualifying such dwelling unit or dwelling for an exemption under this section, in addition to the information required to be provided to the department pursuant to subdivision (d) of this section, such application shall include: the location of each surface that has been encapsulated; the name of the encapsulant that has been used, which shall be limited to those approved by the New York state department of health or by another federal or state agency or jurisdiction which the department has designated as acceptable; and a statement by the person who applied such encapsulant, who shall be certified to perform abatement pursuant to 40 CFR part 745 or successor provisions, that it has been applied in accordance with the manufacturer's instructions. The surfaces to which such encapsulants are applied shall be subject to periodic monitoring by the owner to ensure that they remain undamaged and intact, provided further, that the owner of such dwelling unit or dwelling shall keep records of any monitoring of such encapsulated surfaces for a period of ten years and produced by the owner upon request by the department.

(d) In addition to the information required by subdivision (c) of this section, where applicable, an application for exemption shall include: the address of the multiple dwelling; the number of units; the dates, if known, when substantial alterations were made to the dwelling unit(s) and a description of the work performed; the date of the inspection resulting in the determination; and a copy of the inspection report. Such inspection report shall contain a description of the surfaces tested and the results of such testing. Such application shall also include a copy of the certificate of training of the person who performed such testing.

(e) Upon submission of a complete application for exemption to the department, such multiple dwelling or part thereof, or dwelling unit, shall be deemed to be exempt from application of the presumption established under article 14 of the housing maintenance code and §11-07 of these rules. The department may revoke an exemption granted pursuant to this section where the department determines, after inspection, that a surface in any dwelling unit for which lead-based paint was contained or to which an encapsulant was applied is no longer intact or sealed or that such exemption was determined to be based upon fraud, mistake or misrepresentation. The department shall provide written notification to the owner upon making such determination. Absent fraud, mistake or misrepresentation in the initial application, an owner may reapply for the exemption by showing that the surface for which the lead-based paint was no longer contained or encapsulated has been repaired and resealed.

(f) Results of lead-based paint testing or evidence of application of encapsulants to surfaces performed prior to the effective date of these rules, that conforms with the requirements of this section, may be submitted to qualify for an exemption from the presumption pursuant to this section.

HISTORICAL NOTE

Section repealed and added (formerly §11-07) City Record July 2, 2004 eff. Aug. 1, 2004. [See

Chapter 11 footnote]

DERIVATION

Section 11-07 repealed and added City Record Oct. 13, 1999 eff. Nov. 12, 1999.

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FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-09 Certification of Correction of Lead-Based Paint Hazard Violation.

(a) A registered owner or registered officer or director of a corporate owner or registered managing agent shall submit a certification of correction of a lead-based paint hazard violation issued pursuant to §27-2056.6 of article 14 of the housing maintenance code and these rules within five (5) days of the date set for correction in the notice of violation. Such certification shall be made in writing, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent and shall include the following:

(1) the date that the violation was corrected, and a statement that the violation was corrected in compliance with article 14 of the housing maintenance code and §11-06 of these rules;

(2) the results of laboratory tests performed by an independent laboratory certified by the state of New York for lead-contaminated dust clearance tests performed pursuant to §27-2056.11(b) and (d) of the housing maintenance code and §11-06(g)(1)(ix)(C) and (D) of these rules;

(3) a copy of the certificate of training required pursuant to §11-06(b)(2)(iii) qualifying the person who performed the lead-contaminated dust clearance testing; and

(4) a sworn statement by the person or firm who performed the work necessary to correct the violation that such work was performed in accordance with the applicable provisions of §27-2056.11 of article 14 of the housing maintenance code and the applicable provisions of §11-06 of these rules; and

(5) a copy of the certification by the United States environmental protection agency of the firm that performed the

work as required pursuant to §11-06(b)(2)(i) of these rules.

(b) Certification of a lead-based paint hazard violation shall be rejected by the department unless the results of the laboratory tests for the required lead-contaminated dust clearance tests are submitted with the certification, and such laboratory test results comply with the standards specified in §11-06(g)(1)(ix)(D) of these rules.

(c) Failure to file a certification of correction of such violation shall establish a prima facie case that such violation has not been corrected.

HISTORICAL NOTE

Section repealed and added (formerly §11-08) City Record July 2, 2004 eff. Aug. 1, 2004. [See

Chapter 11 footnote]

DERIVATION

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FOOTNOTES

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Rules of the City of New York

28 RCNY 11-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-10 Postponements.

(a) An owner may apply to the department in writing for postponement of the time to correct a lead-based paint hazard violation issued pursuant to §27-2056.6 of article 14 of the housing maintenance code within the five days preceding the date set for correction of such violation pursuant to §27-2115(l)(1).

(b) Grant of a postponement shall be in the sole discretion of the department, and will be limited to circumstances where a showing has been made by the owner, to the satisfaction of the department, that such owner has taken steps to correct the violation promptly but that full correction could not be completed expeditiously because of the existence of a serious technical difficulty, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling unit or other area of the building necessary to make the required repair. An application for postponement shall contain a detailed statement by the registered owner or agent, or registered managing agent, explaining the steps taken to correct the violation promptly and the specific circumstances surrounding the inability to fully correct the violation within the time set for correction of the violation. Where an owner claims inability to gain access, such application shall include a description of the steps taken to gain access, including but not limited to providing a written notice to the tenant, delivered by certified or registered mail, informing the tenant of the necessity of access to the dwelling unit to correct the violation and the reason why access could not be gained.

(c)(1) The department shall make a determination in writing whether the post- ponement shall be granted or denied, and the reasons therefor. The department may include such other conditions as are deemed necessary to insure correction of the violation within the time set by the postponement. If the postponement is granted, a new date for correction shall be set, which shall not exceed fourteen days from the date set for correction in the notice of violation, provided, however, that the department may grant an additional postponement of fourteen days where the department

determines that the conditions which is the subject of the violation has been stabilized.

(2) The department may grant a postponement of the time to correct a lead-based paint hazard violation in excess of the twenty-eight days provided for in paragraph (1) of this subdivision, where the department determines that the work to be done to remediate the violation includes one or more substantial capital improvements to be made in conjunction with such work, and that such improvements will significantly reduce the presence of lead-based paint in such multiple dwelling or dwelling unit, provided that the paint which is the subject of the violation is stabilized. An owner who applies for such longer postponement shall submit an application within the time period specified in subdivision (a) of this section, and shall include with such application such documentation as the department may require to make its determination, which may include, but is not limited to, written contracts for work, building permits, plans filed with the department of buildings; invoices for materials purchased; and evidence that work has commenced and substantial progress has been made.

HISTORICAL NOTE

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FOOTNOTES

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***** Current through December 2009 ****

28 RCNY 11-11

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-11 Audit and Inspection by the Department.

(a) Upon the issuance of a commissioner's order to abate by the commissioner of the department of health and mental hygiene pursuant to New York city health code §173.13, the department shall require that an owner submit to it all records required to be kept by such owner pursuant to article 14 of the housing maintenance code and these rules. At such other times as the department may deem it necessary, the department may require that an owner submit to it all records required to be kept by such owner pursuant to article 14 of the housing maintenance code and these rules. If such order to abate has been issued, such records shall be submitted to the department within 45 days of written demand for such records by the department. In all other cases, the time period for submission shall be stated in writing to the owner, and shall be in the discretion of the department.

(b) The department may undertake any inspection and enforcement actions it deems necessary under applicable law and these rules based upon its review of the records submitted by an owner pursuant to subdivision (a) of this section. The department may also undertake any inspection or enforcement action authorized by law where an owner refuses or fails to produce any of the records required to be kept pursuant to article 14 of the housing maintenance code, these rules, and other applicable law.

HISTORICAL NOTE

Section added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11-12

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 11 [Lead-Based Paint Abatement; Dwellings; Children]*1

§11-12 Dwelling Units in Cooperative Housing Corporations and Condominiums.

Where the department has issued a violation pursuant to article 14 of the housing maintenance code for a dwelling unit in a multiple dwelling where (i) title to such multiple dwelling is held by a cooperative housing corporation or such dwelling unit is owned as a condominium unit, and (ii) such dwelling unit is occupied by the shareholder of record on the proprietary lease for such dwelling unit or the owner of record of such condominium unit, as is applicable, or the shareholder's or record owner's family, the cooperative housing corporation or the condominium board of managers may apply to the department to have such violation reissued. Such application shall include a sworn affidavit from a representative of the cooperative housing corporation or condominium board of managers attesting to the status of such multiple dwelling as either a cooperative or condominium, and a sworn affidavit from the shareholder of record on the proprietary lease of the unit or the owner of record of the condominium unit for which the violation was issued, attesting to his or her occupancy of the unit.

HISTORICAL NOTE

Section added City Record July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 11 repealed and added City Record July 2, 2004 eff. Aug. 1, 2004. Chapter heading supplied by editor. Note: Statement of Basis and Purpose in City Record July 2, 2004: The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

APPENDIX A LEASE/COMMENCEMENT OF OCCUPANCY NOTICE FOR PREVENTION OF LEAD BASED PAINT HAZARDS-INQUIRY REGARDING CHILD

APPENDIX A LEASE/COMMENCEMENT OF OCCUPANCY NOTICE FOR PREVENTION OF LEAD BASED PAINT HAZARDS-INQUIRY REGARDING CHILD

You are required by law to inform the owner if a child under seven years of age resides or will reside in the dwelling unit (apartment) for which you are signing this lease/commencing occupancy. If such a child resides or will reside in the unit, the owner of the building is required to perform an annual visual inspection of the unit to determine the presence of lead-based paint hazards. IT IS IMPORTANT THAT YOU RETURN THIS FORM TO THE OWNER OR MANAGING AGENT OF YOUR BUILDING TO PROTECT THE HEALTH OF YOUR CHILD. If you do not respond to this notice, the owner is required to attempt to inspect your apartment to determine if a child under seven years of age resides there.

If a child under seven years of age does not reside in the unit now, but does come to live in it at any time during the year, you must inform the owner in writing immediately. If a child under seven years of age resides in the unit, you should also inform the owner immediately at the address below if you notice any peeling paint or deteriorated subsurfaces in the unit during the year.

Please complete this form and return one copy to the owner or his or her agent or representative when you sign the lease/commence occupancy of the unit. Keep one copy of this form for your records. You should also receive a copy of a pamphlet developed by the New York City Department of Health explaining about lead based paint hazards when you sign your lease/commence occupancy.

CHECK ONE: A child under seven years of age resides in the unit

CHECK ONE: A child under seven years of age does not reside in the unit

_____ (Occupant signature)

Print occupant's name, address and apartment number: _____

(NOT APPLICABLE TO RENEWAL LEASE) Certification by owner: I certify that I have complied with the provisions of §27-2056.8 of Article 14 of the Housing Maintenance Code and the rules promulgated thereunder relating to duties to be performed in vacant units, and that I have provided a copy of the New York City Department of Health and Mental Hygiene pamphlet concerning lead-based paint hazards to the occupant.

_____ (Owner signature)

RETURN THIS FORM TO: _____
_____

OCCUPANT: KEEP ONE COPY FOR YOUR RECORDS

OWNER COPY/OCCUPANT COPY

HISTORICAL NOTE

Appendix repealed and added July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

APENDICE A

CONTRATO/COMIENZO DE OCUPACION Y

MEDIDAS DE PRECAUCION CON LOS PELIGROS

DE PLOMO EN LA PINTURA-ENCUESTA

RESPECTO AL NI;atNO.

Usted esta requerido por ley informarle al due;atno si un ni;atno menor de siete a;atnos de edad esta viviendo o vivira con usted en la unidad de vivienda (apartamento) para la cual usted va a firmar un contrato de ocupacion. Si tal ni;atno empieza a residir en la unidad, el due;atno del edificio esta requerido hacer una inspecion visual a;atnualmente de la unidad para determinar la presencia peligrosa de plomo en la pintura. POR ESO ES IMPORTANTE QUE USTED LE DEVEUELVA ESTE AVISO AL DUE;atNO O AGENTE AUTORIZADO DEL EDIFICIO PARA PROTEGER LA SALUD DE SU NI;atNO. Si usted no informa al dueno, el dueno esta requerido inspeccionar su apartamento para descubrir si un ni;atno menor de siete a;atnos de edad esta viviendo en el apartamento.

Si un ni;atno de siete a;atnos de edad no vive en la unidad ahora, pero viene a vivir en cualquier tiempo durante el a;atno, usted debe de informarle al due;atno por escrito inmediatamente a la direccion provenida abajo. Usted tambien debe de informarle al due;atno por escrito si un ni;atno menor de siete a;atnos de edad vive en la unidad y si usted observa que durante el a;atno la pintura se deteriora o esta por pelarse sobre la superficie de la unidad.

Por favor de llenar este formulario y devolver una copia al due;atno del edificio o al agente o representante cuando usted firme el contrato o empieze a ocupar la unidad. Mantegna una copia de este formulario para sus archivos. Al firmar su contrato de ocupacion usted recibira un pamfleto hecho por el Departamento de Salud y Salud de la Ciudad de Nueva York, explicando el peligro de plomo en pintura.

MARQUE UNO: Vive un ni;atno menor de siete a;atnos de edad en la unidad.

MARQUE UNO: No vive un ni;atno menor de siete a;atnos de edad en la unidad.

_____ (Firma del inquilino)

Nombre del inquilino, Direccion, Apartamento: _____

(Esto no es aplicable para un renovamiento del contrato de alquiler.) Certificacion de due;atno: Yo certifico que he cumplido con la provision de §27-2056.8 del Articulo 14 del codigo y reglas de Vivienda y Mantenimiento (Housing Maintenance Code) relacionado con mis obligaciones sobre las unidades vacante, y yo le he dado al ocupante una copia del pamfleto del Departamento de Salud y Salud Mental de la Ciudad de Nueva York sobre el peligro de plomo en pintura.

_____ (Firma del due;atno)

DEVUELVA ESTE FORMULARIO A: _____
_____

INQUILINO: MANTENGA UNA COPIA PARA LOS ARCHIVOS

COPIA DEL DUE;atNO/COPIA DEL INQUILINO

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 11 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

APPENDIX B ANNUAL NOTICE FOR PREVENTION OF LEAD BASED PAINT HAZARDS-INQUIRY REGARDING CHILD

APPENDIX B ANNUAL NOTICE FOR PREVENTION OF LEAD BASED PAINT HAZARDS-INQUIRY REGARDING CHILD

You are required by law to inform the owner if a child under seven years of age resides or will reside in your dwelling unit (apartment). If such a child resides or will reside in the unit, the owner of the building is required to perform an annual visual inspection of the unit to determine the presence of lead-based paint hazards. IT IS IMPORTANT THAT YOU RETURN THIS FORM TO THE OWNER OR MANAGING AGENT OF YOUR BUILDING TO PROTECT THE HEALTH OF YOUR CHILD. If you do not respond to this notice, the owner is required to attempt to inspect your apartment to determine if a child under seven years of age resides there.

If a child under seven years of age does not reside in the unit now, but does come to reside in it at any time during the year, you must inform the owner in writing immediately. If a child under seven years of age lives in the unit you should also inform the owner immediately if you notice any peeling paint or deteriorated surfaces in the unit during the year. You may request that the owner provide you with a copy of any records required to be kept as a result of a visual inspection of your unit.

Please complete this form and return one copy to the owner or his or her agent or representative by March 1st. Keep one copy of this form for your records.

CHECK ONE: A child under seven years of age resides in the unit

CHECK ONE: A child under seven years of age does not reside in the unit

_____ (Occupant signature)

Print occupant's name, address and apartment number: _____

RETURN THIS FORM TO: _____
_____

OCCUPANT: KEEP ONE COPY FOR YOUR RECORDS

OWNER COPY/OCCUPANT COPY

HISTORICAL NOTE

Appendix repealed and added July 2, 2004 eff. Aug. 1, 2004. [See Chapter 11 footnote]

APENDICE B

AVISO A;atNUAL PARA MEDIDAS DE PRECAUCION

CON LOS PELIGROS DE PLOMO EN LA PINTURA-

ENCUESTA RESPECTO AL NI;atNO

Usted esta requerido por ley informarle al due;atno si un ni;atno menor de siete anos de edad esta viviendo o vivira con usted en su unidad de vivienda (apartamento). Si tal ni;atno empvive en la unidad, el due;atno del edificio esta requerido hacer una inspecion visual a;atnualmente de la unidad para determinar la presencia peligrosa de plomo en la pintura. POR ESO ES IMPORTANTE QUE USTED LE DEVEUELVA ESTE AVISO AL DUE;atNO O AGENTE AUTORIZADO DEL EDIFICIO PARA PROTEGER LA SALUD DE SU NI;atNO. Si usted no informa al dueno, el dueno esta requerido inspeccionar su apartamento para descubrir si un ni;atno menor de siete a;atnos de edad esta viviendo en el apartamento.

Si un ni;atno menor de siete a;atnos de de edad no vive en la unidad ahora, pero viene a vivir en cualquier tiempo durante el a;atno, usted debe de informarle al due;atno por escrito inmediatamente. Usted tambien debe de informarle al due;atno por escrito si el ni;atno menor de siete a;atnos de edad vive en la unidad y si usted observa que durante el a;atno la la pintura se deteriora o esta por pelarse sobre la superficie de la unidad, usted tiene que informarle al due;atno inmediatamente. Usted puede solicitar que el due;atno le de una copia de los archivos de la inspecion visual hecha en su unidad.

Por favor de llenar este formulario y devolver una copia al due;atno del edificio o al agente o representante antes de Marzo 1. Mantegna una copia de este formulario para su informacion.

MARQUE UNO: Vive un ni;atno menor de siete a;atnos de edad en la unidad.

MARQUE UNO: No vive un ni;atno menor de siete a;atnos de edad en la unidad.

_____ (Firma del inquilino)

Nombre del inquilino, Direccion, Apartamento: _____

DEVUELVA ESTE FORMULARIO A: _____
_____

INQUILINO: MANTENGA UNA COPIA PARA SU INFORMACION

COPIA DEL DUE;atNO/COPIA DEL INQUILINO

Rules of the City of New York

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28 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-01 Owner Responsibilities for Smoke Detecting Devices for Class A Multiple Dwellings.

Pursuant to §27-2045 of the Administrative Code of the City of New York, the owner of a Class A multiple dwelling which is

required to be equipped with smoke detecting devices pursuant to Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York shall: (a) Provide and install one or more approved and operational smoke detecting devices in each dwelling unit as prescribed in the rules and regulations relating to smoke detecting devices and systems of the Department of Buildings.

(b) Post a notice in a form approved by the Commissioner of the Department of Housing Preservation and Development in a common area of the building, readily visible and preferably in the area of the inspection certificate, informing the occupants of such building that the owner is required by law to install one or more approved and operational smoke detecting devices in each dwelling unit in the building and that each occupant is responsible for the maintenance and repair of such devices and for replacing any or all such devices which are stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit. In addition, the notice should state that the occupant of a dwelling unit in which a battery-operated smoke detecting device is provided and installed shall reimburse the owner a maximum of ten dollars for the cost of providing and installing each such device. The occupant shall have one year from the date of installation to make such reimbursement. A sample of an approved notice is attached and made part of these regulations.

(c) The notice in §12-01(b) above:

(1) shall have letters not less than three-sixteenths of an inch in height;

(2) the lettering of the notice shall be of bold type and shall be properly spaced to provide good legibility and the background shall be of contrasting colors;

(3) the notice shall be durable and shall be substantially secured to the common area where posted;

(4) the notice shall be of metal, plastic, or decal;

(5) lighting shall be sufficient to make the notice easily legible.

(d) Replace any smoke detecting device which has been stolen, removed, missing or rendered inoperable during a prior occupancy of the dwelling unit and which has not been replaced by the prior occupant prior to the commencement of a new occupancy of a dwelling unit.

(e) Replace within thirty calendar days after the receipt of written notice any such device which becomes inoperable within one year of the installation of such device and through no fault of the occupant of the dwelling unit.

(f) Keep the following records, on the premises unless specifically exempted, relating to the installation and maintenance of smoke detecting devices in the building:

(1) date notice posted pursuant to §12-01(b) of this chapter;

(2) date of installation of each smoke detecting device;

(3) whether the smoke detecting device receives its primary power from the building wiring or whether it is a battery-operated device;

(4) apartment number and location within apartment where device installed;

(5) date device tested to see if it is in operable condition;

(6) maintenance work performed on device;

(7) date tenant requested replacement/repair;

(8) file a certification of satisfactory installation within 10 days after completion with the Department of Housing Preservation and Development, Borough Division of Code Enforcement. This certification shall be set forth on a form available at the HPD Borough Office.

A sample for the keeping the above records is attached and made a part of these regulations. These records must be made available to the Commissioner of the Department of Housing Preservation and Development upon request.

HISTORICAL NOTE

Section heading amended City Record Aug. 26, 2004 §2, eff. Aug. 26, 2004. [See Chapter 12

footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

28 RCNY 12-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-02 Occupant Responsibilities for Smoke Detecting Devices for Class A Multiple Dwellings.

Pursuant to §27-2045(2) of the Administrative Code of the City of New York it shall be the sole duty of the occupant of each unit in a Class A multiple dwelling in which a smoke detecting device has been provided and installed by the owner to:

(a) keep and maintain such device in good repair; and

(b) replace any and all devices which are either stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit.

Note: Except as provided in §12-01(d) and (e) above, an owner of a Class A multiple dwelling who has provided and installed a smoke detecting device in a dwelling unit shall not be required to keep and maintain such device in good repair or to replace any such device which is stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit. In addition, the occupant of a dwelling unit in which a battery-operated smoke detecting device is provided and installed shall reimburse the owner a maximum of ten dollars for the cost of providing and installing each such device. The occupant shall have one year from the date of installation to make such reimbursement.

HISTORICAL NOTE

Section heading amended City Record Aug. 26, 2004 §2, eff. Aug. 26, 2004. [See Chapter 12

footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Once the owner has equipped an apartment with a smoke detector, it is the responsibility of the tenant to check whether the detector is in working order. If the tenant notifies the landlord of a problem, the landlord is required to replace the detector within 30 days. However, if the tenant fails to notify the landlord, the responsibility falls entirely on the tenant. Rodriguez v. New York City Housing Authority, N.Y.L.J., Aug. 13, 2002, page 23, col. 2 (Sup.Ct. Bronx Co.).

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting

devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

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28 RCNY 12-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-03 Owner Responsibilities for Smoke Detecting Devices for Class B Multiple Dwellings.

Pursuant to §27-2046 of the Administrative Code of the City of New York the owner of a Class B multiple dwelling which is required to be equipped with smoke detecting devices pursuant to Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York shall:

(a) Provide and install one or more approved and operational smoke detecting devices in each dwelling unit or, in the alternative, provide and install a line-operated zoned smoke detecting system with central office tie-in for all public corridors and public spaces pursuant to rules and regulations promulgated by the Commissioner of the Department of Buildings.

(b) Keep and maintain smoke detecting devices in good repair.

(c) Replace any smoke detecting device which has been stolen, removed, missing or rendered inoperable prior to the commencement of a new occupancy of a dwelling unit.

(d) Keep the following records, on the premises unless specifically exempted, relating to the installation and maintenance of smoke detecting devices in the buildings:

(1) date of installation of each smoke detecting device;

(2) whether the smoke detecting device receives its primary power from the building wiring or whether it is a

battery operated device or in the alternative whether it is a line operated zoned smoke detecting system with central annunciation and central tie-in for all public corridors and public spaces;

(3) room number and location within room where each smoke detecting device is installed;

(4) date device was tested to see if in operable condition;

(5) maintenance performed on each device;

(6) file a certification of satisfactory installation within 10 days after completion with the Department of Housing Preservation and Development, Borough Division of Code Enforcement. This certification shall be set forth on a form available at the HPD Borough Office.

HISTORICAL NOTE

Section heading amended City Record Aug. 26, 2004 §2, eff. Aug. 26, 2004. [See Chapter 12

footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to

installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

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28 RCNY 12-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-04 Form for Records or Smoke Detecting Devices.

A sample form for keeping the above records is attached and made a part of this chapter. These records must be made available to the Commissioner of the Department of Housing Preservation and Development upon request.

NOTICE

The owner, _____

of this building located at _____

is required by law to post this notice advising tenants that the owner is required by law to provide and install one or more approved and operational smoke detectors in each apartment in this building. The law further makes tenant of each apartment responsible for the maintenance and repair of the detectors installed in the apartment and for replacing any or all detectors which are stolen, removed, missing or become inoperable during the occupancy of the apartment. The law also provides that the tenant of each Class A apartment in the building in which a battery-operated smoke detector is provided and installed shall pay the owner a maximum of ten dollars ($10.00) for the cost of providing and installing each detector. The tenant has one (1) year from the date of installation to make such payment to the owner.

HISTORICAL NOTE

Section heading amended City Record Aug. 26, 2004 §2, eff. Aug. 26, 2004. [See Chapter 12 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

28 RCNY 12-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-05 Definitions.

For the purposes of this chapter

(a) CO means carbon monoxide; and

(b) CO alarm means a "carbon monoxide alarm" as defined in 1 RCNY Chapter 28 and shall also mean a "carbon monoxide detecting device" as such term is used in subchapter 7 of chapter 1 and subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York.*2

HISTORICAL NOTE

Section added City Record Aug. 26, 2004 §3, eff. Aug. 26, 2004. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation

and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

2

[Footnote 2]: * 1 RCNY §28-02(a)(2) states: The term "CO alarm" means a "carbon monoxide alarm" as defined in RS 17-14, and shall also mean a "carbon monoxide detecting device" as such term is used in Subchapter 17 of Chapter 1, and Subchapter 2 of Chapter 2, of Title 27 of the Administrative Code of the City of New York. 1 RCNY §28-02(e)(2) states: Existing buildings. Buildings in existence on November l1, 2004, and buildings with work permits issued prior to November 1, 2004, may, in the alternative, be equipped with battery-operated CO alarms compliant with RS 17-14 §5.2.3 or plug-in type CO alarms with a back-up battery compliant with RS 17-14 §5.2.4, except where such buildings are substantially improved or altered on or after November 1, 2004.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-06 Owner Responsibilities for CO Alarms for Class A Multiple Dwellings.

Pursuant to §27-2046.1 of the administrative code of the city of New York, the owner of a Class A multiple dwelling that is required to be equipped with carbon monoxide detecting devices pursuant to article 7 of subchapter 17 of chapter 1 of title 27 of the administrative code of the city of New York and as prescribed by the Department of Buildings ("DOB") pursuant to chapter 28 of title 1 of the rules of the city of New York shall comply with the following requirements:

(a) Provide and install one or more approved and operational CO alarms in each dwelling unit, provided that there shall be installed at least one approved and operational CO alarm within 15 feet of the primary entrance to each room lawfully used for sleeping purposes;

(b) Post a notice in a form approved by the Commissioner of the Department of Housing Preservation and Development ("HPD" or "the Department") in a common area of a Class A multiple dwelling, readily visible and preferably in the area of the inspection certificate informing the occupants of such building that:

(1) the owner is required by law to install one or more approved and operational CO alarm in each dwelling unit in the building within 15 feet of the primary entrance to each room lawfully used for sleeping purposes;

(2) each occupant is responsible for the maintenance and repair of such alarms and for replacing any or all such alarms that are stolen, removed, missing, or rendered inoperable during the occupancy of such dwelling unit; and

(3) the occupant of a dwelling unit in which a CO alarm is newly installed or in which a CO alarm is installed by the owner as a result of such occupant's failure to maintain such alarm or where such alarm has been lost or damaged by such occupant, shall reimburse the owner in the amount of $25.00 per device for the cost of such work, and such occupant shall have one year from the date of installation to make such reimbursement.

(4) An owner may choose to post a single notice that complies with this provision as well as the provisions of 28 RCNY §12-01(b).

(5) The notice required by this subdivision shall conform with the following requirements:

(i) the notice shall have letters not less than three-sixteenths of an inch in height;

(ii) the lettering of the notice shall be of bold type and shall be properly spaced to provide good legibility and the background shall be of contrasting colors;

(iii) the notice shall be durable and shall be substantially secured to the common area where posted;

(iv) the notice shall be of metal, plastic, or decal; and

(v) lighting shall be sufficient to make the notice easily legible; and

(vi) A sample of an approved notice is attached and made part of these rules.

(c) Replace any CO alarm that has been stolen, removed, found missing, or rendered inoperable during a prior occupancy of the dwelling unit and which has not been relaced by the prior occupant before the commencement of a new occupancy of the dwelling unit;

(d) Replace within 30 calendar days after receipt of written notice any such alarm that becomes inoperable within one year of the installation of such alarm due to a defect in the manufacture of such alarm through no fault of the occupant of the dwelling unit;

(e) Provide written information regarding the testing and maintenance of CO alarms to at least one adult occupant of each dwelling unit, including, but not limited to, general information concerning carbon monoxide poisoning and what to do if a CO alarm goes off. Such information may include material that is distributed by the manufacturer or any material prepared or approved by DOB;

(f) Keep the following records, on the premises unless another location is approved by HPD, relating to the installation and maintenance of CO alarms in the building:

(1) date notice posted pursuant to §12-06(b) of this chapter;

(2) date of installation of each CO alarm;

(3) whether each CO alarm receives its primary power from the building wiring with secondary battery back-up, is a battery-operated alarm, or is a plug-in type CO alarm with a back-up battery;

(4) apartment number and location within apartment where each alarm was installed;

(5) date each alarm tested to determine if it is in operable condition;

(6) maintenance work performed on each alarm; and

(7) date occupant requested replacement/repair.

These records must be made available to HPD, DOB, the Fire Department, or the Department of Health and Mental Hygiene ("DOHMH") upon request; and

(g) File a certification of satisfactory installation within 10 days after completion with the HPD Borough Division of Code Enforcement in the borough where the dwelling is located. This certification shall be set forth on a form available at each HPD Borough Office and/or on HPD's website.

HISTORICAL NOTE

Section added City Record Aug. 26, 2004 §3, eff. Aug. 26, 2004. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 12-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-07 Owner Responsibilities for CO Alarms for Private Dwellings.

Pursuant to §27-2046.1 of the administrative code of the city of New York, the owner of a private dwelling that is required to be equipped with CO alarms pursuant to article 7 of subchapter 17 of chapter 1 of title 27 of the administrative code of the city of new York and as prescribed by DOB pursuant to chapter 28 of title 1 of the rules of the city of New York shall comply with the following requirements:

(a) Provide and install one or more approved and operational CO alarm in each dwelling unit, provided that there shall be installed at least one approved and operational CO alarm within 15 feet of the primary entrance to each room lawfully used for sleeping as prescribed in the DOB rules and regulations relating to CO alarms.

(b) For purposes of (c) through (g) of this section, "private dwelling" shall mean a dwelling unit in a one-family or two-family home that is occupied by a person or persons other than the owner of such unit or the owner's family.

(c) Provide notice in a form approved by the Department to the occupants of such dwelling that:

(1) the owner is required by law to install an approved and operational CO alarm in each dwelling or dwelling unit in the building, within 15 feet of the primary entrance to each room lawfully used for sleeping;

(2) each occupant is responsible for the maintenance and repair of such alarms and for replacing any or all such alarms that are stolen, removed, missing, or rendered inoperable during the occupancy of such dwelling or dwelling unit; and

(3) the occupant of a dwelling or dwelling unit in which a CO alarm is newly installed or in which a CO alarm is installed by the owner as a result of such occupant's failure to maintain such alarm or where such alarm has been lost or damaged by such occupant shall reimburse the owner in the amount of $25.00 per alarm for the cost of such work, and the occupant shall have one year from the date of installation to make such reimbursement;

(d) Replace any CO alarm that has been stolen, removed, found missing, or rendered inoperable during a prior occupancy of the dwelling or dwelling unit and that has not been replaced by the prior occupant before commencement of a new occupancy of the dwelling or dwelling unit;

(e) Replace within 30 calendar days after receipt of written notice any such alarm that becomes inoperable within one year of the installation of such alarm due to a defect in the manufacture of such alarm through no fault of the occupant of the dwelling or dwelling unit;

(f) Provide written information regarding the testing and maintenance of CO alarms to at least one adult occupant of each dwelling or dwelling unit, including, but not limited to, general information concerning carbon monoxide poisoning and what to do if a CO alarm goes off. Such information may include material that is distributed by the manufacturer or any material prepared or approved by DOB; and

(g) Keep the following records relating to the installation and maintenance of CO alarms in the dwelling or dwelling unit:

(1) date of installation of each CO alarm;

(2) whether each CO alarm receives its primary power from the building wiring with secondary battery back-up, is a battery-operated device, or is a plug-in type CO alarm with a back-up battery;

(3) location within dwelling or dwelling unit where each alarm is installed;

(4) date each alarm was tested to determine if it is in operable condition;

(5) maintenance work performed on each alarm; and

(6) date occupant requested replacement/repair.

These records must be made available to HPD, DOB, the Fire Department, or DOHMH upon request.

HISTORICAL NOTE

Section added City Record Aug. 26, 2004 §3, eff. Aug. 26, 2004. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain

circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

28 RCNY 12-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-08 Occupant Responsibilities for CO Alarms for Class A Multiple Dwellings and Private Dwellings.

(a) Pursuant to §27-2046.1 of the administrative code of the city of New York, it shall be the sole duty of the occupant of each unit in a Class A multiple dwelling and the occupant of a dwelling or dwelling unit in a private dwelling in which a CO alarm has been provided and installed by the owner to:

(1) keep and maintain such CO alarm in good repair; and

(2) replace any alarm that is either stolen, removed, missing, or rendered inoperable during the occupancy of such dwelling or dwelling unit.

(b) The occupant of a dwelling or dwelling unit in which a CO alarm is newly installed or in which a CO alarm is installed by the owner as a result of such occupant's failure to maintain such alarm where such alarm has been removed or damaged by such occupant shall reimburse the owner in the amount of $25.00 per alarm for the cost of such work. Such occupant shall have one year from the date of installation to make such reimbursement.

(c) Except as provided in §12-06(c) and (d) and §12-07(d) and (e) above, an owner who has provided and installed a CO alarm in a dwelling or dwelling unit shall not be required to keep and maintain such alarm in good repair or to replace any such alarm that is stolen, removed, or rendered inoperable during the occupancy of such dwelling or dwelling unit.

HISTORICAL NOTE

Section added City Record Aug. 26, 2004 §3, eff. Aug. 26, 2004. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

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28 RCNY 12-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-09 Owner Responsibilities for CO Alarms for Class B Multiple Dwellings.

Pursuant to §27-2046.2 of the administrative code of the city of New York, the owner of a Class B multiple dwelling that is required to be equipped with one or more CO alarms pursuant to article 7 of subchapter 17 of chapter 1 of title 27 of the administrative code of the city of New York and as prescribed by DOB pursuant to chapter 28 of title 1 of the rules of the city of New York shall:

(a) Provide and install one or more approved and operational CO alarm in each dwelling unit or in the alternative, provide and install a line operated zoned CO detecting system with central annunciation and central office tie-in for all public corridors and public spaces;

(b) Keep and maintain CO alarms or systems in good repair;

(c) Replace any CO alarm that has been stolen, removed, found missing, or rendered inoperable prior to the commencement of a new occupancy of a dwelling unit;

(d) Keep the following records, on the premises unless another location is approved by HPD, relating to the installation and maintenance of CO alarms or systems:

(1) date of installation of each CO alarm or system;

(2) whether the CO alarm receives its primary power from the building wiring with secondary battery back-up, is a

battery-operated alarm, is a plug-in type CO alarm with a back-up battery, or in the alternative whether it is a line operated zoned CO detecting system with central annunciation and central office tie-in for all public corridors and public spaces;

(3) room number and location within room where each CO alarm was installed;

(4) date each alarm was tested to determine if it is in operable condition;

(5) maintenance work performed on each alarm;

These records must be made available to HPD, DOB, the Fire Department, or DOHMH upon request; and

(e) File certification of satisfactory installation within 10 days after completion with the HPD Borough Division of Code Enforcement in the borough where the dwelling is located. This certification shall be set forth on a form available at each HPD Borough Office and/or on HPD's website.

HISTORICAL NOTE

Section added City Record Aug. 26, 2004 §3, eff. Aug. 26, 2004. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to

installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

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28 RCNY 12-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 12 SMOKE DETECTING AND CARBON MONOXIDE DETECTING DEVICES AND SYSTEMS IN MULTIPLE DWELLINGS*1

§12-10 Form for Notices for CO Alarms.

A sample form for providing notice to occupants pursuant to §12-06 is attached and made a part of this chapter.

NOTICE

The owner, _____, of this building located at _____ is required by law to post this notice advising tenants that the owner is required by law to provide a CO alarm in each apartment in this building within 15 feet of the primary entrance to each room lawfully used for sleeping. The law further makes the tenant of each apartment responsible for the maintenance and repair of the alarms installed in the apartment and for replacing any or all alarms that are stolen, removed, missing, or become inoperable during the occupancy of the apartment. The law also provides that the occupant of each Class A apartment in the building in which a CO alarm is provided and installed shall pay the owner $25.00 per alarm for the cost of such work. The occupant has one year from the date of installation to make such payment to the owner.

HISTORICAL NOTE

Section added City Record Aug. 26, 2004 §3, eff. Aug. 26, 2004. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 heading amended City Record Aug. 26, 2004 §1, eff. Aug. 26, 2004. Note: Statement of Basis and Purpose. The Department of Housing Preservation and Development is amending Chapter 12 to include new provisions relating to owner and occupant responsibilities with respect to installation and maintenance of carbon monoxie detecting devices in multiple and private dwellings. These amendments are made in order to implement Local Law #7 of 2004, known as the New York City Carbon Monoxide Detecting Device Act of 2004. The rules specify the obligations of owners to install, maintain, and keep records relating to such devices, and the duties of occupants to reimburse an owner for such installation under certain circumstances and to maintain or replace such devices as specified herein.

Statement of Substantial Need For Earlier Implementation I hereby find, pursuant to New York City Charter §1043(e)(1)(c), and hereby represent to the Mayor, that there is substantial need for the implementation of amendments to Chapter 12 of Title 28 of the Rules of the City of New York governing carbon monoxide detecting devices and systems, upon the publication in The City Record of the Notice of Adoption.

Local Law No. 7 of 2004 (Local Law No. 7), which becomes effective November 1, 2004, requires the installation of carbon monoxide detecting devices in buildings classified in Building Code occupancy groups G, H-2, J-1, J-2, and J-3. Local Law No. 7 further requires that the Department of Housing Preservation and Development, in consultation with the Fire Department and the Departments of Buildings and Health and Mental Hygiene, promulgate rules clarifying the duties of owners and occupants with respect to installing and maintaining carbon monoxide detecting devices and systems. Finally, Local Law No. 7 requires that the Department of Housing Preservation "take all actions necessary for . . . implementation, including the promulgation of rules" no later than forty-five days prior to the effective date. Thus, the Department is required to amend Chapter 12 of Title 28 of the Rules of the City of New York on or before September 17, 2004.

Pursuant to the statutory mandate, the proposed rule sets forth the owners' responsibilities to install carbon monoxide detecting devices and systems, provide certain notices to occupants, keep records relating to installation, file a certification of satisfactory installation with the Department, and replace such devices and systems under certain circumstances. The rule also sets forth the responsibilities of occupants to reimburse owners for installation of such devices, to keep and maintain the device in good repair, and replace any alarm that is stolen, removed, missing, or rendered inoperable during the occupancy of the dwelling unit. A public hearing on the proposed rule was held on August 12, 2004. Early implementation of the rule is necessary to ensure that owners have advance notice of the requirement to install and maintain carbon monoxide detecting devices prior to the beginning of the heating season, and so that the Department may meet the statutory rule promulgation deadline set forth in Local Law No. 7.

Shaun Donovan, Commissioner

Department of Housing

Preservation and Development

Michael Bloomberg, Mayor

August 16, 2004

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-01 Purpose and Scope.

It is the purpose of this chapter to set forth an administrative procedure to allow new owners of multiple dwellings and other appropriate units in the City of New York the opportunity to correct violations while being assured that legal actions will not be brought against such new owners and that civil penalties accruing to the Department of Housing Preservation and Development will be stayed during the correction period. Pursuant to the procedure set forth herein, a new owner may seek to limit his or her liability while attempting to achieve correction of violations. The regulations created herein institute uniform procedures for an application for such a stay of legal actions, the basis upon which a determination of such application shall be made, the condition upon which a stay may be granted, the revocation of a stay, and the effect of compliance and non-compliance by a new owner with the conditions of a stay.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-02 Definitions.

In these regulations, the following terms shall have the meanings specified:

Department. "Department" shall mean the Department of Housing Preservation and Development or any successor to that Department.

New owner. "New owner" shall mean a person, entity, firm or corporation or agent or principal thereof who has achieved the status of the owner of the freehold or lesser estate therein, receiver, administrator, managing agent, mortgagee in possession, assignee of rents, executor, trustee, or lessee of the subject building who shall demonstrate that such change in ownership was not for the purpose of establishing eligibility for a stay under these regulations, and that:

(1) such status was attained not more than sixty (60) days prior to the making of its application herein; or,

(2) such status was attained not more than six (6) months prior to the effective date of these regulations if the application is made within sixty (60) days of such effective date.

Subject building. "Subject building" shall mean the dwelling in which the violations set forth in the notice of violation are to be found.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-03 Application and Prerequisites.

(a) An application for a stay shall be made during regular business hours to the Department's Agreements and Compliance Unit, 150 William Street, 6th Floor, New York, N.Y. 10038.

(b) A new owner must submit, in support of an application for a stay of legal action, documentary proof that:

(1) the applicant is a new owner as defined in §13-02 "New owner" of this chapter; and

(2) a registration statement has been filed with the Department's Office of Code Enforcement by the new owner, or proof that registration is not required for or allowed to be filed by the applicant.

(c) A new owner seeking a stay or an extension thereof may submit in support of the application any additional statements, information, documents, affidavits, records or reports as he or she may consider desirable to assist the Department in reaching its determination as to whether a stay or an extension thereof should be granted or the length of such stay or extension thereof.

(d) All written materials shall be submitted with a certification by the new owner, or if such an application is submitted by a corporation or partnership, by an office or partner thereof, that all statements contained in all forms and documents submitted in support of the application are true and correct, and an acknowledgement that the applicant is aware that, under §27-2118(a)(3) of the Housing Maintenance Code, any false or misleading statement in an application or an accompanying document, relating to an action to be taken or determination to be made by the Department shall be

guilty of a misdemeanor punishable by fine of not less than ten dollars ($10) nor more than one thousand dollars ($1,000), for each such violation or by imprisonment up to one year, or by both such fine and imprisonment.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-04 Determination of Stay.

Upon application by a new owner, the Department shall make a determination as to whether a stay shall be granted. The Department may take into consideration in determining whether to grant a stay, and the new owner may submit in attempting to establish his or her entitlement to a stay, the following information:

(a) That the new owner has demonstrated, by his or her past and present conduct, that there is a substantial probability that he or she will utilize a postponement to achieve correction of each violation for which a stay is sought. In assessing whether the past conduct of the new owner demonstrates that such a substantial probability exists, the following information may be considered:

(1) whether the new owner has complied with prior orders of the Department;

(2) whether the new owner has complied with prior orders of other City departments concerning building conditions;

(3) whether the new owner has any outstanding debts to the City for emergency repairs or has incurred such debts within five (5) years prior to the date of the applications; and

(4) what the new owner is doing to correct other violations for which he or she is not seeking a stay.

(b) The financial ability of the new owner to achieve correction of each violation for which a stay is sought.

Following a new owner's application for a stay, the Department shall prepare a written statement setting forth the reasons for the granting or the denial of such application. The statement shall be signed and dated by the person making the determination and shall be made part of the records of the Department. A copy of the determination shall be delivered to the new owner or mailed to him or her by regular mail.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-05 Length of Stay.

The length of a stay shall be set by the Department and shall be for a period or periods of time that will provide the new owner with a reasonable time to achieve correction of each violation which is the subject of the application for a stay. In any case, the length of such stay or stays shall be no less than the time allowed by classification pursuant to §27-2115(a) of the Housing Maintenance Code, said time running from the date of the new owner's application for a stay. In determining the appropriate length of time for a stay, the Department may consider:

(a) The time required for correction;

(b) The nature, classification, and estimated cost of repair of outstanding violations, as well as the length of time such violations have remained uncorrected;

(c) The proposed course of action which the new owner will undertake to achieve correction;

(d) Any actions the new owner might have already taken to correct violations prior to the application for a stay; and

(e) The financial ability of the new owner to achieve correction of violations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-06 Written Agreement and Condition of Stay.

(a) In the event the Department determines that a stay could appropriately be granted to the new owner, the Department shall require the new owner to execute an agreement prepared by the Department which shall set forth an exact schedule of removal of all violations for which the new owner is seeking a stay and in which the new owner acknowledges his or her responsibility to correct each violation by those dates. Such agreement may also:

(1) require the new owner to take a particular course of action to correct specified violations;

(2) require a new owner to deposit the rental income of the subject building into an escrow account from which expenditures for scheduled repairs are made; and

(3) may contain other conditions, as the Department finds appropriate, including repayment of Emergency Repair Program expenditures.

(b) In the event the Department determines, after consideration of information described in §13-04 of this chapter, that a stay might be granted but that a further assurance of violation removal is required from the new owner, a stay may be granted on the condition that the new owner accept service of a summons and complaint or a summons with notations and agree to allow the agreement described in §13-06(a) above to be entered in the New York City Civil Court as an order of that court.

(c) If the Department reasonably concludes from the data submitted that the new owner will acquire additional

funds, or may be able to acquire the necessary financing from a particular lending institution or type of lending institution to which the new owner has not applied, the Department may require the new owner to make one or more applications for such financing as a condition precedent to the granting of a stay. The Department shall grant an interim stay sufficient in length for a reply, in the ordinary course of business, to any such application upon the condition that the new owner shall inform the Department of such a reply within five (5) days of its receipt. The Department shall make a final determination as to whether a stay shall be granted upon receiving such information or upon an expiration of the interim stay.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-07 Extension of Stay.

In the event a new owner shall apply for an extension of a stay previously granted, the Department may grant such stay if the new owner:

(a) Makes an application for such extension at least five (5) days prior to the expiration of the correction date set forth in the agreement described in §13-06 of this chapter;

(b) Clearly demonstrates to the Department that:

(1) the inability to correct in a timely manner was caused by circumstances substantially beyond the control of the new owner, or that the impediments were not reasonably foreseeable at the time the new owner applied for and was granted the original stay;

(2) no course of action, other than the one undertaken by the new owner could have achieved correction within the time set forth in the original stay agreement; and,

(3) the new owner has devised a reasonable course of action which he or she intends to pursue if an extension of the stay is granted by the Department, which course of action would remove or circumvent any impediments to correction within the time allowed for an extension of the stay;

(c) Submits any data or information requested by the Department which may include the following:

(1) any information described in §§13-05 or 13-07(b) of this chapter;

(2) documentation of the actions taken to achieve correction, including receipted bills and/or cancelled checks for any work performed or materials supplied;

(3) a statement by the new owner as to the impediments to correction which presently exist; or,

(4) such additional information of any nature as the Department may request to assist it in making a determination as to whether and how long an extension in the stay should be granted; and

(d) Executes an agreement prepared by the Department which sets forth an exact schedule of removal of all violations for which the new owner is seeking an extension of a stay and in which the new owner acknowledges the new dates for correction and his or her responsibility to correct by those dates and, where applicable or required, consents to the extension agreement being entered as an amendment to an order of the New York City Civil Court.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-08 Revocation of Stay and Effect Thereof.

(a) The Department shall have the power to revoke a stay or an extension of a stay by notice to the new owner given by certified mail, return receipt requested, in the event of: (1) discovery of misrepresentation or fraud in an application for a stay or an extension of a stay; or,

(2) failure by a new owner to adhere to the terms of any part or all of either an agreement for a stay described in §13-06 of this chapter or an agreement for an extension of a stay described in §13-07.

(b) In the event that the Department revokes a stay or an extension of a stay:

(1) the new owner shall be liable for full civil penalties as provided by law; and,

(2) such revocation shall not affect a new owner's responsibility to remove violations at the subject building, and, where an agreement executed under §§13-06 or 13-07 of this chapter has been entered as an order of the New York City Civil Court, the schedule of removal of violations contained therein.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 13-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-09 Effect of Compliance.

If the new owner properly and substantially corrects the violations for which a stay is granted, the Department may, in its discretion, recommend to the Office of the Comptroller waiver of any potential causes of action for civil penalties which have accrued pursuant to the Housing Maintenance Code for the violations which have been corrected pursuant to the stay agreement. If the Office of the Comptroller approves such waiver, a written statement of such waiver, signed and dated by the person making such waiver and indicating the Comptroller's approval, shall be made part of the records of the Department. Any such waiver shall be binding and irrevocable.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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28 RCNY 13-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 13 STAYS OF LEGAL ACTION REGARDING VIOLATIONS OF THE MULTIPLE DWELLING LAW AND THE HOUSING MAINTENANCE CODE

§13-10 Severability.

In the event that any section or portion of this chapter shall be held invalid or unenforceable for any reason, it shall not in any way invalidate, affect or impair the remaining sections of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 14-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 14 RENT SETTING AND INCREASES TO TENANTS IN DIVISION OF ALTERNATIVE MANAGEMENT PROGRAM BUILDING*1

§14-01 General Provisions.

(a) All notices required by this chapter shall be in English and Spanish.

(b) For the purposes of this chapter, unless the context indicates otherwise, the following definitions apply:

DAMP. "DAMP" shall mean to the Division of Alternative Management Programs, or any successor division, of the Department of Housing Preservation and Development.

DAMP Lessee. "DAMP Lessee" shall mean a person or entity with whom HPD has entered into a lease for the management of a building under any DAMP Program.

DAMP Programs. "DAMP Programs" shall mean the programs administered by DAMP.

DAMP Program Director. "DAMP Program Director" shall mean the individual at HPD responsible for the operation of an individual DAMP Program or his or her designee.

Room. "Room" shall mean the basic living space of a dwelling unit (i.e. living room, kitchen, dining room, and bedroom). Each bathroom shall be considered as one-half of a room. In studio apartments or apartments in which the kitchen (or kitchenette) and living area occupy the same space, that space shall be considered as two Rooms.

Tenant. "Tenant" shall mean a residential tenant of record occupying a dwelling unit pursuant to a lease with the City or with a net lessee which has entered into a net lease with the City for the building in which such dwelling unit is

located. Other residential occupants, such as squatters and licensees, are not Tenants. Non-residential tenants or occupants, such as those who occupy space for retail, commercial, manufacturing, or community facility purposes, are not Tenants.

(c) Unless otherwise provided in this title, the provisions of this chapter govern the procedures for setting and increasing rents for Tenants of City-owned buildings participating in DAMP Programs.

(d) No Tenant shall receive more than one rent increase within a twelve-month period unless additional increases in the maximum rental charge-per-Room are requested or approved by no fewer than sixty percent (60%) of the Tenants.

(e) DAMP shall assist eligible Tenants in applying for existing rental assistance programs.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. (Note: subds. (c), (d), (e) so designated by Editor to avoid having 2 subds. (b)). [See Chapter 14 footnote]

Section in original publication July 1, 1991.

Subd. (a) amended City Record May 14, 1999 §1, eff. June 13, 1999. (Note: this subd. (a) was bracketed out of the rule in Nov. 7, 2001 amendment)

Subd. (b) DAMP definition amended (as former subd. (f)) City Record May 14, 1999 §2, eff. June 13, 1999. [See T28 §21-22 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended rules reflect current procedures employed by HPD.

28 RCNY 14-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 14 RENT SETTING AND INCREASES TO TENANTS IN DIVISION OF ALTERNATIVE MANAGEMENT PROGRAM BUILDING*1

§14-02 Initial Rent Setting.

(a) To facilitate a particular building's operation and as a condition of admission to a DAMP Program, the appropriate DAMP Program Director may establish a minimum per Room rent level for all dwelling units in such building.

(b) The determination to establish a minimum per Room rent level for all dwelling units in a particular building shall be based on the DAMP Program Director's estimate of the maintenance and operating expenses of the particular building upon admission to a DAMP Program. The DAMP Program Director shall consider the existing rent roll for the particular building or project, the number of vacant dwelling units at the time of admission to a DAMP Program and the maintenance and operating expenses incurred by other buildings presently or previously in that or other DAMP Programs.

(c) The DAMP Program Director shall notify each Tenant that the particular building has been accepted into a DAMP Program, the effective date of entry, to whom rent payments are to be made after that date, and what the initial rent for the dwelling unit will be upon entry and shall provide information on any rental assistance which may be available to the Tenants and the procedures to apply for such assistance. The notice shall be in writing and sent by regular mail to the affected Tenants at least thirty (30) days before the date of entry into a DAMP Program.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 14 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended rules reflect current procedures employed by HPD.

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28 RCNY 14-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 14 RENT SETTING AND INCREASES TO TENANTS IN DIVISION OF ALTERNATIVE MANAGEMENT PROGRAM BUILDING*1

§14-03 Interim Rent Increases.

(a) One or more interim rent increases may be necessary to raise rents to a level sufficient to cover the maintenance and operating expenses of a particular building during the period of City ownership and alternative management.

(b) The DAMP Lessee may prepare a request to the appropriate DAMP Program Director for an interim increase in the rent level per Room for Tenants of a particular building. If the DAMP Lessee fails to submit a request for an interim rent increase, the DAMP Program Director may propose an increase in the rents in accordance with the provisions of these rules.

(c) The DAMP Lessee or DAMP Program Director shall prepare a statement of the maintenance and operating expenses which form the basis for the rent increase, a history not to exceed the prior year of billing and collection of rents in the particular building and a current rent roll. The statement shall contain:

(1) the past actual expenditures for maintenance and operation of a particular building for the period it has participated in a DAMP Program for a period not to exceed the prior year, including, but not limited to: the cost of fuel for heat and hot water, expenditures for common space utilities, repair and maintenance, supplies, insurance, and custodial services; and fees for management and professional services.

(2) a projection of maintenance and operating expenses of the particular building for a period of one (1) year following the effective date of the rent increase, including, but not limited to: the cost of fuel for heat and hot water; expenditures for common space utilities, repair and maintenance, supplies, insurance and custodial services; and fees for

management and professional services to be rendered.

(3) a calculation of the rent required on a per room per month rate and per dwelling unit per month rate.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 14 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended rules reflect current procedures employed by HPD.

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28 RCNY 14-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 14 RENT SETTING AND INCREASES TO TENANTS IN DIVISION OF ALTERNATIVE MANAGEMENT PROGRAM BUILDING*1

§14-04 Disposition Rent Increases.

(a) Disposition rent increases are necessary to raise rents to a level sufficient to cover the maintenance and operating expenses in a particular building during the first year of private ownership.

(b) The DAMP Lessee may prepare a request to the appropriate DAMP Program Director for a disposition rent increase for Tenants to take effect prior to the sale of the particular building.

(c) If a request for a disposition rent increase is not submitted, the DAMP Program Director may propose a disposition rent increase in accordance with the provisions of this chapter.

(d) The DAMP Lessee or DAMP Program Director shall prepare a statement of estimated maintenance and operating expenses which form the basis for the disposition rent increase, a history not to exceed the prior year of billing and collection of rents in the particular building and a current rent roll. The statement of estimated maintenance and operating expenses shall contain:

(1) the past actual expenditures for maintenance and operation of a particular building, including, but not limited to: the cost of fuel for heat and hot water, payments for common space utilities, repair and maintenance, supplies, insurance and custodial services; fees for management and professional services; and a capital and/or operating reserve, if any.

(2) a proposed budget for the maintenance and operation of the particular building setting forth the projected

operating expenses during the first year of private ownership, including, but not limited to: the cost of fuel for heat and hot water, expenditures for common space utilities, repair and maintenance, cleaning supplies, insurance, custodial services, fees for management and professional services, a reserve for vacancies and uncollectible debts, a capital and/or operating reserve, if any, real estate taxes, water and sewer charges and debt service.

(3) a calculation of the rent required on a per Room per month and per dwelling unit per month rate.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 14 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended rules reflect current procedures employed by HPD.

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28 RCNY 14-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 14 RENT SETTING AND INCREASES TO TENANTS IN DIVISION OF ALTERNATIVE MANAGEMENT PROGRAM BUILDING*1

§14-05 Notice of Interim and Disposition Rent Increases.

(a) All Tenants who are subject to the proposed increase will be sent a notice in writing of the proposed rent increase by regular mail, with a duplicate copy delivered to the Tenant's apartment not less than sixty (60) days before the anticipated effective date of the rent increase. The date of notice shall be deemed to be either five (5) days from the date of postmark, or the actual date of delivery to the Tenant's apartment, whichever is earlier. Each affected Tenant will have thirty (30) days from the date of the notice to submit by mail to DAMP or by hand-delivery to the place designated by DAMP in the notice written comments on the proposed rent increase. The date of submission shall be deemed to be five (5) days after the date of postmark or the actual date of the hand-delivery receipt, whichever is earlier. During the comment period, the financial data pertinent to the proposed rent increase shall be available for inspection upon request.

(b) The notice of proposed rent increase in DAMP Programs shall be addressed to each affected Tenant and shall include the proposed new rent level, the statement of estimated maintenance and operating expenses upon which the rent increase was calculated, the anticipated effective date of the rent increase, and shall provide information on any rental assistance which may be available to the Tenant and the procedures to apply for such assistance. The notice of proposed rent increase in DAMP Programs shall also inform each affected Tenant of the opportunity and procedure for commenting on the proposed rent increase by submitting written comments.

(c) A final notice of rent increase shall be addressed to each affected Tenant and sent by regular mail with a duplicate copy delivered to the Tenant's apartment, at least thirty (30) days before the effective date of the rent increase, after consideration by the DAMP Program Director of any written comments submitted by the Tenants of a particular building participating in a DAMP Program. The final notice of rent increase shall include the specific amount of the rent

increase and its effective date, and shall provide information on any rental assistance which may be available to the Tenant and the procedures to apply for such assistance.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 14 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended rules reflect current procedures employed by HPD.

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28 RCNY 14-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 14 RENT SETTING AND INCREASES TO TENANTS IN DIVISION OF ALTERNATIVE MANAGEMENT PROGRAM BUILDING*1

§14-06 Alternative Rent Setting.

Notwithstanding anything to the contrary contained in this chapter, and subject to the notice and other procedural requirements of this chapter, DAMP may set rents for a particular building based on a per square foot per apartment standard instead of a per Room per apartment standard. In addition, if a project consists of more than one building in a common ownership entity, rents may be set based on economic estimates of the maintenance and operating expenses of the multi-building project instead of on economic estimates relating to the maintenance and operating expenses of an individual building.

HISTORICAL NOTE

Section renumbered and amended (formerly §14-07) City Record Nov. 7, 2001 eff. Dec. 7, 2001.

(Former §14-06 Rental Assistance was repealed). [See Chapter 14 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended rules reflect current procedures employed by HPD.

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***** Current through December 2009 ****

28 RCNY 15-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 15 SELF-INSPECTION OF CENTRAL HEATING PLANTS

§15-01 Definitions.

Central heating plant. The term "central heating plant" as used in this chapter shall include all portions of a central heating or hot water system that are located within the public parts of a building.

Qualified persons.

(1) Plumber licensed by the City of New York.

(2) Oil burner installer licensed by the City of New York.

(3) High pressure boiler operating engineer licensed by the City of New York.

(4) Portable high pressure boiler operating engineer licensed by the City of New York.

(5) Boiler inspector holding a certificate of competence from the New York State Department of Labor.

(6) Certified employee of a public utility.

(7) Energy auditor certified as oil burner or system replacement auditor qualified by the oil heating institutes of New York in accordance with training qualifications set by the Public Service Commission for purposes of the Home Insulation and Energy Act.

(8) Employee of the owner holding a certificate of fitness for pre-heated oil burners issued by the Fire Department

of the City of New York.

(9) Employee of Department of Housing Preservation and Development's Office of Energy Conservation holding a certificate of competence issued by the Assistant Commissioner of that office and engaged by the owner of the premises to conduct self-inspection.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

28 RCNY 15-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 15 SELF-INSPECTION OF CENTRAL HEATING PLANTS

§15-02 Form of Report.

The report shall be filed on forms to be prescribed by the department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 15-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 15 SELF-INSPECTION OF CENTRAL HEATING PLANTS

§15-03 Preliminary Certifications.

(a) The report shall be submitted with a certification by the person preparing the report that such person is qualified pursuant to this chapter.

(b) If the person preparing the report is an employee of a public utility, the report shall contain a certification by a supervisor of the employee that the utility has determined the employee is competent to perform the required tests and inspections.

(c) If a license or certificate holder is assisted in preparing the report by an employee, the license or certificate holder shall certify that such employee, is competent to perform the assigned tasks and indicate which tasks were performed by such employees.

(d) Notwithstanding the foregoing, inspections by Building Department personnel or by a duly authorized insurance company in conformance with §27-793 of the Administrative Code shall be acceptable in lieu of the self-inspection by a qualified person as defined in §15-01 "qualified persons" of this chapter provided the owner certifies as to the existence of such an inspection.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 15-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 15 SELF-INSPECTION OF CENTRAL HEATING PLANTS

§15-04 Certification by the Owner.

Such report shall be submitted with a certification by the owner that the person preparing the report is qualified under the terms of this chapter.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 15-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 15 SELF-INSPECTION OF CENTRAL HEATING PLANTS

§15-05 Certification by the Department.

Upon the filing of a certified report of an inspection of a central heating plant, an employee of the department shall inspect such report and, if the report has been prepared by a qualified person under the terms of this chapter and the required certifications have been submitted, he or she shall prepare and file among the department's records a certificate stating that the report was prepared by a qualified person, unless the department determines that the person preparing the report is not in fact a qualified person under the terms of these regulations.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 15-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 15 SELF-INSPECTION OF CENTRAL HEATING PLANTS

§15-06 Administrative Procedures.

(a) Unless a postponement is granted in the manner provided below such certified report is required to be filed on or before October 15th of each year.

(b) On or before October 15th an owner may request an extension of the time to file a report and to correct any defects disclosed in the report. Such application must be verified and must set forth an acceptable explanation for the applicant's inability to file or correct by October 15th. The department shall treat such application in the same manner as an application for a postponement made pursuant to §27-2117(a) of the Housing Maintenance Code. The department shall not grant a postponement requested after October 15th.

(c) After the date on which the report is required to be fried and until the date set forth on the notice of violation as the date by which the violation must be corrected, the owner may file the report and the department shall deem the violation corrected on the date that an employee of the department certified the report in the manner provided in §15-05 of this chapter. Notwithstanding the foregoing, the department shall maintain the violation of its records with a notation of the date of the report's certification by the department, until the May 31st following the year in which the report was to be filed.

(d) After the date set forth on the notice of violation as the date by which the violation must be corrected, the owner may file such report and the department shall enter a notation in its records of the date on which such report was certified by the department. After the date of certification by the department, the per diem penalty shall be stayed. The department shall maintain the violation on its records, with a notation of the date of the report's certification by the department, until May 31st following the year in which the report was to be filed.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 16-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 16 ACCESS TO BOILER ROOMS IN MULTIPLE DWELLINGS

§16-01 Inspection Access.

The owner of every multiple dwelling shall have the area, where the building's heating system is located, readily accessible to members of the department to make inspections pursuant to the Housing Maintenance Code. In the event such area is kept under lock, a key shall be kept on the premises at all times with such person as the owner shall designate; however, if there is a person residing on the premises who performs janitorial services, such person shall hold the key. The owner shall post two notices naming such designated person and his location.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 16-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 16 ACCESS TO BOILER ROOMS IN MULTIPLE DWELLINGS

§16-02 Notices.

The notices in §16-01 above:

(a) shall read: Key to heating system area lock is located at _____;

(b) shall designate the apartment and person in possession of the key;

(c) shall have letters not less than three-sixteenths of an inch in height;

(d) shall be of sufficient size to accommodate the required lettering and to provide a margin of not less than one-fourth inch about the lettering on all sides;

(e) the letters and the background of the notice shall be of contrasting colors;

(f) shall be of metal, plastic or decal;

(g) shall be placed preferably over the mailboxes but, in any case, shall be conspicuously displayed in a prominent location in the entrance hall; a second notice shall be placed on the entrance door of the locked area where the building's heating system is located;

(h) shall be between 6 feet and 8 feet above the floor;

(i) shall be maintained free of damage or defacement.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 17-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 17 AMOUNTS TO BE FILED AS TAX LIENS PURSUANT TO THE HOUSING MAINTENANCE CODE

§17-01 Scope.

This chapter governs administrative determinations and hearings pursuant to Article 8 of Subchapter 5 of Chapter 2 of Title 27 of the Administrative Code (Housing Maintenance Code). It is the purpose of this chapter created herein to effect uniform procedures for the: (a) notification of owners and other persons of emergency conditions and the Department's intent to make repairs; (b) maintenance of records required by Article 8 of Subchapter 5 of Chapter 2 of Title 27 of the Administrative Code; and (c) implementation of recoupment procedures required by Article 8 of Subchapter 5 of Chapter 2 of Title 27 of the Administrative Code. This chapter is issued pursuant to §27-2092 of the Administrative Code to insure that such procedures are conducted in a lawful, orderly and fair manner, and are designed to provide all interested persons with the maximum feasible notification, opportunity to act and opportunity to be heard.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 17-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 17 AMOUNTS TO BE FILED AS TAX LIENS PURSUANT TO THE HOUSING MAINTENANCE CODE

§17-02 Definitions.

In this chapter, the following terms shall have the meanings specified:

Commissioner. "Commissioner" shall mean the Commissioner of Housing Preservation and Development or a person designated by him to exercise the powers conferred herein.

Department. "Department" shall mean the Department of Housing Preservation and Development.

Departmental representative. "Departmental representative" shall mean a person designated by the Commissioner to present before a Hearing Officer the evidence as to repairs performed at the subject premises and the lawfulness and propriety of those repairs.

Emergency condition. "Emergency condition" shall mean a condition dangerous to human life and safety or detrimental to health.

Hearing. "Hearing" shall mean a hearing conducted pursuant to §17-05 of this chapter.

Hearing officer. "Hearing officer" shall mean an individual appointed pursuant to §27-2092 of the Administrative Code to hear and recommend to the Commissioner determinations required by this chapter and by Article 8 of Subchapter 5 of Chapter 2 of Title 27 of the Administrative Code of the Housing Maintenance Code.

Objecting party. "Objecting party" shall mean any person having a substantial interest in the subject premises who

has made a proper objection to a Statement of Account.

Owner. "Owner" shall be as defined by §4(44) of the Multiple Dwelling Law and §27-2004(a)(45) of the Administrative Code.

A substantial issue of fact. "A substantial issue of fact" shall arise when the documentary evidence produced by an objecting party is sufficient to rebut the presumption of validity of the Department's records or the lawfulness of the repairs made.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 17-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 17 AMOUNTS TO BE FILED AS TAX LIENS PURSUANT TO THE HOUSING MAINTENANCE CODE

§17-03 Notice to Owner or Other Persons of Intent to Do Emergency Repair.

(a) **Notice to owner.** Upon certification of an emergency condition at any dwelling, the Department shall give notice to the owner, in the manner prescribed in §17-03(b) of said emergency condition and its intention to repair the same unless the owner immediately remedies said condition. However, nothing contained in this subdivision (a) shall be construed to create a higher duty to notify owners than is otherwise required by statute or case law.*1

(b) **Method of notice.** Notice may be by any method reasonably calculated to apprise the owner of the emergency condition prior to the time the Department actually repairs it. Such methods include, but are not limited to, telephone, regular mail, special delivery, or certified mail.

(c) **Notice to owner of multiple dwelling.** In any multiple dwelling where the owner has registered a managing agent, notification of emergency conditions pursuant to §17-03(a) above may be made upon said registered managing agent.

(d) **Notice to mortgagee or lienor.** Any mortgagee or lienor who wishes notification of emergency conditions existing at a particular dwelling and of the Department's intention to repair said condition may file with the Emergency Services Division of the Department a statement on forms supplied by the Department. Such mortgagee or lienor who shall so register shall receive the same notice afforded to the owner pursuant to §17-03(b) herein.

HISTORICAL NOTE

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FOOTNOTES

1

[Footnote 1]: * As in the case of 300 West 154th Street Realty Co. v. Department of Buildings of the City of New York 26 N.Y. 2d 538, 311 NYS 2d 899 (1970) the Commissioner will not feel obligated to notify owners where there is an extreme emergency or where the emergency condition is in the actual control or operation of the owner; it is the purpose of the Commissioner to notify owners in all cases.

28 RCNY 17-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 17 AMOUNTS TO BE FILED AS TAX LIENS PURSUANT TO THE HOUSING MAINTENANCE CODE

§17-04 Maintenance of Records.

(a) **Maintenance of building records.** There shall be filed in the office of the Department a record of all work caused to be performed by or on behalf of the Department which would give rise to a lien under §27-2144 of the Administrative Code. Such records shall be kept on a building by building basis. Such records will be accessible during business hours at the office of the Emergency Services Division of the Department upon proper application.

(b) **Maintenance of record of work order.** Within thirty (30) days after the issuance of a purchase or work order to cause a repair to be made by or on behalf of the Department, which would give rise to a lien under §27-2144 of the Administrative Code, such order shall be entered on the records of the Department. Such records shall be accessible during business hours at the office of the Emergency Services Division of the Department upon proper application.

(c) **Filing of certificate.** Upon the completion of a repair the Department shall cause a certificate pursuant to Article 8 of Subchapter 5 of Chapter 2 of Title 27 of the Administrative Code to be filed, setting forth the work done and the expenses incurred and certifying that such expenses were necessary and proper in the exercise of its lawful powers.

HISTORICAL NOTE

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28 RCNY 17-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 17 AMOUNTS TO BE FILED AS TAX LIENS PURSUANT TO THE HOUSING MAINTENANCE CODE

§17-05 Determination of Definitely Computed Amount.

(a) **Statement of account.** Whenever the Department has incurred expenses for the repair of a dwelling or for the elimination of any dangerous or unlawful conditions therein, pursuant to this article or any other provision of the Administrative Code, it may serve upon the owner or the registered managing agent at his address registered with the Department in the manner provided in §27-2095 of the Housing Maintenance Code a statement of the expense incurred including administrative fees and sales tax and a demand for payment thereof. If the owner does not within thirty (30) days of service of such statement, notify the Department in writing of his objection to the statement of expenses or any individual item therein, such owner or his successor in interest may not in any subsequent judicial or administrative proceeding contest any item contained in such statement. Such objection shall specify the items objected to and the nature of such objections and shall include any documentary evidence supporting such claim. Those items not specifically objected to shall be deemed admitted.

(b) **Failure to object.** Upon the failure to object in writing within thirty (30) days to the Statement of Account, such sum shall be considered definitely computed.

(c) **Determination to be made upon receipt of objection.** Within a reasonable time after receipt of a written objection to the Statement of Account, the Commissioner shall make a determination of the sums lawfully expended:

(1) Upon receipt of an objection to the Statement of Account, the Department shall issue to the objecting party a notice stating that a determination is to be made and specifying a date by which additional evidence supporting the objection may be submitted.

(2) The Commissioner shall make a determination based on all the evidence received from the objecting party as well as the records of the Department.

(3) After the Commissioner has made a determination he shall inform the objecting party of such determination in writing and state the reasons therefor. Such determination shall become final and the amount definitely computed when no application for judicial review has been made in the time and manner provided by law.

(d) **Determination to be made on hearing.** (1) Where the Commissioner determines that substantial issues of fact are raised which cannot be determined by documentary evidence, a Hearing Officer shall hold a hearing pursuant to §17-05(d) of these regulations as regards such question of fact.

(2) Persons appointed by the Commissioner pursuant to this chapter shall have the duty to conduct fair, impartial, and informed hearings, to maintain order and avoid unnecessary delay. They shall have all powers necessary to achieve these ends, and all powers granted to the Department by §§27-2091 and 27-2092 and Article 8 of Subchapter 5 of Chapter 2 of Title 27 of the Housing Maintenance Code, including the following powers:

(i) To hold hearings and make recommendations, specify and modify the course, time, and place of the hearing and regulate the conduct of parties or counsel;

(ii) To call or hold conferences before, during, or after the hearing, on or off the record, for simplification of issues or any other purpose;

(iii) To sign and issue any orders relating to the proceeding on its own motion or on motion of any party, including but not limited to orders of consolidation, severance, inspection, subpoena, and adjournment, and to rule upon the objections to motions for such orders or objections to the orders themselves;

(iv) To administer oaths and to take testimony;

(v) To rule upon offers of proof, motions, and objections, to receive evidence, to determine the order of proof, and to take any actions or issue any order which will prevent surprise at the hearing;

(vi) To question witnesses; and

(vii) To present a written recommendation to the Commissioner as to the definitely computed amount of monies expended at the premises by the Department.

(3) The Commissioner may appoint himself, or any other person, to serve as a Hearing Officer.

(4) (i) The Department shall issue a notice of hearing which shall include:

(A) a date, time and place scheduled for the hearing;

(B) the appointment of a Hearing Officer;

(C) a place and method for service of applications for orders and subpoenas on the Hearing Officer;

(D) the name, business address and telephone number of the Department's representative;

(E) a statement informing the party of the consequences of default pursuant to subparagraph (4)(ii) of this section and

(F) his right to be represented by counsel. The notice of hearing shall be served on the objecting party as provided by §27-2095 of the Administrative Code.

(ii) Should the objecting party fail to appear at the hearing after being properly notified pursuant to §17-05(d)(4)(i) the Hearing Officer shall recommend a determination to the Commissioner based upon the objection and other evidence submitted by the objective party as well as the records of the Department.

(5) (i) All motions made prior to a hearing shall be

(A) made in writing;

(B) supported by affidavits or other documentary evidence;

(C) served upon all parties; and

(D) filed with the Hearing Officer, with copies of affidavits of service upon the other parties at least ten days before the hearing unless the Hearing Officer permits a motion to be made at a later time in the proceedings. Responses to written motions shall be made within five (5) days after service of the motion, unless the Hearing Officer prescribes another period in an order served with the motion.

(ii) The Hearing Officer may at any time call a conference to consider any motion and dispose of the motion after the conference. The Hearing Officer may reserve decision on any motion made under this subdivision (d) until, during, or after the hearing in which case objection shall be allowed at the hearing. The Hearing Officer may dispose of such motion in the recommendation or order following the hearing, provided, however, that a motion for an adjournment, for a change of parties or for a subpoena shall be ruled upon prior to the submission of evidence at the hearing.

(6) (i) Subpoenas, including subpoenas duces tecum as they are defined in the Civil Practice Law and Rules shall be issued only by the Hearing Officer, in the name of the Commissioner.

(ii) Subpoenas, shall be served as specified in the Civil Practice Law and Rules and shall be accompanied by such fees as may be required by law. When the Hearing Officer issues a subpoena the Hearing Officer may direct the party seeking the issuance of the subpoena to serve such subpoenas and pay such fees.

(iii) Any party or person objecting to or seeking recision or modification of a subpoena or a subpoena duces tecum must serve written objection on the Hearing Officer within five (5) days from the date of service, or at the hearing, whichever is sooner.

(7) All relevant material and reliable evidence shall be admitted which bears upon the propriety and lawfulness of the sums expended including but not limited to the existence of dangerous or emergency conditions, notification of owner, where necessary, performance of the repair by the Department's contractor and propriety and amount of the expenses.

(8) (i) After due consideration of the evidence and arguments the Hearing Officer shall make a written recommendation to the Commissioner in which he shall detail his recommendations and the reasons therefor.

(ii) The Commissioner shall determine the sums lawfully expended based on the recommendations of the Hearing Officer. He shall inform the objecting party of such determination in writing and the reasons therefor. Such determination shall become final when no application for judicial review has been made in the time and the manner provided by law.

(iii) Such determination shall be part of the official record of the Department and shall be available for public inspection.

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28 RCNY 18-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 18 RELOCATION PAYMENTS AND SERVICES

§18-01 Services to Persons Temporarily Displaced by Vacate Orders and Payment of Fees to Persons Providing Substitute Permanent Residences to Persons thus Displaced.

(a) **Definitions.** The following capitalized terms used in this section shall have the meanings stated below.

Administrative Code. "Administrative Code" refers to the New York City Charter and Administrative Code.

Agency or Department. "Agency or Department" refers to the Division of Relocation Operations, Department of Housing Preservation and Development (HPD), 75 Maiden Lane, New York, NY 10038.

Prepared for Occupancy. "Prepared for occupancy" refers to premises are prepared for occupancy when freed of all hazardous violations classified as hazardous by the Office of Rent and Housing Maintenance pursuant to Article 2 of Subchapter 5 of Chapter 2 of Title 27 of the Housing Maintenance Code, supplied with all appropriate fixtures and appliances, painted, and reasonably cleansed and available for occupancy.

Relocatee. "Relocatee" refers to an individual or a head of household and his/her family, deprived of a permanent residence rented by him/her or them in the City of New York as a direct result of the enforcement of a Vacate Order (as defined in these regulations) and not ineligible for relocation services or benefits under any provision of these regulations or of law. "Family" shall include those persons who permanently resided with a head of household at the time the Vacate Order was issued.

Relocation Manager. "Relocation Manager" refers to an employee of the Department assigned to coordinate and direct the furnishing of relocation services to a particular relocatee.

Site Occupancy Record. "Site Occupancy Record" refers to a written file concerning each relocatee, maintained by the Relocation Manager, recording all pertinent agency actions concerning the relocatee.

Standard Apartment. "Standard Apartment" refers to an apartment satisfying the following criteria:

(i) There may not be more than three (3) hazardous violations as classified by the Office of Rent and Housing Maintenance pursuant to Article 2 of Subchapter 5 of Chapter 2 of Title 27 of the Housing Maintenance Code in the building.

(ii) Floor area of rooms must be adequate for all resident family members as defined in the Administrative Code.

(iii) Absence of vermin infestation, mice, or other pests or a letter from a licensed exterminator certifying that the building is under contract to be serviced monthly.

(iv) Apartment must be self-contained; it may not have any rooms or facilities which can be reached only by going through a public area.

(v) The building must have central heat and hot water.

(vi) There must be a private kitchen or kitchenette within the apartment for the exclusive use of the tenant.

(vii) There must be private and fully enclosed toilet and bathing facilities within the apartment for the exclusive use of the tenant.

(viii) Each room must have a window or adequate light and ventilation.

Suitable Accommodation. "Suitable accommodation" refers to accommodations adequate in size to meet the needs of relocatee and his/her family as defined by §27-2075 of the Administrative Code.

Uninhabitable. "Uninhabitable" refers to substantial structural or other damage due to fire, smoke or water that cannot be or is not remedied within a reasonable time.

Vacate Order. "Vacate Order" refers to any order of a governmental agency requiring occupants of a structure to depart therefrom pursuant to the following:

(i) Health Department vacate orders issued pursuant to §17-159 Administrative Code (relating to orders for housing defects likely to cause disease) or other provision of law;

(ii) Buildings Department vacate orders issued pursuant to §26-101 et seq. of the Administrative Code or other provision of law.

(iii) Fire Department vacate orders issued pursuant to §15-227 of the Administrative Code or other provision of law.

(iv) Code enforcement vacate order issued by the Division of Code Enforcement of HPD.

(b) **Department duties upon issuance of Vacate Order.** Upon receiving notice of a Vacate Order, the Department shall offer temporary shelter to relocatee. The Department may order a relocatee to move from one temporary shelter to another if, in the judgment of the Department this shall facilitate the work of the Department or reduce the costs of temporary shelter payable by the Department. After offering such temporary shelter to relocatee, the Department shall offer temporary shelter to relocatee. The Department may order a relocatee to move from one temporary shelter to another if, in the judgment of the Department this shall facilitate the work of the Department or reduce the costs of temporary shelter payable by the Department. After offering such temporary shelter to relocatee, the

Department shall:

(1) furnish relocatee with a copy of this section in English and Spanish and shall notify him/her of the name, office address and telephone number of the Relocation Manager assigned to the relocatee;

(2) submit an application to the New York City Housing Authority on behalf of the relocatee within seven (7) days after relocatee's entry into temporary shelter;

(3) pay temporary shelter benefits in the amounts provided in subdivision (c) of this section and subject to the other conditions stated in these regulation; and

(4) refer relocatee to at least three Standard Apartments in the borough of relocatee's choice, if available. Copies of this section in English and Spanish shall be posted in the offices of Relocation Managers.

(c) **Temporary shelter benefits.** The Department shall pay the actual cost of temporary shelter up to $12 per day for one adult and $7 per day for each additional person residing with the relocatee in the room or, if suitable substitute shelter is unavailable for these amounts, the Department may pay such additional sums as are necessary to obtain suitable shelter for the relocatee.

(d) **Moving expenses.** Upon moving to suitable permanent accommodations, a relocatee not entitled to payment of moving expenses from another City Agency shall be entitled to reimbursement from the Department of his/her moving expenses to the extent of either of the following:

(1) actual expenses up to $300.00, upon relocatee's submission of a paid bill immediately following the move or;

(2) a scheduled amount based on the number of rooms vacated, as follows:

[See tabular material in printed version]

(e) **Obligations of relocatee.** (1) Unless this section specifically requires otherwise, any notice required to be given by a relocatee must be given in writing to the Relocation Manager.

(2) Relocatee must actively seek out suitable permanent accommodations and report his/her progress to the Relocation Manager weekly or at such longer intervals as the Department shall require.

(3) Prior to moving from temporary shelter to permanent accommodations found by his/her own efforts or to signing a lease for such accommodations, relocatee must notify the Relocation Manager. This notice shall include the address from which relocatee was vacated, the new permanent address and the name of relocatee.

(4) The relocatee has the duty to submit a copy of the Tenant Introduction Letter signed by a landlord, agent or superintendent, to the Department, within three working days of any apartment referral made by the Department and, in the event the relocatee is of the opinion that the accommodations are unavailable, unsuitable or otherwise unacceptable, (s)he shall, at the time of submitting the Letter, specifically state in writing the facts upon which his/her conclusions are based.

In the event the relocatee is of the opinion that the accommodations are unavailable, unsuitable or otherwise unacceptable, (s)he shall specifically state in writing the fact upon which his/her conclusions are based.

(5) The relocatee has a duty to advise the Department whenever (s)he finds permanent accommodations and to keep the Department advised regarding the date of expected occupancy.

(6) The Department is entitled to withdraw its offer and the relocatee is entitled to withdraw his/her acceptance of an apartment if the apartment is not prepared for occupancy within 21 days after the initial acceptance.

(7) After having accepted a unit offered through the efforts of the Department and having been notified that it is prepared for occupancy, the relocatee has a duty to report to the Department in writing, if possible, or orally, within three working days of such notification any facts which in his/her opinion would constitute grounds for a determination that the accommodations have not been prepared for occupancy.

(8) The relocatee has a duty to respond to all reasonable notices for appointments with the Department.

(f) **Non-occupancy in temporary shelter; termination of benefits.** (1) Before an emergency relocatee ceases to reside at his/her assigned temporary shelter accommodations, it shall be his/her duty to notify the Department immediately in writing. The Department shall forthwith terminate temporary shelter benefits.

(2) Whenever an emergency relocatee is absent from his/her temporary accommodations for a period of four consecutive days or more, it shall be his/her duty to inform the Department of the date upon which (s)he will return. The Department shall, during the period of absence, suspend temporary shelter benefits.

(3) Except where an emergency relocatee has notified the Department in compliance with paragraph (1) or (2) above, the Department, whenever it is of the opinion that the emergency relocatee is not residing at his/her temporary shelter accommodations, may suspend temporary shelter benefits upon four days notice. This notice shall advise that the relocatee's temporary shelter benefits, shall be suspended unless (s)he notifies the Relocation Manager during business hours, or the hotel management at other times, of his/her continuing occupancy within four calendar days of the delivery of the notice.

(4) Temporary shelter benefits suspended under the provisions of paragraph (3) above shall be suspended for a period of seven days, at which time such benefits will be terminated unless the relocatee, within that seven day period, has advised the Department during business hours, or the hotel management at other times, of his/her intention to continue in occupancy, in which case the relocatee shall be reinstated.

(5) The provisions of paragraphs (3) and (4) above shall be applied to a relocatee and his/her household only once. Thereafter, the Department may terminate a relocatee's temporary shelter benefits upon four days' notice except where the relocatee has notified the Department of his/her intended absence, as required in paragraph (2) above. Such notice of termination shall advise that the relocatee's temporary shelter benefits shall be terminated unless (s)he notifies the Department during business hours or the hotel management at other times, of his/her continuing occupancy within four calendar days of the delivery of the notice.

(g) **Refusal to relocate; termination of benefits.** (1) Relocatee's temporary shelter benefits shall be terminated after notice and hearing (as provided in subdivisions (i)-(m) of this section upon his/her unjustified refusal of three Standard Apartments or, if the relocatee is to be relocated to a rooming unit, three rooming units which are suitable accommodations, to which (s)he has been referred by the Department unless any of the following is true:

(i) The relocatee has been offered and has agreed to rent an accommodation from New York City Housing Authority, which accommodation is not yet prepared for occupancy.

(ii) An accommodation previously accepted by the Relocatee and not withdrawn by the Department is not prepared for occupancy;

(iii) The Department has failed to process a public housing application expeditiously; or

(iv) Physical incapacity or illness of the relocatee or member of his/her household prevents the relocatee from complying with his/her obligations under subdivision (e) hereof.

(2) A termination hearing (pursuant to subdivisions (i)-(m)) of this section) based on relocatee's unjustified refusal as provided in subdivision (g)(1) above, shall be adjourned for seven days if:

(i) The relocatee has an application for public housing pending with the New York City Housing Authority; and the Authority, through no fault or delay of the relocatee, has not certified, rejected, or given notice of deferral of certification regarding such application; or;

(ii) Other good cause is shown.

(h) **Other grounds of termination.** Relocatee's temporary shelter benefits may be terminated immediately, after notice and hearing (pursuant to subdivisions (i)-(m) of this section) upon occurrence of any of the following:

(1) The relocatee refuses, without good cause, to accept an offer to rent suitable accommodations made by the New York City Housing Authority.

(2) The relocatee refuses, without good cause, to move into accommodations which the relocatee has agreed to rent from the New York City Housing Authority and which are prepared for occupancy;

(3) The relocatee refuses, without good cause, to move into accommodations which were offered through the efforts of the Department which the relocatee has agreed to accept, and which have been prepared for occupancy;

(4) The relocatee has refused without good cause, a request by the Department or by the New York City Housing Authority to provide pertinent information relevant to the agency's relocation efforts or the relocatee's eligibility for benefits and services;

(5) The relocatee has failed without good cause, to comply with the obligation to actively seek out suitable accommodations and to report his/her progress on a weekly basis, as required under subdivisions (i)-(m) of this section above.

(6) The relocatee or any member of his/her household dwelling in temporary shelter has engaged in conduct which threatens the health, safety or property of: other residents, guests or visitors in the facility; city personnel, agents or employees; or of the proprietor of the facility, his/her agents or employees.

(7) The relocatee has made material misstatements or concealed material facts from the Department concerning his/her initial or continued eligibility for relocation services.

(8) The relocatee has available to him/her suitable and habitable permanent accommodations at the time of notice of the intention to terminate.

(9) The relocatee has failed to respond to a notice for appointment with employees of the Department, as required under subdivisions (i)-(m) of this section above.

(10) The relocatee is ineligible for relocation benefits or services:

(i) because (s)he did not in fact dwell in the vacated premises;

(ii) because the vacated premises were not uninhabitable, unless the prior accommodations are no longer available to the relocatee through no fault of his/her own; or

(iii) because (s)he is otherwise ineligible.

(i) **Hearing procedures; notice of hearing and other matters.** Prior to the termination of temporary shelter benefits paid on behalf of any relocatee, the Department shall give relocatee notice of the intended termination and an opportunity to be heard, according to the procedures stated in subdivision (i) and the following subdivisions.

(1) Notice of intention to terminate benefits shall be delivered to relocatee in the manner provided in

subdivision(p) of this section for the giving of notice and within the time stated in subdivision (i)(2) below. This notice shall be given in Spanish and English and shall advise relocatee:

(i) of the date upon which the Department intends to terminate temporary shelter benefits and of the factual and legal basis upon which the Department intends to terminate temporary shelter benefits;

(ii) the time, date and place which the Department will make available for a hearing if requested.

(iii) that if the relocatee desires a hearing, (s)he must make a written request therefor which must be received by the Department at least three days before the date which the Department has indicated it will make available for a hearing; except, in the case of a termination under subdivision (i)(2) below, relocatee's request for a hearing must be received by the Department at least one day before the date which the Department has indicated it will make available for a hearing.

(iv) that for good cause the relocatee may request a change in the time, date and/or place which the department has indicated it will make available for a hearing;

(v) that a timely request for a hearing and appearance at the hearing will stay any intended termination until at least seven days after a hearing officer's decision;

(vi) that, if the relocatee requests a hearing, (s)he has the right to be represented by an attorney or other representative, to provide a translator, to testify, to produce witnesses to testify, to offer documentary evidence, to cross-examine opposing witnesses, and to examine the site occupancy record prior to or at the hearing.

(2) Notice of the hearing shall be served no fewer than seven days prior to the scheduled date of the hearing except that notice of the hearing shall be served no fewer than three days prior to the scheduled date of the hearing when termination is intended by reason of:

(i) threatening conduct of the relocatee or member his/her family as described in subdivision (h)(6) above;

(ii) the fact that relocatee did not dwell in the vacated premises, as provided in subdivision (h)(10) above; or

(iii) the fact that the vacate premises were not uninhabitable, as provided in subdivision (h)(10) above.

(3) Relocatee or his/her attorney or representative shall be entitled upon request to examine his/her site occupancy records at a reasonable time before the hearing.

(j) **Hearing procedures; conduct of hearing.** (1) The hearing shall be conducted by an impartial hearing officer appointed by the Department in accordance with the Manual for Hearing Officers in Administrative Adjudication. The hearing officer shall have the power to administer oaths and shall have no prior personal knowledge of the facts concerning the proposed termination of relocatee.

(2) The hearing shall be informal, all relevant and material evidence shall be admissible and the legal rules of evidence shall not apply. The site occupancy record shall be part of the evidence at any hearing whether or not the Relocation Manager is or can be present. The hearing shall be confined to the factual and legal issues raised in the notice of intention to terminate benefits.

(3) Relocatee shall have a right to be represented by counsel or other representative, to testify, to produce witnesses to testify, to offer documentary evidence, to cross-examine opposing witnesses and to examine the site occupancy record.

(4) For good cause, the hearing may be adjourned by the hearing officer on his/her own motion or at the request of an emergency relocatee or the Department.

(5) The hearing officer shall make a written summary of the proceedings including a statement of the relocatee's oral and written position and shall annex any documentary evidence offered at the hearing in support thereof. The relocatee shall be shown this summary and given the opportunity to object. In the case of a Spanish-speaking relocatee the summary shall be read to the relocatee in Spanish. In the event the objection is not resolved at the hearing, that objection shall be made part of the summary. The relocatee shall promptly be provided with a copy of the completed summary. The hearing officer may, in his discretion, combine this summary with his findings of fact.

(6) The Department will provide adequate translation services for Spanish-speaking relocatees.

(k) **Hearing procedures: decision.** (1) The hearing officer shall render a decision which shall include written findings of fact and shall state the legal basis for any decision to terminate and shall set the termination date in the event that termination is ordered. The decision shall be final absent a timely appeal as described in subdivision (m) below.

(2) A copy of the decision shall be delivered to the relocatee no fewer than seven days prior to the termination date set by the hearing officer, except in the case of termination under subdivision (i)(2) of this section delivery shall be at least 24 hours before termination. Delivery shall be effected in the manner for giving notice provided in subdivision (p) of this section.

(3) In setting a termination date the hearing officer shall take into consideration all the surrounding circumstances, including in appropriate cases:

(i) the ground(s) for the termination;

(ii) the number of offerings of standard apartments to relocatee;

(iii) the relocatee's cooperation with the Department;

(iv) the status of any public housing application;

(v) any delay in the processing of such application that may be due to the Department or the relocatee; and

(vi) the hardship which will result to the relocatee or his/her family.

(4) Notwithstanding any other provision of this section, the hearing officer may not stay termination for a period greater than 14 days after the date of his/her decision, unless the relocatee establishes that the termination would result in exceptional hardship to the relocatee or his/her household.

(l) **Hearing procedures; default.** Failure to appear at the scheduled termination hearing shall result in termination of temporary shelter benefits unless upon written application to the Department, the relocatee establishes either:

(1) That the relocatee was not properly served with a notice of intention to terminate an opportunity for a hearing; or

(2) That the default was excusable and that relocatee has a meritorious defense to the intended termination.

Termination shall be stayed if such written application is made prior to the scheduled date of termination. If termination has occurred, the relocatee may make written application to the Department within four days of termination for temporary accommodations which shall be granted if the relocatee set forth facts establishing either of the grounds set forth above. The Department shall issue and serve the relocatee a notice of intention to terminate and opportunity for a hearing, in accordance with the provisions of subdivision (i) above, except that the hearing shall be scheduled on the third business day after service of such notice and that the relocatee need not make a separate request for such hearing.

(m) **Appeal.** An appeal from a decision of a hearing officer may be made in writing to the Assistant Commissioner

of Division of Relocation Services or his designee provided it is received by the Department within at least five days after the delivery of the hearing officer's decision. The record before the Assistant Commissioner shall consist of the summary of proceedings, the site occupancy record, the hearing officer's decision and any affidavits or documentary evidence or written arguments which the appellant may wish to submit. Termination shall be stayed pending at determination of the appeal. A copy of the decision on appeal will be delivered in the manner for giving notice provided in subdivision (p) of this section. In no event shall termination be ordered during the seven-day period immediately following the delivery of the decision on appeal, except in the case of termination under subdivision (i)(2) of this section, termination shall occur within 24 hours after delivery of notice of an adverse decision on appeal.

(n) **Application for relief.** If, at any time, a relocatee believes he has been or will be harmed by any action of the Department which he believes is in violation of any law or regulation and if no other provision of this section provides an opportunity for a hearing, he may make application for a hearing to the Commissioner of the Department or his designee in writing setting forth the Department's action and the manner in which he will be harmed. Notice of the time, date, and place of the hearing and the hearing procedures will be as set forth in subdivisions (i)-(m) of this section.

(o) **Relocation benefits.** A relocatee may be eligible for relocation payment as described in paragraphs (1) and (2).

(1) **Relocation allowance:** A relocatee shall be awarded a relocation allowance payment as shown on the schedule below if the relocatee satisfies the following criteria:

(i) The relocatee must be certified by the Red Cross, Fire Department as having lost all or most of his/her possessions as a result of a fire or other disaster.

(ii) The relocatee must not be under investigation by the Fire Department in relation to a fire of suspicious origin.

(iii) The relocatee must be moving into an apartment which has been certified by the Department as a standard apartment as defined in §18-01(a) "standard apartment."

[See tabular material in printed version]

Notwithstanding the above:

(iv) A relocatee who moves to a rooming house that is certified by the Department as a suitable accommodation and prepared for occupancy is eligible for a relocation allowance payment of $100.00.

(v) No payment will be made to a relocatee whose temporary benefits have been terminated under subdivisions (f)(3) or (f)(5), (g), or (h) of this section.

(2) **Relocation incentive:** A relocatee shall be awarded a relocation incentive payment, calculated as set forth below, if the relocatee satisfies the following criteria:

(i) The relocatee must be moving from temporary shelter furnished by the Department into a unit found through his/her own efforts which is not a unit listed by the Department offered to relocatee by the Department or a unit under the jurisdiction of the New York City Housing Authority.

(ii) The relocatee must be moving into an apartment that has been certified by the Department as a standard apartment as defined in §18-01(a) "Standard Apartment" or, if into a rooming house, into an accommodation certified by the Department as a suitable accommodation and prepared for occupancy as defined in §18-01(a) "Suitable accommodation" and "Prepared for occupancy."

(iii) The relocatee must not be under investigation by the Fire Department in relation to a fire of suspicious origin.

(iv) Relocatee's temporary shelter benefits shall not have been terminated under subdivisions (f)(3) or (f)(5), (g), or

(h) of this section.

(v) The relocatee must move from temporary housing within thirty (30) days after he/she moved into temporary housing or the date of the Vacate Order, whichever is later.

An eligible relocatee shall receive a relocation incentive payment equal to one-half the difference between (x) the projected cost of temporary housing for the relocatee for a period of forty-five days, and (v) the actual cost of temporary housing for the relocatee for the period he/she stayed in temporary housing provided however, such payment shall not exceed the Maximum Monthly Shelter Allowance schedule as established under Human Resources Administration Department Regulations, Chapter II, §352.3 (2)-1, as set forth below:

[See tabular material in printed version]

The above schedule shall be revised, without further amendment to these whenever HRA amends its Maximum Monthly Shelter Allowance Schedule.

(3) **Disallowance.** Within thirty (30) days of receiving written notification of a disallowance of relocation benefits because an apartment was not a Standard Apartment or, if a rooming unit, was not a suitable accommodation or was not prepared for occupancy, the relocated tenant may furnish, in writing to HPD evidentiary matter indicating the cure of the defect, or in the alternative, the tenant's reason for disagreement with the finding of HPD. Within thirty (30) days of receipt of said documentation from the tenant HPD shall issue its final determination to the tenant, and reasons therefore.

(p) **Notice.** Any notice required under this section to be given by the Department shall be:

(1) personally served on relocatee; or

(2) left with a person of suitable age and discretion in relocatee's place of residence in temporary shelter or other residence; or

(3) placed under the door of relocatee's place of residence and a copy with the desk clerk or other responsible representative of the proprietor or lessee of temporary shelter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The City can recover hotel expenses incurred for relocating tenants who vacated the subject premises pursuant to a vacate order. Moreover, the term "tenant includes the members of the tenant's household who permanently resided with him or her at the time the vacate order was issued. **Retek v. City of New York,** 14 A.D.3d 708, 789 N.Y.S.2d 263 (2d Dept. 2005).

¶ 2. The Department of Housing Preservation and Development has the duty to provide relocation services for a tenant where the displacement of the tenant results from the enforcement of laws or regulations. The regulations promulgated by HPD define the term "relocatee" to include a person deprived of a permanent residence as a result of the enforcement of a vacate order. Thus, where a tenant was required to vacate an illegal basement apartment, HPD was required to offer him temporary shelter, and thereafter to provide relocation services, including referral to at least three other apartments. The court rejected HPD's argument that the occupant of an illegal apartment could not be deemed a permanent resident for purposes of the relocation statute. Cupidon v. Donovan, 8 Misc.3d 1024(A), 803 N.Y.S.2d 17 (Sup.Ct. New York Co. 2005).

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 18-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 18 RELOCATION PAYMENTS AND SERVICES

§18-02 Relocation Assistance to Persons Displaced from City-Owned Dwelling Units by Certain Vacate Orders.

(a) **Application.** Notwithstanding the provisions of §18-01 of this chapter, this §18-02 shall apply to persons residing in City-owned buildings which are subject to a Vacate Order which, by its terms, shall take effect thirty (30) or more days after the date of issuance.

(b) **Definitions.** The following terms used in this section shall have the meaning stated below.

Administrative Code. "Administrative Code" refers to the New York City Charter and Administrative Code.

Agency or Department. "Agency or Department" refers to the Division of Relocation Operations, Department of Housing Preservation and Development (HPD), 75 Maiden Lane, New York, New York 10038.

Prepared for occupancy. "Prepared for occupancy" refers to apartments that are prepared for occupancy when freed of all violations classified as immediately hazardous by the Office of Rent and Housing Maintenance pursuant to Article 2 of Subchapter 5 of Chapter 2 of Title 27 of the Administrative Code, supplied with all appropriate fixtures and appliances, painted, exterminated, if necessary, and reasonably cleansed and available for occupancy.

Relocatee. "Relocatee" refers to an individual or a head of household and his or her family, deprived of a permanent residence rented by the person, household or family in the City of New York as a direct result of the enforcement of a Vacate Order (as defined in these regulations) and eligible for relocation services or benefits under these regulations and any other applicable law. "Family" and "household" shall include those persons who permanently resided with a head of household at the time the Vacate Order was issued.

Relocatee accepts an apartment. "Relocatee accepts an apartment" refers to relocatee has established to the Department that the relocatee has leased an apartment in a privately-owned building; or relocatee has paid the first month rent for an apartment in a City-owned building.

Relocation manager. "Relocation manager" refers to an employee of the Department assigned to coordinate and direct the furnishing of relocation services to a particular relocatee.

Site occupancy record. "Site occupancy record" refers to a written file concerning each relocatee maintained by the relocation manager, recording all pertinent agency actions concerning the relocatee.

Standard apartment. "Standard apartment" refers to an apartment satisfying the following criteria:

(i) There may not be more than three (3) immediately hazardous violations as classified by the Office of Rent and Housing Maintenance pursuant to Article 2 of Subchapter 5 of Chapter 2 of Title 27 of the Housing Maintenance Code, in the building which directly and adversely affect the use of the apartment;

(ii) The number of rooms and the floor area of rooms must be adequate for all resident family or household members and meet the requirements of the Administrative Code;

(iii) There shall be no infestation, by vermin, mice or other pests, or a letter shall be submitted from a licensed exterminator certifying that the building is under contract to be serviced monthly;

(iv) It must be self-contained and may not have any rooms or facilities which can be reached only by going through a public area;

(v) The building must have central heat and hot water;

(vi) There must be a private kitchen or kitchenette within the apartment for the exclusive use of the tenant;

(vii) There must be private and fully enclosed toilet and bathing facilities within the apartment for the exclusive use of the tenant; and

(viii) Each room must have a window or adequate light and ventilation.

Suitable Accommodation. "Suitable accommodation" refers to accommodations adequate in size to meet the needs of relocatee and his/her family as defined by §27-2075 of the Administrative Code.

Vacate Order. "Vacate Order" refers to any order of a governmental agency requiring occupants of a structure to depart therefrom, which order, by its terms, shall take effect thirty (30) or more days after its issuance, pursuant to the following:

(i) Health Department vacate orders issued pursuant to §17-159 of the Administrative Code (relating to orders for housing defects likely to cause disease) or other provision of law;

(ii) Buildings department vacate orders issued pursuant to §26-101 et seq. of the Administrative Code or other provision of law.

(iii) Fire department vacate orders issued pursuant to §15-227 of the Administrative Code or other provision of law

(iv) Code enforcement vacate order issued pursuant to §27-2139 of the Administrative Code by the Division of Code Enforcement or other divisions of HPD.

(c) **Department duties.** (1) Upon receiving notice of a Vacate Order which is applicable to a City-owned building,

the Department shall promptly offer relocation assistance to residential tenants of the building and shall furnish them with a copy of this section in English and Spanish and notify them of the name, office address and telephone number of the Relocation Manager assigned to them. Copies of this section in English and Spanish shall be posted in the office of the Relocation Manager.

(2) The Department shall refer relocatee to at least three (3) Standard Apartments or apartments which may be repaired to be Standard Apartments, which may be located in other City-owned buildings. Such apartments shall, if available, be located in the borough of the relocatee's choice. If the relocatee prefers relocating into a rooming unit, the relocatee shall be referred to rooming units if any are available.

(3) The Department may, in its discretion, provide temporary shelter as provided in subdivision (n) of this section subject to such conditions as the Department may impose.

(d) **Obligations of Relocatee.** (1) The relocatee has the duty of inspecting a dwelling unit to which the relocatee has been referred by the Department within three (3) working days. If the relocatee believes that the accommodations are unsuitable or otherwise unacceptable, the relocatee must give the Department a written description of the specific defects claimed within four (4) working days after the referral.

(2) The relocatee has a duty to advise the Department whenever permanent accommodations are found and to keep the Department advised regarding the date of expected occupancy.

(3) The relocatee is entitled to withdraw his or her acceptance of an apartment if the apartment is not prepared for occupancy within thirty (30) days after initial acceptance. In such an instance, the relocatee shall notify the Department in writing, if possible, or orally, within three (3) working days of the withdrawal of acceptance of an apartment.

(e) **Moving expenses allowance.** (1) **Eligible persons.** A relocatee shall be entitled to a moving expense allowance if the relocatee satisfies the following criteria:

(i) The relocatee is not entitled to payment of moving expenses from another City agency;

(ii) The relocatee must be moving to an accommodation to which the relocatee was referred or which has been approved by the Relocation Manager;

(iii) The relocatee must not be under investigation by the Fire Department in relation to a fire of suspicious origin; and

(iv) The Department has not determined the relocatee to be ineligible pursuant to subdivision (g) of this section of these regulations.

(2) **Moving expense allowance.** An eligible relocatee shall receive the following assistance:

(i) The Department may move the relocatee's belongings at the Department's expense, or

(ii) If the relocatee notifies the Department prior to the date of the move that the relocatee wishes to arrange for moving independently, the Department may grant financial assistance in accordance with a schedule of moving allowances prepared by the agency, which shall provide for an allowance based on the number of rooms vacated as follows:

[See tabular material in printed version]

Such financial assistance shall be:

(A) By credit against future rent if the relocatee is moving into a City-owned building, or

(B) By reimbursement to the relocatee if the relocatee is moving into a building which is not City-owned, provided that prior to such reimbursement relocatee shall submit a paid bill within ten (10) working days following the move.

(f) **Relocation incentive allowance.** (1) **Eligible persons.** A relocatee shall be awarded a relocation incentive payment, calculated as set forth below, if the relocatee satisfies the following criteria.

(i) The relocatee must either (A) accept an apartment to which the relocatee has been referred by the Relocation Manager within 10 days of having been referred to three Standard Apartments by the Relocation Manager and move into that apartment within 10 days of the date on which that apartment is prepared for occupancy; or (B) move within 30 days from the initial verbal or written contact of the relocatee by the Relocation Manager after issuance of the Vacate Order; whichever is later;

(ii) The relocatee must move to an accommodation to which the relocatee has been referred by or which has been approved by the Relocation Manager;

(iii) The relocatee must not be under investigation by the Fire Department in relation to a fire of suspicious origin;

(iv) The Department has not determined the relocatee to be ineligible pursuant to subdivision (g) of these regulations.

(2) **Incentive allowance.** An eligible relocatee shall receive a relocation incentive payment in accordance with the Maximum Monthly Shelter Allowance schedule established under Human Resources Administration Regulations, Chapter II, §352.3(2)-1 as set forth below:

[See tabular material in printed version]

The above schedule shall be revised without further amendment to these regulations, whenever HRA amends its Maximum Monthly Shelter Allowance Shelter.

(g) **Determination of Ineligibility for Benefits.** The Department may determine that a relocatee is ineligible for benefits if:

(1) A relocatee unjustifiably refuses to accept three (3) standard apartments or, if the relocatee is to be relocated to a rooming unit, three (3) rooming units which are suitable accommodations, to which the relocatee has been referred by the Department.

(2) The relocatee has made material misstatements or concealed material facts from the Department concerning the relocatee's initial or continued eligibility for relocation services;

(3) Suitable and habitable permanent accommodations are available to the relocatee at the time of notice of determination;

(4) The relocatee has failed to respond to a notice for appointment with employees of the Department, as required;

(5) The relocatee did not in fact dwell in the vacated premises;

(6) The relocatee, if in temporary shelter, has had temporary shelter benefits terminated under subdivisions (f)(3) or (5), (g) or (h) of §18-01 of these regulations;

(7) The relocatee or a member of the family or household has engaged in conduct which threatens the health, safety or property of the residents, guests or visitors of residents of the building to be vacated or the staff of the Department;

(8) The relocatee was subject to legal action by the Department which is resolved in the Department's favor;

(9) The relocatee has refused, without good cause, a request by the Department to provide pertinent information relevant to the agency's relocation efforts, or the relocatee's eligibility for benefits or services; or

(10) The relocatee is otherwise ineligible.

(h) **Review of agency determination.** (1) **Protest of determination ineligibility.** If it is determined by the agency that the relocatee is ineligible for benefits, the relocatee may, within thirty (30) days of receiving written notification of ineligibility, file with the Assistant Commissioner of the Division of Relocation Services a written protest and request that the determination be reviewed. The relocatee's protest shall set forth the basis for the protest and the reasons claimed as the grounds on which such determination should be reversed. The protest shall be reviewed by the Assistant Commissioner unless the relocatee indicates that he or she desires a hearing or the Assistant Commissioner, in his or her discretion, directs that a hearing be held. Upon receipt of a request for a hearing or if a determination is made that a hearing would be appropriate, the Department shall establish the time, date and place for the hearing and provide notice of the hearing to the relocatee. The provisions of subdivisions (i) to (m) of this section of the regulations shall apply to the notice of hearing and the hearing procedures.

(2) **Other claims for review of an agency action.** In situations other than a determination of ineligibility, if a relocatee believes he or she has been or will be harmed by any action of the Department which the relocatee believes is in violation of any law or regulations, the relocatee may make application for relief to the Assistant Commissioner of the Division of Relocation Operations. The relocatee shall file a written request setting forth the action and the manner in which he or she believes he or she will be harmed. The Assistant Commissioner, in his or her discretion, may issue a determination on the request or direct that a hearing be held on the application. If a hearing is to be held, the provisions of subdivisions (i) to (m) of this section shall apply to the notice of hearing and hearing procedures.

(i) **Hearing procedures: Conduct of hearing.** (1) A hearing held pursuant to subdivision (h) of this section shall be conducted by an impartial hearing officer appointed by the Department in accordance with the Manual for Hearing Officers in Administrative Adjudication. The hearing officer may be an employee of the agency. The hearing officer shall have the power to administer oaths and shall have no prior personal knowledge of the particular facts concerning the denial of benefits or the claim to be reviewed.

(2) The Department shall establish the date, time and place of any hearing and shall provide notice of the date, time and place of the hearing to the relocatee in the manner provided in subdivision (m) of this section at least three (3) days prior to the hearing date.

(3) **A hearing shall be informal.** All relevant and material evidence shall be admissible. Any site occupancy record shall be part of the evidence at any hearing whether or not the Relocation Manager is or can be present. A hearing shall be confined to the factual and legal issues raised in the determination for which review has been sought by the relocatee.

(4) A relocatee shall have a right to be represented by counsel or other representative, to testify, to produce witnesses to testify, to offer documentary evidence to cross-examine opposing witnesses and to examine the site occupancy record.

(5) For good cause, a hearing may be adjourned by the hearing officer on the hearing officer's own motion or at the request of a relocatee or the Department.

(6) A hearing officer shall make a written summary of the proceedings including a statement of the relocatee's oral and written position and shall annex any documentary evidence offered at the hearing in support thereof. The relocatee shall be shown this summary and given the opportunity to object. In the case of a Spanish-speaking relocatee, the summary shall be read to the relocatee in Spanish. In the event any objection is not resolved at the hearing, that

objection shall be made part of the summary. The relocatee shall promptly be provided with a copy of the completed summary. The hearing officer may, in the hearing officer's discretion, combine this summary with any findings of fact.

(7) The Department will provide adequate translation services for a Spanish-speaking relocatee.

(j) **Hearing procedures: decision.** (1) The hearing officer shall render a decision which shall include written findings of fact and shall state the legal basis for any decision. The decision shall be final absent a timely appeal as described in subdivision (l) below.

(2) A copy of the decision shall be mailed or delivered to the relocatee within seven (7) business days after the hearing. Delivery shall be made in the manner for giving notice provided in subdivision (m) of this section.

(3) The hearing officer may take into consideration relevant circumstances, including, in appropriate cases:

(i) The relocatee's cooperation with the Department;

(ii) That the accommodation previously accepted by the relocatee and not withdrawn by the Department is not prepared for occupancy;

(iii) That physical incapacity or illness of the relocatee or member of the family or household prevented the relocatee from complying with the relocatee's obligations under subdivision (d) hereof; and

(iv) The hardship which will result to the relocatee or the family or household.

(k) **Hearing procedures: default.** Failure to appear at a scheduled hearing shall result in dismissal of the claim for review of an agency action unless, upon written application to the Department, the relocatee establishes either:

(1) That the relocatee was not properly served with a notice of hearing; or

(2) That the default was excusable and that relocatee has a meritorious defense to action taken by the agency.

(l) **Appeal of hearings.** An appeal from a decision of a hearing officer may be made in writing to the Assistant Commissioner of Division of Relocation Services or the Assistant Commissioner's designee provided it is received by the Department not less than five (5) days after service of the hearing officer's decision. The record before the Assistant Commissioner shall consist of the summary of the proceedings, the site occupancy record, the hearing officer's decision and any affidavits or documentary evidence or written arguments which the appellant may wish to submit. A copy of the decision on appeal will be delivered in the manner for giving notice provided in subdivision (m) of this section.

(m) **Notice.** Unless this article provides for another method of notice, any notice required under these regulations to be given or served by the Department shall be:

(1) Personally served on the relocatee;

(2) Left with a person of suitable age and discretion at the relocatee's place of residence and mailed to the relocatee; or

(3) Affixed to the door of the relocatee's place of residence and mailed to the relocatee.

(n) **Temporary shelter.** (1) The Department, in its discretion, may provide temporary shelter prior to or after the effective date of the vacate order. The Department may limit the granting of such benefits to situations in which the relocatee has selected a permanent accommodation and the dwelling is not yet ready for occupancy.

(2) The Department, if it provides temporary shelter, shall pay the actual cost of temporary shelter up to $12 per

day for one adult and $7 per day for each additional person residing with the relocatee in the room or, if suitable substitute shelter is unavailable for these amounts, the Department may pay such additional sums as are necessary to obtain suitable shelter for the relocatee.

(3) If a relocatee is provided temporary shelter, the relocatee shall be provided with a copy of §18-01 of these regulations, in English and in Spanish, upon moving into temporary shelter and only the provisions of that section relating to termination of temporary shelter benefits and the obligations of a relocatee in temporary shelter shall apply to the relocatee.

(o) **Waiver.** The Department may waive all or part of the foregoing rules and regulations where the circumstances warrant such exemption. Any waiver to be effective shall require the written approval of the Assistant Commissioner of the Division of Relocation Operations or his or her designee and shall include a specific statement of the reason(s) for such waiver.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 18-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 18 RELOCATION PAYMENTS AND SERVICES

§18-03 Finder's Fees.

(a) **General.** Under certain circumstances, the Department will make a payment, termed a "finder's fee," to a person or entity furnishing permanent accommodations to a relocatee. Such payments shall be made pursuant to the provisions of this §18-03.

(b) **Definitions.** The definitions stated in §18-01 of this chapter (concerning relocation assistance (to persons displaced by Vacate Orders) are incorporated into this section unless a contrary definition is indicated.

(c) **Notification of availability of apartment inspection.** A person or entity desiring payment of a finder's fee (a "finder") shall notify the Department of the availability of an apartment for which the fee is sought. Said apartment will be approved as eligible for payment of a finder's fee if, after inspection by the Department, it is determined that:

(1) The apartment is a Standard Apartment.

(2) The neighborhood of the apartment does not, in the judgment of the Department, have an excessive number of abandoned buildings or consist predominantly of vacant land; and

(3) If the apartment has been formed by combining two adjacent apartments, only one kitchen may be left operable; in the other kitchen, the sink and stove must be removed and the gas and water lines capped. An apartment so inspected and approved shall be deemed an "Approved Apartment" and the finder shall be notified whether or not the apartment has been so approved.

(d) **Application for payment of fee.** If a relocatee shall move into an Approved Apartment, the finder may make application to the Department for payment of a finder's fee and payment shall be made in an amount determined pursuant to subdivision (e) below if each of the following shall be established:

(1) the relocatee was referred to the Approved Apartment by the Department; (2) the relocatee is in physical occupancy of the Approved Apartment as certified by his/her Relocation Manager;

(3) a lease with a minimum term of two years must have been executed by a relocatee and the owner of the Approved Apartment and a copy of same has been filed with the Department; and

(4) the Approved Apartment must have been freshly painted and any repairs required by the Department shall have been completed by the finder, provided, however, that an extension of time for said painting or repairs may be granted by the Department if it is established that performance thereof was prevented by the actions or lack of cooperation of relocatee.

(e) **Schedule of finder's fees.** The amount of a finder's fee payable under this section shall be determined according to the following schedule, except as noted in the final sentence of subdivision (e):

[See tabular material in printed version]

The finder's fee otherwise payable under the schedule may be reduced in the discretion of the Assistant Commissioner of Relocation Services if the apartment has more than one bedroom for every two persons in the family of the relocatee moving into the apartment.

(f) **No other fees to be collected by finder.** No broker's fee, apartment fee or fee of any other kind shall be charged to or be collected from relocatee by a finder or anyone affiliated with or claiming through a finder. By acceptance of a finder's fee from the Department, a finder waives any right or claim (s)he or it might otherwise have had to any such fee from relocatee.

(g) **Limitation.** (1) No second finder's fee may be paid for any apartment if a previous finder's fee has been paid for said apartment within six months previous to the date of execution of the lease with the relocatee with respect to whom the second fee is claimed.

(2) No finder's fee shall be paid for any apartment if it is established that:

(i) the prior tenant in the apartment departed prior to expiration of his/her lease; and

(ii) said departure followed harassment by the landlord thereof or termination of services to said apartment.

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***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 18 RELOCATION PAYMENTS AND SERVICES

§18-04 Relocation of Tenants from Public Improvements and Quasi-public Sites and City Assisted Urban Renewal Sites.

(a) **Purpose.** The purpose of this section is to implement for the City of New York the rules and regulations affecting relocation practices and benefit payments for those eligible site occupants who are displaced from public improvement and quasi-public sites or from urban renewal sites which are not federally assisted.

(b) **Definitions.**

Business concern. "Business concern" refers to a corporation, partnership, individual proprietor or other private entity, including a nonprofit organization, engaged in some type of business, professional or institutional activity necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, professional or institution.

City assisted urban renewal site. "City assisted urban renewal site" refers to undertakings and activities of the City of New York in a designated area, under an urban renewal plan as authorized under the provisions of Article 15 of the General Municipal Law, and which is not assisted by the Federal Government.

Displaced person. "Displaced person" refers to any family, individual, or partnership, corporation or association who is displaced or moves from real property, or who moves his personal property from such real property, in or after the date of the acquisition of the real property for the site or project.

Dwelling. "Dwelling" refers to the purpose of determining payments to residential tenants or persons in occupancy

under regulations governing all benefit payments other than moving expenses, the term "dwelling" shall mean the primary place of permanent abode of a person and does not include seasonable or part time dwelling units such as beach houses or vacation bungalows.

Family. "Family" refers to two or more individuals who by blood, marriage, adoption or mutual consent live together as a family unit. For example, two roommates would not be a family, but a couple, who live together as a family, even if not formally married, would be entitled to benefits as if they were married. A certificate of registration as domestic partners in the City of New York shall be evidence of a family relationship for the purposes of this section.

Finder's fee apartment. "Finder's fee apartment" refers to a standard dwelling unit which is provided to the Department of Housing Preservation and Development by any owner, agent or broker for a fee, and into which a relocatee has been moved by the Department.

Furnished room. "Furnished room" is a room rented furnished, usually by the week, which does not have a toilet and bath for the exclusive use of the tenant. Unit must be in conformance with local code standards for boarding houses, or other dwellings for congregate living.

Individual. "Individual" refers to a person who is not a member of a family.

Institutionalized. "Institutionalized" refers to a term to mean the placement of a residential tenant to any hospital, nursing him, or other institution on an indefinite basis.

Property. "Property" refers to tangible personal property, excluding fixtures, equipment and other property which under State or local law are considered real property, but including such items of real property as the site occupant may lawfully remove.

Public housing. "Public housing" refers to housing operated, maintained or leased by the New York City Housing Authority.

Public improvement site. "Public improvement site" refers to an area which the City of New York has condemned for a public use; such public uses may be schools, libraries, hospitals, parks, playgrounds, road widening, police stations, fire houses, etc.

Standard Unit. "Standard unit" refers to one which is decent, safe and sanitary and must:

(i) have a window or adequate light and ventilation in every room.

(ii) have central heat and central hot water system.

(iii) have a kitchen or kitchenette for the exclusive use of the tenant.

(iv) have a fully enclosed bathroom containing toilet and bath for the exclusive use of the tenant.

(v) have no hazardous violations as recorded by the Department of Buildings against the premises.

(vi) be inspected and approved as standard by the Department of Housing Preservation and Development.

(vii) rental should not exceed 25 percent of the relocatee's gross income or within the financial means of the displaced person.

(viii) not be generally less desirable than the acquired dwelling with respect to public utilities, public and commercial facilities, and be reasonably accessible to the displaced persons present or potential place of employment.

(ix) not be overcrowded.

(c) **Basic eligibility conditions for relocation payments.** In order to qualify for benefits as a displaced person all the following conditions must be fulfilled:

(1) The real property in which the person resides or does business must have been acquired by the City of New York; and the person must have moved as a result of its acquisition.

(2) The person must be an occupant of the real property on the date title vested in the City of New York.

(3) Displacement is made necessary by the acquisition of such real property by the City of New York.

(d) **Determinations and appeals.** Determinations by the Commissioner of the Department of Housing Preservation and Development or his designee, shall be final as to payments under these rules and regulations. However, in the event of dissatisfaction by any displaced person, such person shall have the following right of review:

(1) In case of any disputed questions of eligibility or determinations of the amount of a relocation payment, which is not disposed by agreement, the displaced person may request and will receive a review by the Commissioner or his designee, which designee shall not be one who has participated in the original decision.

(2) Upon such review, the displaced person may submit any and all additional material in writing for consideration in the matter.

(3) Such review as provided in paragraph (1) above, must be requested in writing within 30 days of the date of the original determination by the Department. The request shall be sent to Commissioner of the Department of Housing Preservation and Development, 100 Gold Street, New York, N.Y. 10038.

(4) The decision of the Commissioner shall be made in writing to the displaced person making such appeal, which decision shall be final.

(e) **Moving and related expenses.** Whenever the acquisition of real property for a program or project will result or has resulted in the displacement of any displaced person from the required site on or after the effective date of these rules, the head of the Department of Housing Preservation and Development or his designee, shall make a payment to any displaced person upon application as approved by such official for:

(1) The actual reasonable expenses in moving himself, his family, business, or other personal property;

(2) The actual direct loss of tangible personal property incurred as a result of moving or discontinuing a business but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the Department of Housing Preservation and Development, or his designee;

(3) The actual reasonable expense of searching for a substitute business site. The amount of this payment is limited to $500. Payment for expenses related to the finding of replacement housing is not authorized.

(f) **Actual reasonable expenses in moving.** (1) **Allowable expenses.**

(i) Packing and crating of personalty.

(ii) Advertising for packing, crating and transportation as the head of the Department of Housing Preservation and Development or his designee may require.

(iii) Storage of personal property for a period not to exceed 6 months when the head of the Department of Housing Preservation and Development, or his designee, determines that storage is necessary.

(iv) Insurance premiums covering loss and damage of personal property while in storage or transit.

(v) Removal, dismantling and reassembly of machinery, equipment, appliances and other items, not acquired as real property, including reconnection of utilities which do not constitute an improvement to the replacement site, and which were not acquired by the City of New York.

(vi) Such other reasonable expenses as determined by the head of the Department of Housing Preservation and Development, including expenditure incurred by and in behalf of the City incidental to the move.

(2) **Limitations.** (i) When the displaced person accomplishes the move himself, the amount of payment shall not exceed the estimated cost of moving commercially established by the Department of Housing Preservation and Development unless the Department of Housing Preservation and Development determines that documentation submitted by the displaced person justifies a larger amount.

(ii) When an item of personal property used in connection with any business is not moved but sold and promptly replaced with a comparable item, reimbursement shall not exceed the replacement cost minus the proceeds received from the sale, or the cost of moving, whichever is less.

(iii) When personal property used in connection with any business to be moved is of law value and high bulk, and the cost of moving would be disproportionate in relation to the value, in the judgement of the head of the Department of Housing Preservation and Development or his designee, the allowable reimbursement for the expense of moving the personal property shall not exceed the difference between the amount which would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market.

(iv) The owner of an outdoor advertising display who does not receive either a fixture award or a fee award, and who does not conduct a business on the site, shall be entitled only to moving expenses. However, the amount of the moving expense to be paid shall be limited to the less of

(A) The value of the sign or

(B) The actual moving cost.

(v) In the event any tenant who moves chooses to take actual moving expense allowances, the following notice to the Department of Housing Preservation and Development is required:

(A) Residential tenants must provide not less than 5 days written notice with moving estimate before the move takes place of tenant's intention.

(B) Commercial tenants must provide notice of intention to move not less than 30 days nor more than 90 days prior to the commencement of the move, and must submit 3 independent bona-fide estimate or bids at least 15 days prior to the commencement of the move.

(g) **Exclusions from moving expenses and losses.** The following items are excluded from moving expenses and losses:

(1) Cost of moving structures, improvements or other real property in which the displaced person reserved ownership.

(2) Interest on loans to cover moving expenses.

(3) Loss of good will.

(4) Loss of profits.

(5) Loss of trained employees.

(6) Personal injury.

(7) Cost of preparing the application for moving and related expenses.

(8) Modification of personal property to adapt it to the replacement site, except when required by law.

(9) Additional expenses incurred because of living in a new location.

(10) Such other items as the head of the Department of Housing Preservation and Development determined should be excluded.

(h) **Actual direct loss of property by business.** (1) When the personal property other than stock kept for sale is abandoned, the displaced person is entitled to payment for the difference between the in-place value and the amount which he receives from the sale of the item, or the cost of moving, whichever is less.

(2) When the displaced person does not move personal property and claims direct loss, he shall be required to make bonafide effort to sell it.

(3) When personal property is sold and the business reestablished, the displaced person is entitled to payment as provided in §18-04(f)(2)(ii).

(i) **Expenses in searching for replacement business site.** (1) Subject to the limitation herein, the following items are allowed:

(i) Travel costs.

(ii) Reasonable cost for meals and lodging.

(iii) Time spent in searching at the rate of the displaced person's salary or earnings, but not to exceed $10 per hour.

(iv) Broker or realtor fee to locate a replacement business with the advance approval of the head of the Department of Housing Preservation and Development or his designee.

(2) **Limitation on such expenses.** The total amount which a displaced person may be paid for searching expense shall not exceed $500.

(j) **Payments in lieu of moving and related expenses.** (1) **Residential tenants.**

(i) Any displaced person eligible for moving expense payments who is displaced from a dwelling may, in lieu of actual moving expense, elect to accept a fixed moving expense allowance not to exceed $300 according to the following schedule:

(A) **For persons who own furniture:**

No. of Rooms	Amount	No. of Rooms	Amount
1-1/2	$120	5-5/2	$300.00
2-2/2	170	6-6/2	300.00
3-3/2	215	7-7/2	300.00
4-4/2	260	8-more	300.00

(B) **For persons who do not own furniture:**

$25, for the first room and $15 additional for each additional room.

(ii) Every displaced residential tenant who chooses a fixed payment moving expense in lieu of actual moving expense shall also be entitled to a Dislocation Allowance of $200. This Dislocation Allowance is not subject to any set off by the Department of Housing Preservation and Development.

(iii) In the event any residential tenant is required by the Department of Housing Preservation and Development to move to another unit within the same site, whether through emergency or furtherance of clearance, such tenant can at his option elect to receive actual money expenses or the fixed "in lieu of payment. No Dislocation Allowance can be paid for an on-site move.

(2) **Business fixed payment.** Any displaced person otherwise eligible for moving expense payment who is displaced from his place of business may elect to choose one of three types of fixed payments in lieu of actual moving and related expenses:

(i) **Six times the monthly rental.** This choice may be elected by any commercial tenant. The maximum payment if $4,000, the minimum is 400, and such choice replaces actual moving expenses and related expense. It is not necessary to submit moving estimates.

(ii) **"In lieu of" payment.** This choice may be selected by a commercial tenant who satisfies the head of the Department of Housing Preservation and Development, or his designee, that:

(A) The business cannot be relocated without a substantial loss of its existing patronage. Loss of existing patronage to a business must include the following factors: the type of business conducted by the displaced concern; the nature of the clientele of the displaced concern; and the relative importance of the present and proposed location to the displaced business; and

(B) The business is not a part of a commercial enterprise having at least one other establishment not being acquired by the City of New York, which is in the same or similar business; and

(C) The business contributes materially to the income of the displaced owner. This standard eliminates those part-time family occupations such as newspaper routes, part-time typing, etc. unless they contribute substantially to the displaced person's income.

This "in lieu of" payment shall be in the amount equal to the average annual earnings of the business, except that such payment shall not be less than $2,500 nor more than $10,000. Any "in lieu of" payment to an eligible non-profit making organization shall be limited to $2,500 unless it is in fact operating a profit making business. The definition of "contributes materially to the income of the displaced owner" shall mean:

(a) That the business had average annual gross receipts of at least $2,000, or

(b) That the business had average annual net earnings of at least $1,000 or

(c) That the business contributed at least 33 1/3 percent of the average total annual income of the owner or owners.

The average annual receipts, earning or income is determined by one half the sum during the 2 taxable years immediately preceding the taxable year in which the business moves, or during such other period as the head of the Department of Housing Preservation and Development may determine. In the event this choice is taken by the tenant no moving estimates or bids are necessary to be submitted by tenant. This choice replaces actual moving expenses and related expense.

(iii) **A negotiated payment.** This choice may be selected by commercial tenants only upon prearrangement and consent of the head of the Department of Housing Preservation and Development, or his designee. This choice replaces

actual moving expenses and related expenses. The negotiated amount is the specific amount approved for payment(s) by the Department of Housing Preservation and Development prior to any actual move and requires the submission by the tenant of at least three acceptable estimates or bids for moving, the physical inspection by the Department of Housing Preservation and Development, the written offer by the tenant to accept a stipulated amount, and the written approval, prior to the move, from the Department of Housing Preservation and Development. The stipulated amount must be considerably below the lowest estimated cost of the move. If this choice is taken, no detailed bills need be submitted by the tenant.

(k) **Replacement housing for homeowner.** (1) The addition to payments otherwise authorized pursuant to subdivisions (e), (f), (j) and (t) of this section, the head of the Department of Housing Preservation and Development or his designee, shall make an additional payment not in excess of $15,000, to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the acquisition of the property. Such additional payment shall include the following elements:

(i) The amount, if any, which when added to the amount of condemnation award or purchase price (if by negotiation) of the dwelling acquired by the City of New York, equals the reasonable cost of a comparable replacement dwelling which is decent, safe and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market.

(ii) The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the City of New York was encumbered by a bonafide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the acquisition of dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of the amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on saving deposits by commercial banks in the general area in which the replacement dwelling is located.

(iii) Reasonable expenses incurred by such displaced person for evidence of title, recording fees and other closing costs incidents to the purchase of the replacement dwelling, but not including prepared expenses. Attorneys fees shall be not more than one percent of the purchase price, with a minimum of $200.

(2) The additional payment of replacement housing for homeowners shall be made only to such displaced person who purchases and occupies a replacement dwelling which is a decent, safe and sanitary dwelling, not later than the end of the one year period beginning on the date on which he receives from the City of New York payment for the acquired dwelling, or on the date on which he moves from the acquired dwelling whichever is the later date.

(3) Whenever a displaced person is eligible for a payment but has not yet purchased a replacement dwelling, the head of the Department of Housing Preservation and Development shall at the request of the displaced person, provide a written statement to any interested person, financial institution or lending agency as to such person's eligibility for a payment and the requirements that must be satisfied before such payment can be made.

(l) **Eligibility for homeowners replacement housing.** (1) **A displaced owner.** Occupant is eligible for a replacement housing payment if he meets the eligibility requirements enumerated under subdivision (k) of this section.

(2) A displaced owner-occupant of a dwelling who is determined to be ineligible for a homeowners replacement housing payment may be eligible for a replacement housing payment for tenants and others as more fully set forth in subdivision (n) of this section.

(m) **Computation of homeowners replacement housing payment.** (1) **Differential payment for replacement housing.** (i) **Displaced owner.** Occupants shall have the right to elect to use either a schedule method or comparative

method in determining the amount to be paid.

(A) **The schedule method:** The schedule of average prices of comparable sales housing in the locality, is as follows:

[See tabular material in printed version]

(B) **The Comparative Method:** The cost of comparable unit is determined on a case by case basis through the use of the sales price (together with any adjustments necessary to reflect the market sales experience) of one or more dwelling determined to be the most representative of the acquired dwelling and conforming to the definition of "comparable replacement housing". The comparable dwellings may be selected by the Relocation Agency, or by the displaced person with the approval of the Relocation Agency.

(ii) **Limitations.** (A) If the displaced person, of his own volition, purchases and occupies a decent, safe and sanitary dwelling at a price less than the acquisition price of the acquired building, no differential payment shall be made.

(B) If the displaced person, of his own volition, purchases and occupies, a decent, safe and sanitary dwelling at a price less than the average sale price, as above, of a comparative replacement dwelling, the differential payment will be reduced to that amount required to pay the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling.

(C) If the dwelling unit occupied by the claimant was part of a structure owned by the claimant which also included space used for non-residential or multi-residential purposes, the amount of the differential payment shall be determined by using as the acquisition payment of the dwelling unit only that part of the total payment which relates to the value of the claimant's residential use portion of the structure.

(D) When an eligible claimant, who has received all or a portion of a rental assistance payment (because he elected to rent), subsequently files a claim for replacement housing payment for homeowners, the total amount of the rental assistance payment he has received must be deducted from the amount of the payment to which he may be entitled.

(2) **Interest payment.** The interest payment shall be based on present value of the reasonable cost of the interest differential, including points paid by the purchaser on the amount refinanced not to exceed the amount of the unpaid debt for its remaining term at the time of acquisition of the real property.

(3) **Incidental expenses.** (i) The incidental expense payment is the amount necessary to compensate the homeowner for costs incident to the purchase of the replacement dwelling such as:

(A) Legal, closing and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings of plats, and charges incident to recordation. Attorney fees are limited to one percent of the purchase price but not less than $200.

(B) Lenders, Federal Housing Administration, or Veterans Administration appraisal fees.

(C) Federal Housing Administration application fee.

(D) Certification of structural soundness when required by lender, Federal Housing Administration or Veterans Administration.

(E) Credit report.

(F) Title policies or abstracts of title.

(G) Escrow Agent's Fee (mortgage fee).

(H) State revenue stamps, or sale or transfer taxes.

(ii) No fee, cost, charge or expenses is reimbursable which is determined to be a part of the finance charge under Title I of the Federal Truth in Lending Act and Regulation "Z" issued pursuant thereto.

(n) **Replacement housing payment for tenants and certain others-eligibility.** (1) A displaced tenant or owner-occupant of less than 180 days before condemnation date, is eligible for a replacement housing payment if he actually occupied the dwelling for not less than 90 days immediately prior to the acquisition of the property, and meets the other eligibility requirements.

(2) In addition to amounts otherwise authorized, the Relocation Agency shall make a payment to or for any displaced person from any dwelling not eligible to receive a payment under subdivision (k) of this section which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days prior to the acquisition of such dwelling. Tenant or other occupant of the property shall be notified of the actual date of title vesting in the City.

(3) Payment under subdivision (n) shall be either:

(i) The amount necessary to enable such displaced person to lease or rent for a period not to exceed 4 years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or

(ii) The amount necessary to enable such person to make a down payment and including incidental expenses described in subdivision (m)(3) of this section (incidental expense), on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public and commercial facilities, but not exceeding $4,000 except that, if such amounts exceed $2,000 such person must equally match any such amount in excess of $2,000 in making the down payment.

(A) The displaced person is required to apply all of the portion of the total down payment which was not needed to meet the cost of incidental expenses, toward the purchase of the dwelling.

(B) The down payment for the replacement housing shall be limited to that amount which would normally be required for a conventional loan, unless otherwise approved by the head of the Relocation Agency, or his designee.

(4) An owner-occupant otherwise eligible for payment of a Homeowners Replacement Housing Payment but who rents instead of purchases a replacement dwelling is eligible for replacement housing payment for tenants.

(5) The additional payment of Replacement Housing Payment for Tenants and Certain Others shall be made only to such displaced person who moves into a unit which is decent, safe and sanitary, and a standard dwelling, not later than six months from the date he moves from the site dwelling or six months from the effective date of these regulations, whichever is later.

(6) If individuals, not a family, are joint occupants of a single family unit acquired for a project, each eligible claimant shall be paid a prorated share of the total payment applicable to single individual. The total payment made to all such claimants shall not exceed the total applicable to a single individual.

(o) **Computations of replacement housing payment for displaced tenants.** (1) Displaced tenants who rent shall have the right to elect to use either a Schedule Method or a Comparative Method to determine the payment due them.

(2) **Schedule:** The Schedule of Average Rents in the City of New York is as follows:

No. of Bed-	Average Contract Monthly	Average	Average Gross Monthly	Average Gross Annual

rooms	Rental	Utilities		Rentals	Rentals
		Gas	Elec		
0	214	5	17	$236	$2,832
1	240	5	21	266	3,192
2	283	7	25	315	3,780
3	328	8	28	364	4,368
4	372	9	31	412	4,944
5 or more	372	9	31	412	4,944

Replacement housing payment under the schedule method is computed by determining the amount necessary to rent a suitable replacement dwelling unit for 4 years (the average monthly cost from the schedule) or the new actual rent paid, whichever is lower, and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to condemnation if such rent is reasonable, or if not reasonable, 48 times the monthly economic rent for the dwelling unit as established by the Relocation Agency. For purpose of these regulations, economic rent is defined as the amount of rent the displaced tenant would have had to pay for a similar dwelling unit in areas not generally less desirable than the dwelling unit to be acquired.

(3) **Comparative method.** The cost of a comparable unit may be determined on a case-by-case basis by using the average month's rent for one or more dwellings determined to be the most representative of the acquired dwelling conforming to the definition of "comparable replacement housing." The comparable dwellings may be selected by the Relocation Agency, or by the displaced person with the approval of the Relocation Agency. The payment is to be computed by determining the amount necessary to rent for 4 years a suitable replacement dwelling or the new actual rent paid, whichever is lower, and substracting from the amount so determined the lesser of 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of condemnation, or if not reasonable, 48 times the monthly economic rent for the dwelling unit established by the Relocation Agency.

(4) **Exceptions.** (i) The head of the Department of Housing Preservation and Development may establish the average month's rent by using more than 3 months, if he deems it advisable.

(ii) Notwithstanding any of the provisions herein, payments for persons displaced on or after the effective date of this regulation shall not exceed 48 times the difference between the base monthly rental and the lesser of (A) the comparable monthly rental (whether Comparative or Schedule) for a replacement dwelling or (B) the actual monthly rental for the replacement dwelling into which the displaced person is relocated. The $4,000 limitation shall as apply.

(5) **Disbursement of rental replacement housing payment.** All rental replacement housing payments in excess of $500 will be made in 4 equal installments on an annual basis. Before making each installment payment, the Relocation Agency must verify that the tenant is in decent, safe and sanitary housing.

(p) **Replacement housing payment to purchaser.** If the tenant elects to purchase instead of rent, the payment shall be computed by determining the amount necessary to enable him to make a down payment and to cover incidental expenses on the purchase of replacement housing.

(1) The down payment shall be the amount necessary to make a down payment on a suitable replacement dwelling. Determination on the amount "necessary" for such down payment shall be based on down payment that would be required for a conventional loan.

(2) Incidental expenses of closing the transaction are those as described in subdivision (m)(3) of this section.

(3) The full amount of the down payment must be applied to the purchase price and such down payment and incidental costs shown on the closing statement.

(q) **Computation of replacement housing payment for certain others.** (1) A displaced owner-occupant not eligible under subdivision (k) of this section, replacement housing payment for homeowner, because he elects not to purchase a replacement dwelling, but wishes to rent, may receive a rental replacement housing payment not to exceed $4,000. The payment shall be computed in the same manner as indicated in subdivision (o) of this section except that the present rental rate for the original dwelling shall be the economic rent as determined by market data.

(2) A displaced owner-occupant who does not qualify for a replacement housing payment under subdivision (k) herein, because of the 180 day occupancy requirement and elects to rent, is eligible for rental replacement housing not to exceed $4,000. The payment will be computed in the same manner as indicated herein, except that the present rental rate for the original dwelling shall be the economic rent as determined by market data.

(3) A displaced owner-occupant who does not qualify for a replacement housing payment under subdivision (k) herein because of the 180 day occupancy requirement and elects to purchase a replacement dwelling, is eligible for a replacement housing downpayment and closing cost not to exceed $4,000. The payment will be computed in the same manner as shown herein.

(r) **Bonus assistance for tenants.** In the addition to payments otherwise authorized, and subject to the limitations below, the head of the Relocation Agency shall make an additional payment to every displaced person who moves into permanent decent, safe and sanitary accommodations according to the following schedule:

No. of Rooms	Tenant Found Apts.	Public Housing and Finders Fee Apts.
1 to 3	$300	$150
4	400	200
5	500	250
6	600	300
7	700	350
8 or more	800	400

The above bonus or relocation allowance payments are subject to the following limitations and criteria:

(1) Payments are calculated on the basis of the number of rooms required by the tenant based on family composition, and into which the tenant moves.

(2) Two or more families occupying one apartment and being relocated shall each be entitled to the benefits contained herein upon their permanently relocating off-site to separate standard accommodations.

(3) Payments under subdivision (r) herein are not payable and available to displaced persons unless the person moves after title to the property occupied vests in the City of New York.

(4) The actual amount of the bonus or relocation allowance payment provided in this subdivision (r) to be paid to displaced persons shall be reduced by any amounts paid or credited to that displaced person for a Dislocation Allowance (subdivision (j), a Replacement Housing Payment for Homeowners of this section, and/or a Replacement Housing Payment for Tenants and Certain Others (subdivision (n) of this section).

(5) Bonus payment is limited to $100 where the tenant is institutionalized.

(6) For the purpose of this section, Public Housing is defined as all housing is provided in the "Definitions" herein and to all types of equivalent housing including, Rent Supplement and Capital Grant Assistance.

(s) **Finder fee payments.** Finders fee payment are to be paid to owners, agents or brokers who have listed with the

Relocation Agency standard apartment into which relocatee have moved. The schedule is as follows:

[See tabular material in printed version]

Finders fee for furnished room in a rooming house-$50 per room.

(t) **Settlement costs.** (1) **General.** The Department of Housing Preservation and Development as soon as practical after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is earlier, shall reimburse the owner to the extent the head of the Relocation Agency deems fair and reasonable for expenses such owner necessarily incurred, if not paid through some other source for:

(i) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the City of New York; and

(ii) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(iii) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting of title in the City of New York, or the effective date of possession of such real property by the City of New York, whichever is earlier.

(2) **Documentation in support of a claim.** If real property is acquired by condemnation, a claim for payment under paragraph 1 of this subdivision shall be submitted to the Relocation Agency and supported by such documentation as may be required by the head of the Relocation Agency. If the real property is acquired by purchase, payment shall be made at settlement of the acquisition and accounted for in the settlement statement, on the basis of such documentation as may be required by the Relocation Agency.

(3) **Time for filing settlement cost claims.** Each such claim shall be submitted to the relocation agency within a period of 6 months after either the acquisition of the property or the effective date of these rules and regulations, whichever is later.

(u) **Time for filing claims.** All relocation payment claims of eligible tenants must be submitted to the Relocation Agency within a period of six months from the date of the permanent move from the site or six months from the effective date of these regulations, whichever is later, except where provided otherwise herein:

(v) **Relocation assistance and advisory services.** (1) The head of the Relocation Agency shall provide relocation assistance for displaced persons and shall offer services which should include:

(i) Determine the need, if any, of displaced persons for relocation assistance.

(ii) Provide current and continuing information on the availability, prices and rentals of comparable decent, safe and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses.

(iii) Assist a person displaced from his business in obtaining and becoming established in a suitable replacement location.

(iv) Supply information concerning Federal, State and City housing program disaster loan programs and other Federal, State or City programs offering assistance to displaced persons.

(v) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(vi) The Commissioner of the Department of Housing Preservation and Development shall coordinate all relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

(2) If the Commissioner of the Department of Housing Preservation and Development determine that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(3) The head of the Relocation Agency shall make every effort to pay promptly any displaced person who makes application for payments authorized by these regulations after a move, or in hardship cases, advance payments may be authorized.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) Family definition amended City Record June 8, 1998 eff. July 8, 1998. [See T28 §4-02

Note 1]

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28 RCNY 19-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-01 Applicability.

Except as otherwise provided in §19-07 of this rule, the unauthorized occupant policy of the Department of Housing Preservation and Development's Division of Property Management's (DPM) applies only to those occupants who were residing in DPM/HPD apartments as of April 1, 1988 and have continuously resided in the same apartment since, or who have been residing in an apartment with a legal tenant and wish to continue residing in the same apartment upon the death or departure of the legal tenant. All occupants who have illegally entered a DPM/HPD apartment since the implementation of the Vacant Apartment Security procedures on April 1, 1988 are not eligible to be set up as authorized tenants and shall be referred directly to The Legal Affairs Unit (TLAU).

HISTORICAL NOTE

Section amended City Record Feb. 9, 1993 eff. Mar. 7, 1993.

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

28 RCNY 19-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-02 Evaluation Generally.

All unauthorized occupants in residence as of April 1, 1988 who have not already been referred to TLAU for legal advice are to be evaluated on a case by case basis to determine whether they would be acceptable as legal tenants. Occupants will be evaluated based on their household composition, residence history, involvement in unacceptable activities and willingness to pay rent and arrears.

HISTORICAL NOTE

Section in original publication July 1, 1991.

28 RCNY 19-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-03 Interview.

(a) The Real Property Manager (RPM) shall make at least three (3) attempts to interview each occupant.

(b) If no one is available at the time of visit, the RPM shall leave a Notice of Attempted Interview, indicating the date and time of the next visit (if known) and a contact name, phone number and mailing address. If no contact is made after three attempted visits the RPM shall send a Notice of Attempted Interview to the occupant by certified mail notifying them of the attempted visits and indicating that legal proceedings will begin if the occupant does not contact the manager within one week to complete an interview. The Notice shall include a contact name, phone number and address. The manager shall also double check with the building superintendent and/or neighboring tenants to make sure the occupant is not mentally or physically incapable of understanding or dealing with the attempted visits and written notice.

(c) If the RPM is able to contact the occupant, an Evaluation Questionnaire shall be filled out appropriately. Documentation provided by the occupant for all claims concerning household members, length of residence and relationship to or residence with the tenant of record shall be noted by the RPM. Documentation may include copies of a birth certificate or marriage license, stamped envelopes received at the address, utility bills in the occupant's name at the address, an old lease from the former owner with the present occupant's name or the name of an immediate family member, a letter from the tenant of record, public records, etc.

(d) Allegations of unacceptable activity must be confirmed by at least three independent sources (e.g. two residents and the superintendent) and documented by the RPM in the Unacceptable Activity Affidavit. Examples of unacceptable activity include, but are not limited to, drug trafficking, prostitution, organized gambling, attacking or threatening other

residents of the building, damaging or defacing any portion of the building, generating excessive traffic of people and/or materials in and out of the building, and generating loud noise which is disturbing to other residents. Allegations of unacceptable activity which is illegal will be referred to the Narcotics Control Unit to be checked against their database and, if possible, against Police Department Records.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

28 RCNY 19-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-04 Evaluation of Occupants--Procedures.

(a) If the occupants refused to cooperate with the RPM or were repeatedly unavailable despite a good faith attempt by the RPM to contact them, the occupants will be referred to TLAU for legal action by the Area Director.

(b) If the occupants cooperated with the RPM and a questionnaire was completed, the occupants will be evaluated based on household circumstances, involvement in unacceptable activities and willingness to pay rent and arrears.

(c) Priority households and households with a claim of right to their apartment will be presumed acceptable candidates for legal tenancy and will be screened for involvement in unacceptable activities and willingness to pay rent and arrears. Priority households are those which include senior citizens (age sixty-two or older), mentally or physically handicapped individuals, pregnant women and children under the age of eighteen. Households which have a claim of right to their apartment include those which a member lived in the apartment with the legal tenant and has continuously resided there since the legal tenant's departure; and those which lived in the apartment at the time of vesting and have continuously resided therein since the date of vesting.

(d) Households not identified as "priority" or "claim of right" may also be considered for legal tenancy, but only if special circumstances (i.e., fairness, equity, and the best interests of the building and its residents dictate that the unauthorized occupant be set up as a legal tenant) are involved. Households determined by the Assistant Commissioner to involve special circumstances will be presumed acceptable candidates for legal tenancy and further screened for involvement in illegal activities and willingness to pay rent.

(e) All other households will be referred to TLAU for legal action.

(f) Priority, claim of right and special circumstances households which are not involved in unacceptable activities and are willing to pay rent and arrears will be referred to the Bureau of Vacant Apartment Repair and Rental (BVARR) to be set up as legal tenants. Any such households which are involved in unacceptable activities (as attested to in an Unacceptable Activities Affidavit) and/or are not willing to pay rent and arrears, will be referred to TLAU for legal action.

(g) HRA-occupants must agree to pay rent equal to the HRA approved maximum shelter allowance for their household size.

(h) Non-HRA occupants must be willing to pay rent as follows:

Studio	(2.5 rooms):	$250;	2 Bedroom	(4.5 rooms):	$312;
1 Bedroom	(3.5 rooms):	$286;	3 Bedroom	(5.5 rooms):	$349;

and so forth. If the specified rent is more than 30 percent of the occupant's income, the occupant must be willing to pay a rent equal to 30 percent of their income.

(i) Payment of arrears equal to the lesser of 12 months or the period of occupancy must be made within two years. Acceptable terms of payment include an emergency housing grant from HRA, payment in full at the time of leasing, or a minimum

of three months or one-third of the total arrears paid at the time of leasing with the remainder to be paid within two years according to an agreed upon schedule. The specific terms of payment will be negotiated by BVARR staff.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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28 RCNY 19-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-05 Referral to the Bureau of Vacant Apartment Repair and Rental.

(a) Occupants referred to BVARR as acceptable for legal tenancy will negotiate and sign a lease agreement with BVARR staff stipulating monthly rent, the total amount of arrears to be paid, and the dates and amounts for payment of such arrears.

(b) In most cases occupants will be set up in their existing apartment. Some occupants may be set up in a smaller apartment if they underoccupy their existing apartment. Underoccupancy is defined as less than one household member per apartment bedroom. Households which are determined to underoccupy their existing apartment should be relocated to the nearest available apartment of appropriate size, preferably in the same building or neighborhood. Claim of right households will always have the right to be set up in their existing apartment. The possibility of relocation due to underoccupancy will be addressed during negotiations prior to lease signing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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28 RCNY 19-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-06 Termination of UOP Policy.

(a) The unauthorized occupant policy of the Department of Housing Preservation and Development's Division of Property Management's (DPM) as specified in §§19-01 through 19-05 above, shall, on February 29, 1992, cease and be of no further force and effect other than as specified in this section.

(b) (1) HPD shall, no later than March 13, 1992, notify unauthorized occupants of its buildings with authorized tenants of record ("occupied buildings"), that those who were in occupancy as of April 1, 1988, who have not already been evaluated under this chapter, may apply to become legal tenants pursuant to this policy. Such notice shall state that applications are available at the Area Office. All such applications shall be filed with HPD no later than May 31, 1992. No application filed after that date shall be considered or evaluated.

(2) Notice under this subsection (b) shall be made by publishing such notice once in the City Record, posting such notice in each Area Office of DPM and by posting one copy in the lobby of each of its occupied building. Such notifications shall be completed by March 13,]992.

(3) Each application shall be evaluated pursuant to the procedures and standards set forth in §§19-02, 19-03(d), 19-04 and 19-05.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

28 RCNY 19-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 19 UNAUTHORIZED OCCUPANT POLICY FOR THE DIVISION OF PROPERTY MANAGEMENT

§19-07 Post Termination Provision.

(a) **Post termination eligibility.** (1) Any person who submitted an application for legal tenancy pursuant to the procedures set forth in §19-06(b)(1) by May 31st, 1992, or is the occupant of an apartment identified on HPD's tenant accounting system as being occupied by unauthorized occupants as of May 31st, 1992 is eligible for a tenancy pursuant to this section. No other unauthorized occupants are eligibile for tenancy pursuant to this section.

(2) Tenancy will be offered to unauthorized occupants, as specified in subdivision (a)(1) above, who, in the judgment of HPD, will make good tenants. Tenancy will not be offered to those occupants who have engaged in unacceptable activity, or who fail to pay any accured arrears which they have been advised by HPD are due for the apartment, or who fail to sign a lease. Occupants will be responsible for arrears payments for the lesser of 12 months or the period of occupancy. Conduct that constitutes unacceptable activity shall be solely within HPD's discretion to determine.

(3) Tenancy will be offered only for residential apartments in "occupied" buildings owned by the City of New York and managed by HPD's Division of Property Management (DPM), except those deemed by HPD to be substandard, or too costly or impractical to repair. The definition of "occupied" building does not include buildings that have no legal residential tenants as recognized by DPM, and does not include buildings categorized by DPM as "vacant" buildings. Buildings not managed by DPM are excluded from this rule.

(b) **Remaining unauthorized occupants.** Unauthorized occupants not covered by this section and who do not qualify under Chapter 24 of this title (Successor Tenants), will be removed from City-owned buildings, except in extraordinary circumstances as determined solely in the discretion of HPD.

HISTORICAL NOTE

Section added City Record Feb. 9, 1993 eff. Mar. 11, 1993.

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28 RCNY 20-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 20 RULES CONCERNING ARTICLE 7-A OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW*1

§20-01 Criteria for Appointment.

(a) Any person proposed for appointment as an administrator pursuant to Article 7-A of the Real Property Actions and Proceedings Law shall, prior to appointment:

(1) be a graduate of the 7-A Training Program administered by the Department of Housing Preservation and Development and submit to a review by the Inspector General of the Department in relation to matters which are within the jurisdiction of such Inspector General, or

(2) if such person is not a graduate of such Program, possess experience which, in the discretion of the Department, warrants appointment as an administrator and such person submits to a review by the Inspector General of the Department in relation to matters which are within the jurisdiction of such Inspector General, or

(3) if such person is not a graduate of such Program and if such person does not possess experience which warrants appointment as an administrator, consents in good faith as a condition for such appointment to enroll in and graduate from such Program and such person submits to a review by the Inspector General of the Department in relation to matters which are within the jurisdiction of such Inspector General.

(b) For the purposes of subdivision (a) of this section, the evaluation of the "experience" of such person may include, but is not limited to, consideration of the ownership or management history of residential property by such person, whether such person served previously as a 7-A administrator or as a manager of City-owned property and, if such person was previously a 7-A administrator, the date or dates of prior appointments, compliance with prior Court

orders of appointment, compliance with reporting requirements of the Department's 7-A Counseling and Assistant Unit, and such other indicators of experience which may be contained in the records of the Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record June 25, 2001 eff. July 25, 2001. Note further provisions: These amended rules implement newly enacted State legislation (Chapter 375 of the Laws of 1999) authorizing evaporation of certain liens pursuant to a regulatory agreement with the new owner of a building for which an administrator has been appointed pursuant to Article 7-A of the Real property Actions and Proceedings Law.

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28 RCNY 20-02

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Title 28 Housing Preservation and Development

CHAPTER 20 RULES CONCERNING ARTICLE 7-A OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW*1

§20-02 Applicability.

These rules apply to any building for which (i) an administrator is appointed pursuant to Article 7-A of the Real Property Actions and Proceedings Law ("RPAPL") on or after August 19, 2003, or (ii) an administrator was appointed pursuant to Article 7-A of the RPAPL prior to August 19, 2003 and has not been discharged as of August 19, 2003.

HISTORICAL NOTE

Section amended City Record May 27, 2004 eff. June 26, 2004. [See Note 1]

Section added City Record June 25, 2001 §2, eff. July 25, 2001. [See Chapter 20 footnote]

NOTE

1. Statement of Basis and Purpose in City Record May 27, 2004 These amended rules implement newly enacted State legislation (Chapter 387 of the Laws of 2003). The law permits that certain outstanding liens may be reduced to zero pursuant to a regulatory agreement with the new owner of a building for which an administrator had been appointed pursuant to Article 7-A of the Real Property Actions and Proceedings Law. The regulatory agreement requires that the owner provide adequate, safe and sanitary housing accommodations for persons of low income for a period of not less than thirty years.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record June 25, 2001 eff. July 25, 2001. Note further provisions: These amended rules implement newly enacted State legislation (Chapter 375 of the Laws of 1999) authorizing evaporation of certain liens pursuant to a regulatory agreement with the new owner of a building for which an administrator has been appointed pursuant to Article 7-A of the Real property Actions and Proceedings Law.

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28 RCNY 20-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 20 RULES CONCERNING ARTICLE 7-A OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW*1

§20-03 Regulatory Agreement.

(a) When a building covered by these rules is transferred to a new owner at any time following appointment of such administrator, §778(10) of the RPAPL authorizes the Department of Housing Preservation and Development ("Department") to enter into a regulatory agreement ("Regulatory Agreement") with the new owner.

(b) A Regulatory Agreement shall require the new owner to provide adequate, safe and sanitary housing accommodations for persons of low income, as such term is defined in Subdivision 19 of §2 of the Private Housing Finance Law, for a period of not less than thirty years and may require such additional provisions as the Department deems appropriate, including, but not limited to, income and occupancy restrictions and a plan for the continuing repair and maintenance of the property.

(c) A Regulatory Agreement shall include a certification by the new owner of the real property containing such building that (i) the prior owner has no direct or indirect interest in such real property, and (ii) the prior owner has no direct or indirect interest in such new owner.

(d) A Regulatory Agreement may provide that, upon transfer of such building to the new owner, any outstanding liens filed with and recorded by the City pursuant to §778(1) of the RPAPL and §309 of the Multiple Dwelling Law shall immediately be reduced to zero upon execution of such Regulatory Agreement.

HISTORICAL NOTE

Section amended City Record May 27, 2004 eff. June 26, 2004. [See T28 §20-02 Note 1]

Section added City Record June 25, 2001 §3, eff. July 25, 2001. [See Chapter 20 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record June 25, 2001 eff. July 25, 2001. Note further provisions: These amended rules implement newly enacted State legislation (Chapter 375 of the Laws of 1999) authorizing evaporation of certain liens pursuant to a regulatory agreement with the new owner of a building for which an administrator has been appointed pursuant to Article 7-A of the Real property Actions and Proceedings Law.

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28 RCNY 20-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 20 RULES CONCERNING ARTICLE 7-A OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW*1

§20-04 Miscellaneous Provisions.

(a) All determinations to be made by the Department in accordance with these rules shall be in the sole discretion of the Department.

(b) Nothing in these rules shall be deemed to limit the Department's authority pursuant to any applicable law.

(c) Provided that there has been a good faith effort to comply with these rules, technical violations of these rules shall not invalidate any action taken pursuant to these rules, nor shall such technical violations give rise to any rights, claims or causes of action. The Commissioner, upon good cause shown, may alter the timing or sequence of the actions described in these rules, provided all affected parties are given reasonable notice.

HISTORICAL NOTE

Section added City Record June 25, 2001 §4, eff. July 25, 2001. [See Chapter 20 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record June 25, 2001 eff. July 25, 2001. Note further

provisions: These amended rules implement newly enacted State legislation (Chapter 375 of the Laws of 1999) authorizing evaporation of certain liens pursuant to a regulatory agreement with the new owner of a building for which an administrator has been appointed pursuant to Article 7-A of the Real property Actions and Proceedings Law.

28 RCNY 21-21

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 21*1 DIVISION OF ALTERNATIVE MANAGEMENT PROGRAMS

SUBCHAPTER B RIGHTS OF TENANTS AND TERMINATION OF TENANCIES

§21-21 Definitions.

City. "City" shall mean the City of New York.

City-approved lease. "City-approved lease" shall mean a form of lease, approved by an authorized official of HPD, and containing such other approvals of City officials as are, from time-to-time, required.

City-owned building. "City-owned building" shall mean any building owned by the City and assigned to HPD for management.

DAMP. "DAMP" shall mean the Division of Alternative Management Programs.

DAMP Lessee. "DAMP Lessee" shall mean a person or entity with whom HPD has entered a lease for the management of buildings under any DAMP program.

DSS. "DSS" shall mean the Department of Social Services of the Human Resources Administration of the City.

Guest. "Guest" shall mean any person entering the building with the consent of the Tenant.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City.

Lease term. "Lease term" shall mean one month.

Occupant. "Occupant" shall mean any person other than a Tenant occupying an apartment.

Occupied building. "Occupied building" shall mean a City-owned building, occupied by Tenants.

Rules. "Rules" shall mean these rules.

Tenant. "Tenant" shall mean an authorized residential tenant of record occupying a dwelling unit in a City-owned building pursuant to a lease with the City or with a DAMP Lessee. Other residential occupants such as squatters and licensees are not Tenants. Nonresidential tenants or occupants, such as those who occupy space for retail, commercial, manufacturing, or community facility purposes, are not Tenants.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 21 footnote]

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Tenant Interim Lease regulations do not provide for succession rights. 518 West 134th St. Tenants Assoc. v. Calderon, N.Y.L.J., July 20, 1999, page 26, col. 1 (App.Term 1st Dept.).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended chapter repeals provisions for HPD programs that no longer exist and makes other technical changes to existing rules.

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28 RCNY 21-22

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 21*1 DIVISION OF ALTERNATIVE MANAGEMENT PROGRAMS

SUBCHAPTER B RIGHTS OF TENANTS AND TERMINATION OF TENANCIES

§21-22 General.

(a) **Scope.** HPD is responsible for managing, rehabilitating, and disposing of buildings owned by the City. HPD's goals include improving living conditions for Tenants in City-owned buildings and returning the City's housing stock to private tax-paying ownership, while maintaining it as affordable housing.

(b) **Coverage.** These Rules govern the termination of tenancies, and the rights and responsibilities of Tenants in City-owned buildings that are under the jurisdiction of DAMP.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 21 footnote]

Section in original publication July 1, 1991.

Subd. (a) amended City Record May 14, 1999 §3, eff. June 13, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 14, 1999:

This amendment clarifies that the Rules apply to all City-owned buildings under the jurisdiction of the Department of Housing Preservation and Development which are selected for the DAMP program.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended chapter repeals provisions for HPD programs that no longer exist and makes other technical changes to existing rules.

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28 RCNY 21-23

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 21*1 DIVISION OF ALTERNATIVE MANAGEMENT PROGRAMS

SUBCHAPTER B RIGHTS OF TENANTS AND TERMINATION OF TENANCIES

§21-23 Rights of Tenants.

(a) **Tenancy.** All Tenants of a building in DAMP shall be month-to-month Tenants.

(b) **Continuation of Tenancy.** As long as a Tenant continues to pay the rent, in accordance with §21-24(b), his/her month-to-month tenancy shall be renewed, unless the DAMP Lessee asserts grounds for termination or non-renewal under these Rules.

(c) **Eviction Proceedings (Failure to Pay Rent).** A DAMP Lessee may commence eviction proceedings when a Tenant has failed to pay the rent due in accordance with §21-24(b). If the DAMP Lessee has any reason to know that the Tenant's rent has ever been paid by DSS, then the DAMP Lessee must ascertain the Tenant's public assistance status from HPD prior to instituting non-payment proceedings.

(d) **Eviction Proceedings (Termination of Tenancy).** Without the approval of HPD, the DAMP Lessee may refuse to renew a Tenant's lease or may commence an action or proceeding to recover possession of any housing accommodation upon one or more of the following grounds:

(1) The Tenant, other Occupant or Guest is violating a substantial obligation of the Tenant's tenancy.

(2) The Tenant, Occupant or Guest is committing or permitting a nuisance in such housing accommodation or the

building containing such housing accommodation.

(3) Occupancy of the housing accommodation by the Tenant is illegal because of the requirements of law, or such occupancy is in violation of contracts with governmental agencies.

(4) The Tenant, Occupant or Guest is using or permitting such housing accommodation to be used for an illegal purpose.

(5) The Tenant has unreasonably refused the DAMP Lessee or HPD access to the housing accommodation for the purpose of making necessary inspections, repairs or improvements required by law or authorized or required by HPD.

(6) The Tenant has refused, after at least twenty days written notice, to move to a substantially similar housing accommodation at the same rent provided:

(i) that the DAMP Lessee has a plan approved by DAMP to reconstruct, renovate or improve the housing accommodation currently occupied by the Tenant or the building in which it is located; and

(ii) that the move is reasonably necessary to permit such reconstruction, renovation or improvement; and

(iii) that the DAMP Lessee offers the Tenant in writing the right of reoccupancy of a reconstructed, renovated, or improved housing accommodation at the same rent or at a rent set pursuant to applicable rules for the respective DAMP Program or other rent restructuring authority.

(7) The housing accommodation is not occupied by the Tenant, not including subtenants or occupants, as his or her primary residence, unless the subtenant or assignee has been approved pursuant to §21-24(i) of these Rules.

(8) The building is to be placed in a program of rehabilitation or reconstruction which requires the vacating of the entire building.

(9) The building is to be sealed or demolished.

(10) The Tenant has refused to reoccupy a housing accommodation that has been renovated, reconstructed or improved, and continues to occupy a housing accommodation which was offered for the purposes of relocation pursuant to paragraph (6) above.

(11) For any other reason permitted by law.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 21 footnote]

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where the property is under the Neighborhood Redevelopment Plan, a landlord can remove a tenant in order to perform the necessary work, provided that the tenant is offered suitable relocation. The landlord serves the tenant with a 20 day notice prior to the date at which the tenant is to vacate the premises, and can bring a holdover proceeding against a tenant who refuses to move. A court held that it was insufficient for the landlord to merely contact a tenant about a "possible" relocation; the owner must propose a specific alternative apartment for the tenant. Quisqueya Housing Corp. v. Various Tenants, N.Y.L.J., Aug. 30, 1999, page 28, col. 6 (Civ.Ct. New York Co.).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended chapter repeals provisions for HPD programs that no longer exist and makes other technical changes to existing rules.

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28 RCNY 21-24

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 21*1 DIVISION OF ALTERNATIVE MANAGEMENT PROGRAMS

SUBCHAPTER B RIGHTS OF TENANTS AND TERMINATION OF TENANCIES

§21-24 Conditions of Residential Tenancy.

(a) **Conditions of Residential Tenancy.** All Tenants of a building in DAMP shall be subject to the terms of the Conditions of Tenancy contained in these Rules and contained in any City-approved leases they have been issued. Where a City-approved lease has been issued, the terms of such lease shall govern, to the extent that they differ from these Rules. Where no City-approved lease has been issued, the terms of this section shall govern.

(b) **Rent and Term.** (1) The DAMP Lessee shall lease an apartment to a Tenant for the lease term. The Tenant shall pay the rent for each month in advance on the first day of that month during the term of such rental at the DAMP Lessee's office or at such other place or address as the DAMP Lessee shall designate.

(2) HPD shall have the right to implement rent restructuring plans pursuant to the applicable rules for the respective DAMP Program. If the Tenant refuses to pay the increased rent, the DAMP Lessee shall have the right to terminate the tenancy.

(c) **Occupancy.** The apartment leased to the Tenant shall be occupied for residential purposes only, subject only to applicable laws, the lease and these Rules. The Tenant, the members of the Tenant's immediate family, and any other person permitted by law, may reside in the Tenant's apartment.

(d) **Maintenance and Repair by Tenant.** The Tenant shall take good care of his/her apartment and fixtures in the

apartment and keep it clean, safe and orderly. The Tenant shall be responsible, at the Tenant's expense, for all repairs and replacement whenever the need results from any act or neglect of the Tenant or Guest.

(e) **Improvements.** The Tenant and the Guest shall make neither improvements nor alterations without the DAMP Lessee's prior written consent. Any and all such improvements or alterations shall, upon installation, become the property of the DAMP Lessee at the option of the DAMP Lessee, if approved by HPD. Improvements or alterations of any kind or nature built or placed within the apartment by the Tenant or Guest during the Lease Term shall be removed by the Tenant before the termination of the lease term at the option of the DAMP Lessee. If the Tenant fails to remove such improvements or alterations from his or her apartment at the direction of the DAMP Lessee or fails to repair any damages or defacement to the apartment caused by such removal or construction by the end of the lease term, the Tenant shall be and remain liable to the DAMP Lessee for all costs incurred by the DAMP Lessee in removing same from the apartment and all costs incurred by the DAMP Lessee to repair any damage or defacement to the apartment as a result thereof after the Tenant's lease term has expired.

(f) **Services.** The DAMP Lessee shall supply heat as required by law, and hot and cold water. The Tenant shall pay for all electricity, gas, telephone and other utility services used in his or her apartment and arrange for services with the public utility and telephone company (except for utility services that are master-metered in buildings that are master-metered). The Tenant shall obtain and pay for any meters, permits or approvals needed to comply with this provision (other than master meters), as may be required by law.

(g) **Liability.** The DAMP Lessee shall not be responsible to the Tenant or the Guest for any loss of property or injury to the Tenant or any other person resulting from theft or any crime in the apartment or elsewhere in the building or for loss or damage to persons or property sustained by smoke, fire or water coming on or being within said apartment or building. The DAMP Lessee shall only be liable for loss, expense or damage to any person or property due to the DAMP Lessee's negligence. The Tenant shall reimburse the DAMP Lessee for any expenses incurred or loss suffered by the DAMP Lessee, as a result of the action or inaction of the Tenant or Guest.

(h) **Entry to Apartment.** (1) The DAMP Lessee and its agents may (but shall not be obligated to) enter the Tenant's apartment at any time in case of an emergency, and at any reasonable hour to: repair, inspect, exterminate, improve or perform other work, including rehabilitation to the apartment or building determined to be necessary by the DAMP Lessee. The DAMP Lessee may take into the Tenant's apartment all materials and equipment required for such purposes.

(2) The Tenant shall furnish unhindered access to the DAMP Lessee and its agents to all areas of the Tenant's apartment and building for the purpose of making tests or repairs. If there should be any loss of usable space, the Tenant may request, in writing, a proportionate rent reduction for such loss, provided, however, that such reduction shall only be for the period until the area involved has been restored to the Tenant.

(i) **Assignment and Sublease.** The Tenant may not assign the Tenant's tenancy rights, or the Tenant's lease, or sublet the Tenant's apartment or grant any license as to the whole or any part, without first obtaining the written permission of the DAMP Lessee. If the Tenant shall assign such tenancy rights or such lease or sublet the Tenant's apartment or any part thereof, without the written consent of the DAMP Lessee, the Tenant's tenancy may be terminated. Any permitted assignment of tenancy rights or of the Tenant's lease or sublet of the apartment shall not relieve or release Tenant from any obligations under these Conditions of Tenancy. Any subtenant or assignee shall be bound by and be subject to all the terms of these Conditions of Tenancy. In the event that the Tenant's tenancy rights or lease is terminated for any reason, it shall be the duty of the Tenant to remove any subtenants. The DAMP Lessee may collect rent from the assignee, subtenant or occupant if the Tenant fails to pay the rent. The DAMP Lessee shall credit the amount collected against the rent owed by the Tenant. However, the DAMP Lessee's acceptance of such rent does not change the status of the assignee, subtenant or occupant to that of a direct Tenant of the DAMP Lessee.

(j) **Notices.** Any bill, statement or notice must be in writing. If to the Tenant, it must be delivered or mailed to the

Tenant at the Tenant's apartment or such other address as the Tenant designates. If to the DAMP Lessee, it must be mailed to the DAMP Lessee's address.

(k) **End of Term.** At the end of the tenancy, the Tenant shall remove all of the Tenant's and the Guest's personal property and leave the Tenant's apartment broom clean and in good condition, subject to ordinary wear and tear. All property and additions which remain after the Tenant leaves the apartment may either be retained by the DAMP Lessee as the DAMP Lessee's property, or be removed by the DAMP Lessee at the Tenant's expense.

(l) **Liens and Encumbrances.** The Tenant shall not mortgage or place or cause to be placed, any liens or encumbrances upon or affecting the fee title or any interest in the apartment or building.

(m) **Termination.** Tenant's lease shall terminate immediately in the event that a vacate order is issued by any governmental agency certifying that the building or any part thereof is in a condition which endangers the life, health or safety of the Tenant or other occupants. In the event that the vacate order is rescinded as a result of repairs made to the building or part thereof, while the building is under the jurisdiction of DAMP, the Tenant's tenancy shall be reinstated.

(n) **Attorneys' Fees.** Neither the DAMP Lessee nor the Tenant, in any action or summary proceeding, may recover, against the other, attorneys' fees or other costs for legal action.

(o) **Application of Arrears.** If the Tenant pays to the DAMP Lessee less than the full monthly rent, any subsequent payments shall first be applied to arrears. The DAMP Lessee's acceptance of partial or full payment of rent or failure to insist in any one or more cases upon the strict performance of any of the Tenant's obligations shall not be construed as a waiver or relinquishment for the future of such obligation, right or remedy.

(p) **Rules.** The Tenant shall observe and comply with such rules as the DAMP Lessee, with HPD's prior approval, may determine are needed for the safety, care and cleanliness of the Tenant's apartment and building and the comfort, quiet and convenience of other occupants of the building.

HISTORICAL NOTE

Section amended City Record Nov. 7, 2001 eff. Dec. 7, 2001.

Section in original publication July 1, 1991. [See Chapter 21 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note further provisions: The amended chapter repeals provisions for HPD programs that no longer exist and makes other technical changes to existing rules.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 22-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 22*1 DISPOSITION OF RESIDENTIAL PROPERTY DEVELOPED OR REHABILITATED BY A CITY LOAN

§22-01 Definitions.

Building. "Building" shall mean any residential building (including the land in the tax lot) which is owned by the City, managed by HPD and which, prior to entering City ownership, was either developed or rehabilitated through a City loan program.

City. "City" shall mean the City of New York.

Commissioner. "Commissioner" shall mean the Commissioner of HPD or his or her designee.

Disposition. "Disposition" shall mean the sale of a Building to a Permanent Owner.

Disposition Rent. "Disposition Rent" shall mean the rent established by HPD for a Building prior to its return to private ownership.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.

Laws. "Laws" shall mean any and all applicable laws, ordinances, orders, rules and/or regulations.

Permanent Owner. "Permanent Owner" shall mean the person or entity which shall own a Building after Disposition.

Rules. "Rules" shall mean this subchapter.

Tenants. "Tenants" shall mean authorized residential tenants of record. Occupants such as squatters and licensees are not Tenants.

HISTORICAL NOTE

Section added City Record Jan. 28, 2000 eff. Feb. 27, 2000. [See Chapter 22 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 28, 2000 eff. Feb. 27, 2000. Note further provisions: These rules deal with procedures for the disposition of residential properties owned by the City which were developed or rehabilitated with loans from the City.

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28 RCNY 22-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 22*1 DISPOSITION OF RESIDENTIAL PROPERTY DEVELOPED OR REHABILITATED BY A CITY LOAN

§22-02 General.

(a) **Coverage.** These Rules govern the procedures for restructuring rents in Buildings, providing notices to Tenants and the Disposition of Buildings to Permanent Owners.

(b) **Program description.** HPD will select qualified Permanent Owners to acquire Buildings owned by the City.

HISTORICAL NOTE

Section added City Record Jan. 28, 2000 eff. Feb. 27, 2000. [See Chapter 22 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 28, 2000 eff. Feb. 27, 2000. Note further provisions: These rules deal with procedures for the disposition of residential properties owned by the City which were developed or rehabilitated with loans from the City.

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***** Current through December 2009 ****

28 RCNY 22-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 22*1 DISPOSITION OF RESIDENTIAL PROPERTY DEVELOPED OR REHABILITATED BY A CITY LOAN

§22-03 Selection of Permanent Owners.

HPD may select a Permanent Owner for a Building by any appropriate method, including, but not a limited to sealed bid sale or auction, a request for qualifications process, a request for proposals process, a request for offers or, in the discretion of HPD, by a direct designation of an entity judged by HPD to be a suitable Permanent Owner. HPD, in selecting a Permanent Owner, may consider any relevant factors, including, but not limited to, the prospective Permanent Owner's prior record in other City housing programs as a property owner or manager or the Permanent Owner's status as an organization formed by the Tenants in the Building.

HISTORICAL NOTE

Section added City Record Jan. 28, 2000 eff. Feb. 27, 2000. [See Chapter 22 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 28, 2000 eff. Feb. 27, 2000. Note further provisions: These rules deal with procedures for the disposition of residential properties owned by the City which were developed or rehabilitated with loans from the City.

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28 RCNY 22-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 22*1 DISPOSITION OF RESIDENTIAL PROPERTY DEVELOPED OR REHABILITATED BY A CITY LOAN

§22-04 Rent Setting.

(a) **Establishment of disposition rent.** HPD may establish a Disposition Rent for each dwelling unit in a Building based upon the estimated cost of (i) operating the Building in private ownership, and (ii) the repayment of City investment in the Building, including, but not limited to, any City investments during City ownership and any City loan prior to City ownership. The Disposition Rent per dwelling unit shall reflect the expenses for the Building for the first year following disposition. Such expenses may include, but shall not be limited to: allowances for vacancies, debt service coverage, debt service, fuel, common space utilities, repair and maintenance, cleaning supplies, insurance, custodial services, management fees, professional services, operating reserve, capital replacement reserve, real estate taxes, return on equity, anticipated capital repairs and water and sewer charges. The expenses shall be projected by HPD based on its experience and knowledge of the operation of similar buildings.

(b) **Notice of opportunity to comment.** Prior to establishment of the Disposition Rent, HPD shall notify the Tenants of the proposed amount of the Disposition Rent and afford them a thirty (30) day opportunity to submit written comments to HPD.

(c) **Notice of disposition rent.** Once a Disposition Rent has been established, HPD shall send a written notice of the amount of the Disposition Rent to all Tenants at least thirty (30) days before the effective date of the new Disposition Rent. The notice of Disposition Rent may be combined with any notice of Disposition.

HISTORICAL NOTE

Section added City Record Jan. 28, 2000 eff. Feb. 27, 2000. [See Chapter 22 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 28, 2000 eff. Feb. 27, 2000. Note further provisions: These rules deal with procedures for the disposition of residential properties owned by the City which were developed or rehabilitated with loans from the City.

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28 RCNY 22-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 22*1 DISPOSITION OF RESIDENTIAL PROPERTY DEVELOPED OR REHABILITATED BY A CITY LOAN

§22-05 Disposition to Permanent Owner.

(a) **Notice of disposition.** HPD shall send a notice of Disposition to Tenants of a Building advising them of the contemplated sale to the Permanent Owner at least thirty (30) days prior to Disposition. The notice shall provide the Tenants with the name, address, telephone number and contact person for the Permanent Owner.

(b) **Post-sale registration.** Immediately following Disposition, the Permanent Owner shall register all units in a Building with the New York State Division of Housing and Community Renewal if required by applicable law.

HISTORICAL NOTE

Section added City Record Jan. 28, 2000 eff. Feb. 27, 2000. [See Chapter 22 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 28, 2000 eff. Feb. 27, 2000. Note further provisions: These rules deal with procedures for the disposition of residential properties owned by the City which were developed or rehabilitated with loans from the City.

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28 RCNY 22-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 22*1 DISPOSITION OF RESIDENTIAL PROPERTY DEVELOPED OR REHABILITATED BY A CITY LOAN

§22-06 Miscellaneous Provisions.

(a) **HPD discretion.** All determinations to be made by HPD in accordance with these Rules shall be in the sole discretion of HPD.

(b) **Statutory authority not limited.** Nothing in these Rules shall be deemed to limit HPD's authority pursuant to any applicable Laws.

(c) **Method of notification.** Notification shall be in English and Spanish and shall be either posted in a common area of the Building and affixed to or placed under each apartment door of the Building, or mailed to every apartment in the Building, as determined by HPD.

(d) **Technical violation and other variances.** Provided that there has been a good faith effort to comply with these Rules, technical violations of these Rules shall not invalidate any action taken pursuant to these Rules, nor shall such technical violations give rise to any rights, claims or courses of action. The Commissioner, upon good cause shown, may alter the timing or sequence of the actions described in these Rules, provided all affected parties are given reasonable notice.

HISTORICAL NOTE

Section added City Record Jan. 28, 2000 eff. Feb. 27, 2000. [See Chapter 22 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 28, 2000 eff. Feb. 27, 2000. Note further provisions: These rules deal with procedures for the disposition of residential properties owned by the City which were developed or rehabilitated with loans from the City.

Rules of the City of New York

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28 RCNY 24-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-01 Definitions.

City owned building. "City owned building" shall mean any building owned by the City of New York and assigned to HPD for management.

DHHD. "DHHD" shall mean the Division of Homeless Housing Development.

DPM. "DPM" shall mean the Division of Property Management.

Disabled Person. "Disabled person" shall mean a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techinques, and which are expected to be permanent and which substantially limit one or more of such person's life activities.

Family Member. "Family member" shall mean:

(1) A husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, nephew, niece, uncle, aunt, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of a tenant;

(2) Any other person residing with the tenant in the apartment as a primary residence, who can prove emotional and financial commitment, and interdependence between such person and the tenant. Although no single factor shall be

determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed may include, without limitation, such factors as listed below. In no event is evidence of a sexual relationship between such persons to be required or considered.

(A) longevity of the relationship;

(B) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;

(C) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;

(D) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, ect.;

(E) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, granting each other a power of attorney and/or conferring upon each other authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, ect.;

(F) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;

(G) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;

(H) engaging in other patterns of behavior or other action which evidences the intention of creating a long-term, emotionally-committed relationship.

Occupant. "Occupant" shall mean a person occupying an apartment, other than a tenant.

Occupied building. "Occupied building" shall mean a City owned building, occupied by tenants.

Senior Citizen. "Senior Citizen" shall mean a person who is sixty-two years of age or older.

Tenant. "Tenant" shall mean an HPD authorized residential tenant of record. Occupants such as squatters and licensees are not tenants of record.

Unacceptable activity. "Unacceptable activity" shall include, but not be limited to, drug trafficking, prostitution, unlawful possession of a firearm, organized gambling, attacking or threatening other residents of a building or employees, contractors or agents of HPD, damaging or defacing any portion of a building, generating excessive traffic of people or materials in and out of a building, generating loud noise which is disturbing to other residents or engaging in any activity which constitutes a nuisance, or creates a hazard to other tenants of the building.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

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28 RCNY 24-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-02 Statement of Purpose.

These regulations are intended to set forth the standards that will be used by HPD to determine who will be eligible to apply to succeed to the tenancy of a tenant when an apartment is permanently vacated by that tenant.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

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28 RCNY 24-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-03 Coverage.

These rules apply to residential apartments in city owned buildings under the jurisdiction of DPM and DHHD.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

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28 RCNY 24-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-04 Eligible Persons.

Unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, if a tenant has permanently vacated an apartment, any family member, who has resided with the tenant in the apartment as a primary residence for a period of no less than two (2) years, or where such family member is a "senior citizen", or a "disabled person", for a period of no less than one (1) year, immediately prior to the permanent vacating of the apartment by the tenant, or from the inception of the tenancy or commencement of the relationship, if for less than such periods, may apply to HPD to become the legal tenant of such apartment.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

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28 RCNY 24-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-05 Ineligible Persons.

Persons otherwise eligible to apply for tenancy under §24-04 above shall not be offered tenancy if:

(a) they have engaged in an unacceptable activity, or;

(b) they fail to pay any accrued rent which they have been advised by HPD is due for the apartment or;

(c) the permanent tenant was evicted for failure to pay rent or any other cause, or a proceeding, other than a non-payment proceeding, has been commenced against the permanent tenant and not yet completed.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

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28 RCNY 24-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-06 Calculation of Minimum Period of Residency.

The minimum periods of required residency set forth in this subdivision shall not be deemed to be interrupted by any period during which the "family member" temporarily relocates because he or she:

(a) is engaged in active military duty;

(b) is enrolled as a full time student;

(c) is not in residence at the apartment pursuant to a court order not involving any term or provision of the lease, and not involving any grounds specified in the Real Property Actions and Proceedings Law;

(d) is engaged in employment requiring temporary relocation from the apartment.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

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28 RCNY 24-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-07 Application for Successor Tenancy.

An occupant seeking to become a tenant must show that he or she is eligible to apply for tenancy pursuant to §24-04 of these rules. Such application must be made on a form prescribed by HPD within 30 days after the permanent vacating of the apartment by the permanent tenant, or within 90 days after the effective date of these rules, whichever is later.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. An occupant seeking to become a tenant must apply for tenancy within 30 days the tenant of record permanently vacates the premises. The proper procedure is to make a timely application to the Department of Housing Preservation and Development (HPD) for tenant status , not to make a belated claim of tenant status in response to a summary holdover proceeding brought by the landlord. United Tenants Ass'n./Mutual Housing Ass'n. v. Price, N.Y.L.J., May 18, 2001, page 18, col. 1 (App.Term 1st Dept.).

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28 RCNY 24-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-08 Application.

HPD shall review the application of an occupant who seeks

to become a successor tenant and shall advise the applicant of the acceptance or rejection of such application. If the application is rejected for failure to show that the occupant is an eligible person, HPD shall give a brief description of the reason for such rejection. If the occupant's application is rejected for unacceptable activity, the rejection shall so state.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

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28 RCNY 24-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 24 SUCCESSOR TENANTS IN BUILDINGS UNDER THE SUPERVISION OF THE DIVISION OF PROPERTY MANAGEMENT AND THE DIVISION OF HOMELESS HOUSING DEVELOPMENT

§24-09 Appeal.

If an application is rejected, the applicant may appeal such determination within 14 days to the Assistant Commissioner of the Division having jurisdiction of the applicant's building. Such appeal shall be in writing. The Assistant Commissioner shall review the determination and any additional information submitted by the applicant and shall issue the final agency decision with regard to the applicant's application.

HISTORICAL NOTE

Section added City Record Jan. 29, 1992 eff. Feb. 28, 1992.

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28 RCNY 25-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER A INSTALLATION AND MAINTENANCE OF GAS-FUELED WATER AND SPACE HEATERS IN ALL PORTIONS OF DWELLINGS USED OR OCCUPIED FOR LIVING PURPOSES

PART 1 SCOPE

§25-01 Scope.

These rules shall govern the installation and maintenance of gas-fueled space and water heaters in the residence portions of multiple dwellings in the City of New York, including but not limited to the installation of such devices in multiple dwellings which are installed in lieu of centrally supplied heat and hot water under the provisions of sections 27-2028, 27-2031, 27-2032, and 27-2034 of the Administrative Code, and in one and two family residences not heated by a central heating system.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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28 RCNY 25-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER A INSTALLATION AND MAINTENANCE OF GAS-FUELED WATER AND SPACE HEATERS IN ALL PORTIONS OF DWELLINGS USED OR OCCUPIED FOR LIVING PURPOSES

PART 2 DEPARTMENTAL PROCEDURES

§25-06 Applications and Plans.

(a) Before commencing the installation of a gas-fueled space or water heater in a dwelling a plumbing repair slip or building notice, as specified below must be filed in the borough office of the Department of Buildings where the installation is to be made, giving the address of the dwelling and all pertinent information required on the forms.

(b) Before filing these forms in the offices of the Department of Buildings the applicant shall have the house numbers and the block and lot checked in the offices of the borough president where that procedure is followed in a particular borough, and in addition obtain a certification from the Department of Housing Preservation and Development of the classification of the multiple dwelling in which the appliances are to be installed.

(c) When applications are filed for permits to install gas-fueled space and water heaters the plumbing repair slips, the building notice forms and the envelopes in which they are placed shall be stamped by the plan clerk with a stamp reading: "GAS AP- PLIANCES".

(d) Plumbing repair slips shall be accepted only where gas appliances will be connected to flues in existing brick

chimneys, and where no other venting or other work is required to be done. They shall not be accepted for installation of gas-fueled heaters in sleeping rooms. Plumbing repair slips shall clearly state the type of appliance to be installed, the floors, apartments and rooms in which they are to be placed, including the number of rooms in the apartment and the occupancy of each room, whether sleeping room or otherwise. They shall describe the condition of the chimney flue to be used and state whether the draft is satisfactory. If a gas meter is to be installed its location shall be given.

(e) Where vent pipes are to be installed, or other work done in connection with the installation of gas-fueled heaters, a building notice application shall be filed. It shall indicate the type of each such device, the floor on which, and the apartment and the occupancy of the room in which such appliance is to be installed, the material and dimensions of the vent pipe or flue, and the dimensions of the court or yard to which the exhaust vent will be carried. If a gas meter is to be installed, its location shall be shown. No plumbing specification sheet or plumbing repair slip need be filed with such a building notice.

(f) Application for permits to install gas-fueled space heaters and water heaters may be made separately or together on one application but each such application shall indicate that all apartments in the building will be provided with gas-fueled space and/or water heaters as the case may be. The location, type, make, and capacity of all such appliances previously installed or to be installed in a building shall be specified. If any of the appliances have been installed in multiple dwellings prior to December 9, 1955, which the owner desires to maintain, the necessary work to make them comply with these rules should be indicated.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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PART 2 DEPARTMENTAL PROCEDURES

§25-07 Examination and Approval of Applications.

(a) Plumbing repair slips, when filed, shall be processed in the usual manner and forwarded to the inspectors of plumbing.

(b) Building notices calling for the installation of gas-fueled space and water heaters shall be expedited and may be taken out of turn, except that they shall be processed in the order in which they were received. They shall be examined for compliance with these rules and all other laws and regulations applicable to such installations. If any chimney or metal stack is to be installed, examiners shall check such construction for compliance with subchapter 15 of chapter 1 of Title 27 of the Administrative Code (Building Code). They shall require that the foundations shall be carried not less than four feet below the surface of the ground, and that the soil on which it is build to be not overloaded. They shall require that new chimneys be strapped to the existing walls.

(c) Only applications calling for the installation of gas-fueled space or water heaters, approved by the Department of Health, specifying the make and model shall be approved. All such gas appliances shall be of types approved also by the American Gas Association. However, where an owner desires to continue to use any gas appliance installed in a

multiple dwelling prior to December 9, 1955, clearly shows on the plan the data required by paragraph f of §25-06 of these rules and prominently marks the appliances that have not been approved by the Department of Health, the application may be conditionally approved pending the approval of the appliances by the Department of Health.

HISTORICAL NOTE

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PART 2 DEPARTMENTAL PROCEDURES

§25-08 Commencement of Work.

(a) It shall be unlawful to commence any construction for which a building notice has been filed until a permit for the proposed work has been issued by the borough superintendent, and it shall be unlawful to commence the installation of piping of any gas appliance until a registered plumber has filed a signed statement with the borough superintendent containing the address of said plumber and stating the he is duly authorized to proceed with the work.

(b) The plumber shall notify in writing the borough superintendent of the Department of Buildings of the borough in which any gas-fueled space or water heater is to be installed when such work is to begin and when it will be ready for operation and inspection.

HISTORICAL NOTE

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PART 2 DEPARTMENTAL PROCEDURES

§25-09 Inspection of Gas-Fueled Space and Water Heaters.

(a) Where a plumbing repair slip has been filed it shall be the responsibility of the inspectors of plumbing to see that gas-fueled space and water heaters are installed in dwellings, apartments and rooms where such heaters are permitted to be installed in lieu of central heat or supply of hot water. They shall see to it that the appliances are of types approved by the Department of Health and the American Gas Association, and are installed in compliance with these rules. Inspectors shall require the filing of a building notice where an appliance is to be placed in sleeping room where vent pipes are to be installed, or other work done.

(b) A building notice covering the installation of these appliances in dwellings shall be forwarded directly to the plumbing inspectors when approved as a permit. The installation of such appliances including Type B and other gas vents, but not chimneys, shall be inspected by inspectors of plumbing. If a building notice application does not call for construction of a masonry or metal chimney, it shall be reported as completed, by the plumbing inspector, provided the work was satisfactory with a note on his report "no structural work".

(c) If the building notice calls for the erection of a masonry or metal chimney, it shall be forwarded by the

plumbing inspector to the construction inspector as soon as the plumbing inspector has found the installation of these gas appliances and vent connections satisfactory. The construction inspector shall report such an application completed if the construction of the chimney has been satisfactorily performed

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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28 RCNY 25-10

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PART 2 DEPARTMENTAL PROCEDURES

§25-10 Issuing Approvals.

(a) A gas-fueled space or water heater installed after December 18, 1957, and a gas-fueled space heater installed prior to that date, in the residence portion of a multiple dwelling and installed after October 1, 1964, in one and two family dwellings, shall be approved by the Department of Buildings only if it is of a type approved by the Department of Health and the American Gas Association, and if it has been installed in compliance with these rules. A gas-fueled water heater installed in a multiple dwelling prior to December 18, 1957, and in a one or two family dwelling prior to October 1, 1964 shall be approved by this department only after it has been made to comply with all the requirements of these rules. The certification of approval of type of appliance by the Department of Health of such water heaters shall be attached to the plumbing repair slip or building notice.

(b) A building notice or plumbing repair slip which has been filed to cover the installation of only gas-fueled space heaters or only gas-fueled water heaters shall be reported as being satisfactorily completed only if all apartments in the building have been provided with either space or water heaters as the particular application specified. If an application calls for the installation of both space heaters and water heaters it shall be reported as being satisfactorily completed only if all apartments in the building have been provided with both space heaters and water heaters. Nor shall any

application be reported as being satisfactorily completed unless all new appliances have been installed in compliance with these rules and all existing appliances have been made to conform with them.

(c) When the plumbing section signs off, as satisfactorily completed, a plumbing repair slip or a building notice application which provides for the installation of gas-fueled space heaters in all apartments of a multiple dwelling, including the apartments where gas-fueled space heaters may have been installed prior to December 18, 1957, they shall make a list of such premises and send a copy of the list to the Department of Housing Preservation and Development. Where water heaters also have been satisfactorily installed, that fact should be noted on the list. The list shall contain the premises and the application number under which the appliances have been installed, and shall be forwarded weekly.

HISTORICAL NOTE

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PART 3 WHERE HEATERS MAY BE USED

§25-16 Substitution for Central Heating or Hot Water Supply.

Gas-fueled space or water heaters may be used in lieu of centrally supplied heat or hot water only in an apartment in a dwelling which complies with all the following requirements:

(a) The apartment shall consist of two or more living rooms.

(b) The apartment shall consist entirely of rooms used in Class A occupancy, or in one or two family dwellings.

(c) The apartment shall not be, in whole or in part, arranged, designed or intended to be used for single room occupancy.

(d) The apartment shall not have been formed, in whole or in part, as a result of work done to increase the number of apartments of a converted dwelling or a tenement under an application or plan filed with the department on or after December 9, 1955.

(e) The apartment shall not be located in a building which has been vacant under conditions and for periods which

render it subject to the provisions of §27-2089 of the Administrative Code.

(f) The apartment shall not have been converted or altered under plans filed with the department on or after December 9, 1955 so as to cause any existing or newly created portion of a Class A or Class B converted dwelling not previously constituting an apartment consisting of rooms used for Class A occupancy to become such an apartment.

(g) The apartment shall not be a part of Class A or Class B multiple dwelling which is or was converted to such dwelling from a single family or two-family dwelling under an application or plan filed with the department on or after December 9, 1955.

(h) The apartment shall not be in a tenement which, after being used or occupied as other than a tenement, is or was reconverted to a tenement under any application or plan filed with the department on or after December 9, 1955.

HISTORICAL NOTE

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§25-21 Required Approvals of Appliances.

Gas-fueled space and water heaters, installed after December 18, 1957, in apartments in multiple dwellings, in lieu of centrally supplied heat or hot water where such centrally supplied heat or hot water supply is required by the Multiple Dwelling Code, and in one and two family dwellings installed after October 1, 1964 shall be types approved by the Department of Health and the American Gas Association.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

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§25-22 Prohibited Types of Water Heaters.

On and after December 18, 1957, it shall be unlawful to install in any apartment in any multiple dwelling, and after October 1, 1964 in a one or two family dwelling a gas-fueled water heater, so designed and arranged that it heats water in pipe coils placed at a distance from the hot water storage tank.

HISTORICAL NOTE

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§25-23 Number and Capacity of Gas-Fueled Heaters.

(a) Where gas fueled heaters are permitted to be installed in lieu of the required centrally supplied heat, each "living room", as such term is defined in subdivision 18 of §4 of the Multiple Dwelling Law, shall be heated by a heater placed in such room or in an adjoining room which connects with it except that a room whose exterior walls are exposed only on a fully enclosed inner court may be heated by a heater located one room removed from such room. For this purpose, an inner court shall be considered fully enclosed even though some of the enclosure walls are located on an adjoining lot. The aggregate input capacity of the heater or heaters installed in any apartment shall not be less than the number of living room times ten

thousand (10,000) British thermal units per hour.

(b) Notwithstanding the provisions of the subdivision (a) of this section, there shall be installed and continuously maintained by the owner in each apartment gas-fueled heaters in such numbers and at such locations as shall be sufficient to heat such apartment to the minimum temperature which would be required to be maintained therein by the owner under the provisions of the Sanitary Code of the city relating to the heating of buildings, if such owner were

required to furnish centrally supplied heat in such apartment.

(c) The requirements of subdivisions (a) and (b) of this section are not applicable when an apartment in a multiple dwelling is heated by gas-fueled space heater or heaters which were installed by a tenant prior to December 18, 1957, and in a one or two family dwelling prior to October 1, 1964 and owned by such tenant or successor tenant.

HISTORICAL NOTE

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§25-24 Capacity of Water Heaters.

Gas-fueled water heaters shall be automatic storage types having a capacity of not less than twenty gallons and shall, in any event, be adequate to provide a supply of hot water as defined in §27-2031 and §27-2034 of the Housing Maintenance Code, and §131.042 of the Health Code.

HISTORICAL NOTE

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§25-25 Shut-Off Devices.

Each gas-fueled space or water heater installed in an apartment in a dwelling shall be equipped with an effective device which will automatically shut off the gas supply to such heater in the event that its pilot light or other constantly burning flame is extinguished, or in the event of an interruption of the gas supply to such heater. Such automatic gas shut-off device shall be of a type which, after it has shut off the supply of gas to a heater, will not permit such heater to be relighted unless such shut-off device is first reset manually.

HISTORICAL NOTE

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§25-26 Gas Piping.

(a) The sizes of gas piping shall be such as to give an adequate volumetric flow of gas to all appliances. The minimum diameter of gas piping shall be three-quarters of an inch (3/4") except that a branch supplying only one appliance may be one-half inch (1/2") diameter.

(b) Each gas-fueled space and water heater shall be rigidly connected to the gas piping supplying gas to the apartment.

HISTORICAL NOTE

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§25-27 Appliances in Sleeping Rooms.

(a) Gas-fueled water heaters shall not be installed in a room occupied for sleeping purposes, in bathrooms, or in any occupied room normally kept closed.

(b) It shall be unlawful to install a gas-fueled space heater in a room occupied for sleeping purposes except when the space heater is so designed, installed and operated for it:

(1) Obtains combustion air directly from the outside of the building or through a duct leading to the outside.

(2) It vents directly to space outside of the building other than an inner court, or is connected through a flue or outlet pipe with an outside chimney which conforms with the requirements of sub-article three of article twelve of the Building Code.

A flue in an existing brick chimney may be used if it is in good condition and tests show that it will provide adequate draft.

HISTORICAL NOTE

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§25-28 Clearances from Combustible Materials.

(a) Space heaters and water heaters approved by the American Gas Association Laboratories, shall have clearance from combustible materials in accordance with the terms of their approval.

(b) Gas-fueled space and water heaters shall be installed also in conformity with any applicable requirements of specifications Z21.30 of 1954 of the American Standards Association, except where these rules otherwise provide.

(c) Vent connectors and vent and outlet pipes shall be installed so as to provide a minimum clearance of three inches on all sides from combustible material. Vent and outlet pipes shall not pass through a floor. Where a vent or outlet pipe passes through partition or roof constructed wholly or in part of combustible material, a ventilated metal thimble not less than six inches larger in diameter than the pipe shall be provided. Any material used to fill the space between the vent pipe and the thimble shall be incombustible.

HISTORICAL NOTE

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§25-29 Venting of Gas Appliances.

(a) **Definitions.** A flue, vent or outlet pipe is a conduit or passageway, vertical or nearly so, for conveying flue gases to the outer air.

A vent connector is a pipe connecting an appliance with the flue, vent, outlet pipe or chimney.

(b) Every vent or outlet pipe serving a gas space or water heater shall be provided with a draft hood of a type approved by the American Gas Association, Inc., laboratories of the Underwriters' Laboratories, Inc., as conforming to accepted standards, unless the heater has an approved built-in draft hood, or has been approved by the American Gas Association without a draft hood. The draft hood shall be installed at the flue collar or as near to the appliance as possible and in the position for which it was designed, with reference to horizontal and vertical planes. The relief opening of the draft hood shall not be obstructed. A suitable cap shall be provided at top of vent pipes.

(c) Each gas-fueled space or water heater installed in an apartment in lieu of the required centrally supplied heat and hot water supply, respectively, shall be connected to a chimney flue, outlet pipe, or type B vent, complying with the

requirements of subdivision (h) of this section, which shall be carried four feet above a flat roof and two feet above the highest part of a peaked roof, except that type B vents need not comply with this provision when equipped with a vent cap approved by the Department of Buildings or previously approved by the Board of Standards and Appeals for the prevention of downdraft. A flue in an existing chimney may be used if a licensed plumber certifies that he has made a smoke test of the flue and found no gas escaping through its walls, and made a test of the draft and found it adequate. However, window or wall type heaters of the sealed combustion chamber type which have been approved by the Department of Buildings or previously approved by the Board of Standards and Appeals may be vented in accordance with the approval of the Board, except as provided in subdivision (d) of this section.

(d) No gas-fueled space heater, including a window or wall type recessed heater and no gas-fueled water heater, installed in a dwelling, shall be vented to an inner court unless it is connected to a chimney complying with the requirements of subchapter 15 of Chapter 1 of title 27 of the Administrative Code (Building Code). Standard steel steam or water pipes are acceptable in such locations.

(e) Gas-fueled water heaters shall be located as close as practicable to a vent or flue. They should be so located as to provide short runs of piping to fixtures.

(f) Vent connectors shall consist of galvanized iron of not less than No. 26 U.S. gauge in thickness, cement-asbestos pipe, approved type B vents, enameled steel pipe of a quality acceptable to the superintendent as heat and corrosion resistant, or other materials satisfactory to the superintendent.

(g) Vent connectors shall have a cross-sectional area at least equal to the area of the vent outlets of the appliance and shall have a minimum diameter or dimension of three inches.

(h) Outlet pipes and vents, on the exterior of a building, shall consist of standard water, steam or soil pipes, cement-asbestos pipe, type B vents approved by the Department of Buildings or previously approved by the Board of Standards and Appeals, or other corrosion resistant materials satisfactory to the superintendent, all so connected as to prevent leakage at joints. Outlet pipes and vents on the exterior of a building shall be adequately supported and braced. Flues inside of building shall be constructed as low temperature chimneys. Type B vents may be used inside buildings when installed in accordance with the requirements of §27-887(d) of the Administrative Code (Building Code) and with the conditions of their approval.

(i) Only vent connections serving appliances located in one story of a building may be made to any flue. The cross-sectional area of any flue shall be equal to or greater than the total cross-sectional area of all vents connected to it, but in any case the least internal dimensions shall be three inches.

(j) Vent connections may be made to a flue serving other heat producing appliances, above the connection of the other heat producing appliances, or the smoke pipe or vent connection from the gas appliance and the other heat producing device may enter the flue through a single opening if joined together by a Y fitting located as close as practical to the flue. The angle of intersection between the branch and the stem of the Y shall not exceed forty-five degrees. The area of the common outlet pipe shall not be less than the combined areas of the outlet pipes joined by the Y fitting.

(k) The horizontal run of vent pipe connectors shall not exceed three-fourths of the vertical rise of the flue to which the vent is attached, measured from the connection of the appliance to the top of the flue. A vent connector shall be pitched upward from the gas appliance with a slope of not less than one-fourth inch vertically for each foot of horizontal run.

(l) No dampers, steel wool or other obstructions shall be placed in any vent pipe or flue.

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§25-30 Gas-Fueled Space Heaters Installed Prior to December 18, 1957.

(a) Gas-fueled space heaters installed prior to December 18, 1957, if of a type not approved by the Department of Health and the American Gas Association, shall be replaced by centrally supplied heat or by gas heaters approved by the said authorities on or before November 1, 1958, in any tenement and converted dwelling which contains ten or more apartments, and on or before November 1, 1959, in other tenements and converted dwellings.

(b) On or before the applicable dates given in subdivision (a) of this section, gas-fueled space heaters installed prior to December 18, 1957, in tenements and converted dwellings prescribed in said paragraph shall be made to comply with all the requirements of §§25-23 to 25-29.

HISTORICAL NOTE

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PART 4 INSTALLATION OF GAS-FUELED HEATERS

§25-31 Gas-Fueled Water Heaters Installed Prior to December 18, 1957.

(a) On or before November 1, 1958, in any tenement and converted dwelling which contains ten or more apartments, and on or before November 1, 1959, in other tenements and converted dwellings, any gas-fueled water heater installed prior to December 18, 1957, if of a type not approved by the Department of Health, shall be replaced by a supply of hot water or by a water heater approved by said department.

(b) On or before the applicable dates given in §25-30(a), gas-fueled dwellings described in said paragraph shall be made to comply with all the applicable requirements of §§25-23 to 25-29, and all gas-fueled water heaters that have water heaters installed prior to December 18, 1957, in tenements and converted dwellings' sleeping rooms shall be removed.

(c) Any gas-fueled water heater so designed and arranged that it heats water in pipe coils placed at a distance from the hot water storage tank, installed prior to December 18, 1957, may be maintained in tenements and converted dwellings described in subdivision (a) of this section on and after the applicable dates given in said rule only if it is of a type approved by the Department of Health. However, no gas-fueled water heater shall be maintained in a sleeping

room or bathroom.

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PART 4 INSTALLATION OF GAS-FUELED HEATERS

§25-32 Maintenance of Space and Water Heaters.

(a) The owner of the tenement or converted dwelling and of the one and two family dwelling in which gas-fueled space and water heaters have been installed by him shall maintain each such appliance in a condition of good repair and in good operating condition.

(b) On and after November 1, 1958, in any tenement and converted dwelling which contains ten or more apartments, and on and after November 1, 1959, in any other tenement and converted dwelling, where a tenant provided a space or water heater on October 1, 1957, each such appliance shall be made to comply with all the applicable requirements of these rules and shall be maintained in a condition of repair and in good operating condition by the tenant.

(c) Should a tenant fail to comply with the requirements of subdivision (b) of this section, it shall be the duty of the owner of the tenement or converted dwelling to provide centrally supplied heat and a supply of hot water, or if such apartment is eligible therefore and he so elects, to install and continuously maintain space and water heaters therein which shall comply with the requirements of these rules.

(d) On and after November 1, 1958, in any tenement and converted dwelling which contains ten or more apartments, and on and after November 1, 1959, in any other tenement and converted dwelling, where gas-fueled space or water heaters were provided by the tenant, and the ownership of such appliances passes from the tenant or successor tenant, or if any such space or water heaters are removed from gas-fueled space or water heater, or temporarily for the purpose of repairs, then such an apartment, except for the purpose of immediate replacement by another owner will be subject to the duties imposed on an owner by subdivision (c) of this section.

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PART 4 INSTALLATION OF GAS-FUELED HEATERS

§25-33 Existing Appliances in Ineligible Locations.

Where a gas-fueled space heater or water heater has heretofore been installed in a dwelling not complying with all the requirements of §25-16, nothing in these rules shall be construed to relieve the owner of his responsibility to provide for such dwelling centrally supplied heat and a supply of hot water.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER A INSTALLATION AND MAINTENANCE OF GAS-FUELED WATER AND SPACE HEATERS IN ALL PORTIONS OF DWELLINGS USED OR OCCUPIED FOR LIVING PURPOSES

PART 4 INSTALLATION OF GAS-FUELED HEATERS

§25-34 Instruction to Tenants.

The owner or the authorized agent of the owner shall instruct the tenant of each apartment wherein a space or water heater is located as to the proper method of using and operating such appliance.

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CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER A INSTALLATION AND MAINTENANCE OF GAS-FUELED WATER AND SPACE HEATERS IN ALL PORTIONS OF DWELLINGS USED OR OCCUPIED FOR LIVING PURPOSES

PART 4 INSTALLATION OF GAS-FUELED HEATERS

§25-35 Variations.

Where there is a practical difficulty in carrying out the strict letter of the provisions of these rules, the borough superintendent may vary such provisions for a specific installation, provided the necessary safety is secured and the variance is not in conflict with the Administrative Code.

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28 RCNY 25-51

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER C CONDUCT AND MAINTENANCE OF LODGING HOUSES

§25-51 Conduct and Maintenance of Lodging Houses.

(a) **Lodging house, defined.** As used in these rules, the term lodging house shall mean any house or building or portion thereof, in which persons are harbored, or received, or lodged, for hire for a single night, or for less than a week at one time, or any party of which is let for any person to sleep in, for any term less than a week. The term lodging house shall not be deemed to include a Class A multiple dwelling used or let for single room occupancy.

(b) **Permits required.** It shall be unlawful to conduct, maintain or operate a lodging house containing rooms in which there are more than three beds for the use of lodgers, or in which more than six persons are allowed to sleep unless a permit therefor has been issued by the Commissioner of Housing Preservation and Development.

(c) **Procedure for obtaining a permit.**

(1) **Information to be given in application.** Each application for a permit shall file with the Department of Housing Preservation and Development in duplicate, a written application, dated, signed by himself, and correctly setting forth:

(i) The full name and address of the proprietor of the lodging house and of the owner of the premises.

(ii) The location of the lodging house.

(iii) The portions of the building intended to be used as a lodging house.

(2) **Certificate from the Fire Department.** The applicant shall procure from the Fire Department of the City of New York a certificate to the effect that the premises for which a permit is desired complies with all laws, rules and regulations enforceable by the Fire Department.

(d) **Conduct, maintenance and operation of lodging houses.** (1) Every permittee shall conduct, maintain and operate such lodging house in accordance with the terms of his permit and the rules and regulations of the Department of Housing Preservation and Development.

(2) **Permit to be displayed.** The permit of the Department of Housing Preservation and Development issued for such lodging house shall be continuously and conspicuously displayed in the office or hall of such lodging house.

(3) **Numbers of lodgers permitted.** (i) No keeper of a lodging house shall receive lodgers therein without displaying continuously and conspicuously in each room a card issued for such room by the Department of Housing Preservation and Development setting forth the maximum number of lodgers permitted to be accommodated in such room, and also a copy of these rules and regulations.

(ii) No keeper of a lodging house shall accommodate in any sleeping room thereof a number of lodgers greater than the number set forth on the card issued for such room by the Department of Housing Preservation and Development; nor shall he accommodate any lodgers in any room in which a card, duly issued therefor, is not displayed as above described.

(4) **Ventilation.** (i) In every lodging house each room shall be adequately ventilated as required by law and to the satisfaction of the Department of Housing Preservation and Development.

(ii) In every sleeping room there shall be provided not less than 400 cubic feet of air space per bed.

(iii) Neither side of any bed shall at any time be nearer than two feet to the side of any other bed.

(iv) All beds shall be so arranged that the air shall circulate freely under each of them.

(v) In the ease of all lodging houses for which permits are for the first time applied for after the year 1919, no beds or bunks shall be placed one above another.

(5) **Airing, etc.** (i) Except when extreme severity of the weather prevents, all windows of sleeping rooms, waterclosets, washrooms and bathrooms shall be kept open not less than one foot at the bottom and one foot at the top at least four hours daily.

(ii) Beds occupied at night shall be vacated by 10 A.M. or 12 M., and the bedding thereof shall be turned over and exposed to the air from 10 A.M. to 2 P.M. or from 12 M. to 4 P.M. daily, as prescribed by the permits issued for each lodging house.

(iii) For the accommodations of lodgers working by night, special beds or rooms shall be set apart for their use during the day, but the bedding of suc beds must be turned over and exposed to the air in a room with outside windows, open as above prescribed, for at lease four consecutive hours daily.

(iv) Only servants at work or lodgers accommodated as per-subparagraph (iii) of this subdivision, shall be allowed in sleeping rooms during the four-hour period for airing, as specified in the permit issued for such lodging house, in any lodging house in which accommodations are provided for male lodgers, no female servants shall be employed; likewise, where accommodations are provided for female lodgers, no male servants shall be employed.

(6) **Beds and bedding.** (i) In every lodging house there shall be provided for each lodger a separate bed with

bedspread, bedding and bedclothes satisfactory to the Department of Housing Preservation and Development.

(ii) All portions of the building, including all furniture, bed clothing, matresses and pillows shall always be kept clean and free from vermin.

(iii) Sheets and pillow cases shall be kept in a condition clean and satisfactory to the Department of Housing Preservation and Development.

(iv) In the case of all lodging houses for which permits are for the first time applied for after the year 1910, the frames of all beds shall be of metal.

(7) **Waterclosets.** (i) In every lodging house there shall be provided waterclosets in the ratio of at least one watercloset to every fifteen beds or fraction thereof.

(ii) In every lodging house for which a permit shall be first applied for after February 1st, 1911, there shall be provided at least one watercloset on each floor, and watercloset shall be provided on every floor in the ratio of at least one to every fifteen beds or fraction thereof on such floors.

(iii) Every watercloset shall be properly ventilated by an unobstructed opening to the outer air.

(iv) No gas or offensive odors shall be allowed to escape from any water closet, sewer or outlet into any sleeping room or part thereof. Each watercloset shall be provided with a self-closing door, which shall be cut away at the bottom so as to provide adequate ventilation.

(v) In no lodging house shall any person be allowed to sleep in a room in which there is a watercloset.

(vi) In every lodging house for which a permit shall be first applied for after February 1st, 1911, there shall be provided at least one washroom on each floor.

(vii) In every lodging house there shall be provided washrooms with running water, set wash basins or other individual washing appliances satisfactory in character to the Department of Housing Preservation and Development. Such individual appliances shall be provided in proportion to the number of beds in the lodging house as follows: One such appliance for every ten beds or fraction thereof.

(8) **Baths.** (i) In every lodging house shower baths shall be provided in the ration of at least one shower bath to every fifty beds or fraction thereof, or tub baths shall be provided in the ration of at least one tub bath to every twenty-five beds or fraction thereof.

(ii) All such baths shall be provided with hot and cold running water, and shall be at all times accessible for the use of lodgers free of charge.

(9) **Water and towels.** An adequate supply of water and clean individual towels shall be provided. The use of common towel is prohibited.

(10) **Floors and walls of waterclosets, etc.** In every lodging house the floors of all waterclosets, washrooms and bathrooms, and the walls thereof to a height of at least four feet above the floor shall be constructed of such durable, waterproof material as may be approved by the Department of Housing Preservation and Development.

(11) **Cleanliness and repair.** (i) Every lodging house and every part thereof shall be at all times kept clean and free from dirt, filth garbage and rubbish in or on the premises belonging to or connected with the same.

(ii) All waterclosets, washbasins, baths, windows, fixtures, fitting and painted surfaces shall be at all times kept thoroughly clean and in good repair.

(iii) The floors, walls and ceilings of all rooms, passages, and stairways must be at all times kept clean and in good repair.

(iv) If painted with oil, all walls and ceilings shall be thoroughly washed with soap and water at least twice yearly, and at such other times as the Department of Housing Preservation and Development may direct.

(12) **Spitting and cuspidors.** (i) In each hall, room, cubicle, watercloset, washroom and bathroom of every lodging house there shall be provided a sufficient number of cuspidors or spittoons.

(ii) In every such room, etc., there shall be continuously and conspicuously a sing: "SPITTING FORBIDDEN EXECPT IN PROPER RECEPTACLES."

(iii) All such cuspidors or spittoons shall be of durable waterproof material and shall be thoroughly cleaned at least once daily, and shall be at all times maintained in a condition satisfactory to the Department of Housing Preservation and Development.

(13) **Method of sweeping regulated.** Sweeping of any portions of such lodging houses shall be so performed as to avoid the raising of dust in the process. Dry sweeping prohibited.

(14) **Illness.** It shall be the duty of the keeper, agent, or owner of every lodging house to immediately report to the Department of Health the occurance of any illness in such house.

(15) **No Women or Children lodged.** In no lodging house in which men are lodged shall any women or girl be lodged or any boy under the age of sixteen years, unless accompained by his father or legal male guardian.

(e) **Violations, revocation or suspension of permit**. A violation of any of the foregoing rules and regulations shall constitute sufficient cause for the revocation or suspension of a permit by the Commissioner of Housing Preservation and Development.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-61

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER D SIGNS AT INCINERATOR SERVICE OPENINGS

§25-61 Signs at Incinerator Service Openings.

(a) Signs on doors leading to the service openings shall be not less than eight inches wide and not less than 3 inches high, and shall have letters not less than one-quarter inch in height.

(b) Signs placed on the walls over the hoppers shall be not less than ten inches wide and four inches in height and shall have letters not less than five-sixteenths of an inch in height.

(c) The lettering of the signs shall be of the bold type and shall be properly spaced to provide good legibility, and the letters and the background shall be of contrasting colors.

(d) Signs on doors shall be located on the hall side and approximately five feet above the floor.

(e) Signs shall be durable and shall be substantially secured to the door wall.

(f) Lighting shall be sufficient to make the signs easily legible at all times.

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28 RCNY 25-71

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER E SIGNS SHOWING THE MAXIMUM LAWFUL OCCUPANCY FOR SLEEPING PURPOSES OF APARTMENTS, SUITES OF ROOMS AND SINGLE-ROOM UNITS CONSTITUTING "ACCOMMODATIONS FOR TRANSIENTS"

§25-71 Signs Showing the Maximum Lawful Occupancy for Sleeping Purposes of Apartments, Suites of Rooms and Single-Room Units Constituting "Accommodations For Transients."

(a) (1) Except as otherwise provided in paragraph (5) of this subdivision (a), the owner of every multiple dwelling containing any accommodations for transients (see definition of accommodations for transients' in subd(b) hereof), except structures containing not less than 200 rooms and classified by the department as hotels (whether a class A or class B multiple dwelling), shall install and maintain signs therein in accordance with the applicable requirements set forth in paragraph two, three, four and five of this subdivision.

(2) There shall be displayed in each apartment, suite of rooms and single-room unit constituting such accommodations for transients, a sign which shall show both the currently applicable total maximum lawful occupancy, for sleeping purposes, of such apartment, suite or unit, and the currently applicable maximum lawful occupancy, for sleeping purposes, of each living room constituting a part of each such apartment or suite.

(3) In addition, in each room in any such apartment or suite, there shall be displayed a sign showing the maximum lawful occupancy, for sleeping purposes, of such room.

(4) Such signs shall be displayed in each such apartment, suite of rooms, single-room unit and living room, in

conformity with the applicable requirement of paragraphs two, three and four of this subdivision.

(5) Such signs need not be displayed in any apartment, suite of rooms, single-room unit or dormitory in a hotel (whether a class A or class B multiple dwelling), which apartment, suite, unit or dormitory consists of a room or rooms used for class B occupancy (see definitions of `room used for class B occupancy') lawfully, during any time while such apartment, suite, unit or dormitory is occupied for sleeping purposes by any person or persons, none of whom has occupied same for such purposes for a continuous period exceeding eighty-five days.

(b) **Accommodations for Transients.** (1) Any apartment, suite of rooms or single-room unit, consisting in whole or in part of any room or rooms used for class B occupancy, or any portion of any such apartment or suite, or

(2) any dormitory, or

(3) any apartment or portion thereof used for single room occupancy.

(c) **Application.** These rules shall apply to the signs which are required by §27-2080 of the Administrative Code to be installed and maintained in each apartment, suite of rooms and single-room unit constituting "accommodations for transients" as described in subdivision (b) of this section.

(d) **Material.** Signs shall be constructed of metal, slow-burning plastic or other material approved by the Commissioner, and shall be substantial, rigid and durable in construction. Signs of cardboard or heavy paper may be used if such material is encased in strong metal, wood or plastic frames and is covered by clear plastic or glass not less than one sixteenth inch (1/16") in thickness and if provided with substantial backing. Signs shall be provided with means for fastening securely to the wall.

(e) **Room signs.** The following information shall appear on signs required in rooms in which not more than one (1) adult is permitted to sleep:

Department of Housing Preservation and Development

City of New York

Premises: _____

(address of building)

Room No. _____ on _____ story.

Not more than ONE (1) ADULT permitted to sleep in this room. §27-2075, Administrative Code.

The following information shall appear on signs required in rooms in which not more than two (2) adults are permitted to sleep:

Department of Housing Preservation and Development

City of New York

Premises: _____

(address of building)

Room No. _____ on _____ story.

Not more than TWO (2) ADULTS permitted to sleep in this room. §27-2075 of the Administrative Code.

In both of the above instances the address of the premises and the location of the room must be shown, in addition to the number of persons permitted to sleep in such room.

(f) **Apartment signs.** The following information shall appear on signs required in apartments and suites of rooms showing the total maximum occupancy for sleeping purposes of entire apartment or suite of rooms:

Department of Housing Preservation and Development

City of New York

Premises: _____

(address of building)

Apartment

(or suite) No. _____ on _____ story.

Not more than a TOTAL OF _____ ADULTS permitted to sleep in this apartment (or suite). §27-2075, Administrative Code.

The permitted lawful occupancy for sleeping purposes of each room in this apartment is as follows:

Room No. _____ not more than _____ ADULTS

Room No. _____ not more than _____ ADULTS

(Provide separate line for each room in apartment or suite.)

The above sign must show the address of the premises, the location of the apartment or suite of rooms, the total maximum lawful occupancy for sleeping purposes of the entire apartment or suite, and the permitted lawful occupancy for sleeping purposes of each individual room in said apartment or suite. The maximum lawful occupancy for sleeping purposes of each room shall be shown on a separate line, with a proper designation by room number in order to identify each room.

(g) **Size of sign and lettering.** The lettering shall be of the Gothic type.

The letters forming "DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT", and the letters and numerals showing the number of ADULTS, shall be not less than one-quarter inch (1/4") in height. All other letters and numerals shall be not less than three-sixteenths inch (3/16") in height. Letters shall be of such width and spacing as will provide the greatest legibility.

The letters and the background of the sign shall be of contrasting colors.

The size of sign shall be sufficient to accommodate the required lettering and to provide a margin of not less than one-quarter inch (1/4") about the lettering on all sides.

(h) **Location of signs.** Signs shall be located at a distance of not less than five feet (5') or more than six feet (6') above the floor.

Where a sign is required to be displayed in a room, same shall be so located that it is visible at all times to the occupant or occupants of such room.

Where a sign showing the total maximum occupancy for sleeping purposes of an entire apartment or suite of rooms is required to be displayed in such apartment or suite, such signs shall be located in a portion of such apartment or suite through which it is necessary for every occupant to pass after entering or before departure from such apartment or suite. Such sign shall be visible at all times to the occupants of such apartment or suite.

(i) **Lighting.** Sufficient lighting shall be provided so that the sign will be plainly legible at all times when the apartment or room is occupied.

(j) **Maintenance.** Signs shall be maintained in a clean and legible condition. Signs that are damaged shall be repaired or replaced immediately. Signs that are painted over shall be replaced or restored to the original condition. Signs that become loose shall be securely fastened.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER F SIGNS IDENTIFYING OWNER, MANAGING AGENT AND SUPERINTENDENT OF MULTIPLE DWELLINGS

§25-81 Signs Identifying Owner, Managing Agent and Superintendent; Plans on Premises.

(a) (1) Identification signs for the purpose of identifying the owners and managing agents of multiple dwellings by the display of the serial number, shall comply with the applicable provisions of these rules.

(2) Identification signs for the purpose of identifying the superintendents, janitors or housekeepers of multiple dwellings, wherein such employees are required by the provisions of §83, Multiple Dwelling Law, shall comply with the applicable provisions of these rules.

(b) Signs shall be constructed of metal, slow-burning plastic or other material approved by the Commissioner and shall be substantial, rigid and durable, in construction. Signs of cardboard or heavy paper may be used if such material is encased in strong metal, wood or plastic frames and is covered by clear plastic or glass not less than one-sixteenth inch in thickness and if provided with substantial backing. Signs shall be provided with means for fastening securely to the wall.

(c) (1) The following information shall appear on the sign, prescribed in paragraph (1) of subdivision (a) of this section, in four lines of lettering as indicated and in the order indicated:

Department of Housing Preservation and Development

City of New York

Serial Number

Street Address of Building

(2) The following information shall appear on the sign, prescribed in paragraph (2) of subdivision (a) of this section, in four lines of lettering as indicated and in the order indicated:

Title (Superintendent, Janitor or Housekeeper) Name of Superintendent, Janitor or Housekeeper Address of Superintendent, Janitor or housekeeper (including apartment number, if any)

(d) **Telephone number of superintendent, janitor or housekeeper.** The size of sign shall be sufficient to accommodate the required lettering and provide a margin of not less than one-fourth inch about the lettering on all sides.

(e) (1) Serial numbers, as specified in §27-2104 shall be determined and assigned by the Department of Housing Preservation and Development. No serial number shall be changed or ordered without the approval of the Department of Housing Preservation and Development. The serial number shall be placed on the sign by the owner or his representative.

(2) The street address of the building consisting of the house number and the street shall be placed on each sign by the owner or his representative.

(3) The lettering shall be gothic type. The numbers composing the serial number shall be not less than one-half inch in height. The letters forming "Department of Housing Preservation and Development" and the street address shall not be less than one-fourth inch in height. All other letters shall be not less than three-sixteenth of an inch in height. Letters shall be of such width and whatever as will provide the greatest legibility.

(f) The lettering of signs, as specified in §27-2104, shall be Gothic type and shall not be less than three-sixteenths of an inch in height. Letters shall be of such width and spacing as will provide the greatest legibility.

(g) The letters and the background of the sign shall be of contrasting colors.

(h) Signs shall be approved by the Department of Housing Preservation and Development before installation.

(i) Signs shall be located in the entrance hall at the main entrance to the building at the street floor. Signs shall be placed preferably over the mail boxes but, in any case, shall be conspicuously displayed in a prominent location in the entrance hall. Signs shall be located between 7 feet and 9 feet above the floor.

(j) Signs shall be fastened directly to the wall by screws or bolts in a rigid, substantial manner, or by other means as may be approved by the Department of Housing Preservation and Development.

(k) Sufficient lighting shall be provided so that the sign will be plainly legible at all times.

(l) Signs that are defaced, damaged or removed, shall be promptly repaired or replaced. Signs shall be maintained in such manner as to be easily read at all times.

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Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER G REQUIREMENT THAT OWNERS OF MULTIPLE DWELLINGS FILE A "24-HOUR" TELEPHONE NUMBER WITH THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

§25-91 Rules for Enforcement of Subdivision 4 of §27-2098 of the Administrative Code of the City of New York.

(a) The words "may be reached at all hours and time" within the meaning of subdivision (4) of §27-2098 of the Administrative Code shall be construed to mean a telephone number at or through which in the normal course of events a person might reasonably be expected to be reached at all times and this shall be deemed to include:

(1) the telephone number of the residence of such person; or

(2) the telephone number of an agent fully authorized to act on behalf of the owner; or

(3) the telephone number of a person, firm or corporation, including an answering service, which has in its possession at all times a telephone number at which the person or agent can be reached at all times.

A corporation may comply with this subdivision by any of the means as hereinabove set forth.

(b) The term "emergency repairs" within the meaning of this subdivision shall be construed to designate a condition in a multiple dwelling which, in the opinion of the department, constitutes, or if not properly corrected, will constitute, a fire hazard or a serious threat to the life, health or safety of occupants thereof.

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Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER H OWNER'S RIGHT TO ACCESS TO APARTMENTS OR ROOMS IN MULTIPLE DWELLINGS

§25-101 Owner's Right of Access.

(a) **Owner to give notice.** Where an owner seeks access to an apartment, suite of rooms or to a room, under the provisions of §27-2008 in order to make inspection therein for the purpose of determining whether such places are in compliance with the provisions of the multiple dwelling law of the administrative code, he shall notify the tenants that he will seek access to the apartment, suite of rooms, or rooms, not less than twenty-four hours in advance of such time. Where an owner, contractor or agent of the owner seeks access to make improvements required by law or to make repairs, notice shall be given to the tenant not less than one week in advance of the time when the improvements or repairs are to be started. However, where repairs are urgently needed in emergencies to prevent damage to property or to prevent injury to persons, such repairs of leaking gas piping or appliances, leaking water piping, stopped-up or defective drains or leaking roofs, broken and dangerous ceiling conditions, no advance notice shall be required from the owner, agent, contractor or workman.

(b) **Notices to be in writing.** Where an owner is required to give notice in advance of seeking access to an apartment, suite of rooms or to a room, as required by subdivision (a) of this section, such notice shall be in writing and shall contain a statement of the nature of the improvement or repairs to be made.

(c) **Authorization to be in writing.** Where an authorized agent or employee of an owner seeks access to an apartment, suite of rooms, or rooms, the authorization of the owner shall be in writing and the agent or employee shall exhibit such authorization to the tenant when access is requested.

(d) **Hours when access to be permitted.** Except in emergencies, access to an apartment, suite of rooms, or rooms, shall be limited, to the hours between nine antemeridian and five post-meridian. Access shall not be required on Saturdays, Sundays or legal holidays except in emergencies.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER I BOILER ROOM ENCLOSURE

§25-111 Boiler Room Enclosure for Multiple Dwellings with Central Heat.

(a) A separate enclosure shall not be required when the central heating plant is located in a cellar that is used for no other purpose, provided that

(1) The building is occupied entirely for residential purposes.

(2) The first tier is of fireproof construction with no opening to the upper stories.

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Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER J SIGNS INDICATING FLOORS IN MULTIPLE DWELLINGS

§25-121 Signs Indicating Floors in Multiple Dwellings Pursuant to §27-2047 Administrative Code.

(a) Signs may be posted or painted and may consist of numerals or letters only.

(b) Numerals or letters shall be not less than three inches in height and except for the numeral one (1), shall be not less than two inches in width and shall be sufficiently large to be easily read.

(c) Numerals or letters shall be of a color which will contrast with the background. The numerals or letters may or may not be fixed to other material.

(d) Lighting shall be sufficient to make the signs legible at all times. Lighting within the sign or in back of the sign shall not be required if other illumination is sufficient to make the sign legible.

(e) Signs shall be durable and shall be substantially secured to the walls.

(f) The superintendent may vary the provisions of these rules where strict compliance would produce unnecessary hardship, provided the intent of the law and rules is obtained.

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28 RCNY 25-131

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER K HOUSE NUMBERS

§25-131 House Numbers.

(a) On each building erected or altered after the effective date of these rules there shall be affixed in a conspicuous location at or near the main entrance of a building, the house number of the building.

(b) House numbers shall be of such size and shall be so located as to be clearly visible from the public sidewalk during daylight hours. Where the building is remote from the sidewalk, the number of the building and a directional arrow indicating the building location shall be provided in addition to the conspicuous number at the entrance to the building.

(c) House numbers shall be constructed of durable material and shall be maintained in such condition as to be readily visible as required by subdivision (b) of this section.

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Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER L MEASURING FLOOR AREA OF PUBLIC HALLS, STAIRS, FIRE-STAIRS AND FIRE-TOWERS IN MULTIPLE DWELLINGS TO DETERMINE LIGHTING REQUIREMENTS

§25-141 Measuring Floor Area of Public Halls, Stairs, Fire-Stairs and Fire-Towers in Multiple Dwellings to Determine Lighting Requirements.

(a) To compute the square feet of floor area of public halls in multiple dwellings having an unenclosed stair, the floor area of the public hall and the horizontal area of the stair opening shall be added. At the lowest story, where there is an ascending flight of stairs but no descending flight of stairs, only the area of the actual flight of stairs shall be added to the floor area of such lowest story.

(b) To compute the square feet of floor area of a fire-stair or a fire-tower in a multiple dwelling, one-half of the horizontal area of such fire-stair or fire-tower, measured from the wall of the stair landing on one level to the wall of the stair landing on the next level, shall be deemed to be the floor area at each such level.

(c) Where the light from the fixture at the highest story provides adequate illumination, in the opinion of the department, no lighting fixture shall be required at the roof level of the stair bulkhead.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-151

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER M ENTRANCE DOORS, LOCKS AND INTERCOMMUNICATION SYSTEMS

§25-151 Entrance Doors, Locks and Intercommunication Systems.

(a) Bulkhead doors and scuttles shall have no key locks and shall not be locked by a key at any time. The only permissible and acceptable means of securing a bulkhead door or scuttle is by means of a movable bolt or hook on the inside.

(b) Subdivision (n) of §25-174 of the current departmental rules and regulations in its last un-numbered paragraph provides as follows:

"All passageways required under these rules shall be not less than seven feet (7'0") in height and not less than three feet (3'0") in width and shall at all times be kept clear and unobstructed. Doors and gates at the end of such passageways are prohibited, except that a door or gate equipped with an approved-type knob or panic bolt which shall be readily openable from the inside will be permitted at the building line. Doors and gates provided with key locks or padlocks are prohibited."

(c) Where an entrance door leading from a vestibule to the main entrance hall or lobby is equipped with one or more automatic self-closing and self-locking doors, the entrance door from the street to the vestibule need not be equipped with automatic self-closing and self-locking doors.

(d) Every entrance from the street, court, yard or cellar to a class A multiple dwelling erected or converted after

January 1, 1968 containing eight or more apartments shall be equipped with automatic self-closing and self-locking doors. Such multiple dwelling, as aforesaid, shall also be equipped with an intercommunication system to be located at the required main entrance door.

(e) On or after January 1, 1969, every entrance from the street, court, yard or cellar to a class A multiple dwelling erected or converted prior to January 1, 1968 containing eight or more apartments, provided that a majority of tenants in occupancy request or consent in writing, shall be equipped with automatic self-closing and self-locking doors and shall also be equipped with an intercommunication system.

(f) Every self-locking door required under this section shall be installed and maintained so as to be readily openable from the inside without the use of keys.

(g) The minimal devices acceptable for the intercommunication system shall be a bell or buzzer system, or a speaking and listening device to permit communication by voice between the occupant of each apartment and a person outside such required main entrance door, and a return buzzer mechanism to release or open the lock to the aforesaid required door.

(h) The bell and intercommunication system shall be located at the required main entrance door so that a person may readily reach the door when the unlocking buzzer is activated.

(i) No push button device shall be more than six feet from the floor and the speaking and listening device shall be installed to be not less than four feet and not more than five feet from the floor.

(j) The device or devices for the intercommunication system installed in the apartment shall be readily accessible to the occupant.

(k) The device or devices for the intercommunication system installed hereunder shall be of a type and kind approved by the Department of Buildings or previously approved by the Board of Standards and Appeals.

(1) Devices which have been previously installed and which are in good condition and performing in an adequate manner may, in the discretion of the department, be accepted.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER N INSTALLATION OF SECURITY ITEMS IN MULTIPLE DWELLINGS

§25-161 Installation of Peepholes.

(a) These new peepholes, or door interviewers, must bear a label showing the approval of the Department of Buildings or the previous approval of the Board of Standards and Appeals.

(b) The peepholes must be so located as to enable a person in such housing unit to view from the inside of the entrance door any person immediately outside.

(c) The distance above the inside finished floor to the center of the peephole shall be approximately 5 feet.

(d) The cutout shall not affect the adequacy of any stiffening member of the door.

(e) Peepholes installed prior to the enactment of the legislation will be acceptable unless the cutout for the peephole has affected the adequacy of any stiffening member of the door.

HISTORICAL NOTE

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER N INSTALLATION OF SECURITY ITEMS IN MULTIPLE DWELLINGS

§25-162 Installation of Two 50 Watt Lights at Front Entrance Way.

(a) All electrical work shall be done in accordance with the requirements and approval of the Department of Buildings.

(b) The installation shall be a separate circuit or connected to the house line servicing the public halls.

(c) The lights shall be encased in a metal guard or shatterproof globe.

(d) The lights of at least 50 watts of incandescent or equivalent illumination shall be placed on each side of the front entrance-way at a height of between 7 to 11 feet above floor level adjacent to such entrance-way and adequate to light same.

HISTORICAL NOTE

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28 RCNY 25-163

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CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER N INSTALLATION OF SECURITY ITEMS IN MULTIPLE DWELLINGS

§25-163 Installation of Viewing Mirrors in Self-Service Elevators.

(a) Mirrors shall be made of polished metal.

(b) Mirrors shall be of such size and so located on the car wall opposite the car entrance so that a person entering the elevator may have a complete view of the interior of the car. It shall not be necessary to provide a view of the floor and ceiling.

(c) The mirror shall be so located as not to interfere with or endanger passengers in the elevator.

(d) Mirrors shall be mounted and secured so that they cannot be readily removed by the public.

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Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER N INSTALLATION OF SECURITY ITEMS IN MULTIPLE DWELLINGS

§25-164 Installation of Lights in Rear Yards, Side Yards, Front Yards and Courts.

(a) All electrical work shall be done in accordance with requirements and approval of the Department of Buildings.

(b) The installation shall be a separate circuit or connected to the house line servicing the public halls.

(c) The light or lights, of at least 40 watts of incandescent or equivalent illumination, shall be placed so as not to create a nuisance.

(d) The lights shall be so located as to adequately light all portions of the rear yards, side yards, front yards and courts.

(e) Lights are not required in an inner court that is accessible only from the interior of the building and to which access is restricted for clean-out purposes.

HISTORICAL NOTE

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER O FIRE-RETARDING OF ENTRANCE HALLS, STAIR HALLS AND PUBLIC HALLS IN OLD LAW TENEMENTS AND CONVERTED DWELLINGS

§25-171 Fire-Retarding of Entrance Halls, Stair Halls and Public Halls in Old Law Tenements and Converted Dwellings.

(a) **Intent.** The fire-retarding rules herewith set forth are approved by the Department of Buildings for old law tenements and converted dwellings where their entrance halls, stair halls and public halls are required, by §189, subdivisions 1 and 4, §238, subdivision 4, and §218, subdivisions 5 and 6, Multiple Dwelling Law, and §27-2044, Housing Maintenance Code, to be fire-retarded in a manner approved by the Department of Buildings.

(1) All entrance halls, stair halls and public halls, including service halls and stairs, shall be fire-retarded to the extent required by the Multiple Dwelling Law and the Multiple Dwelling Code and the Housing Maintenance Code.

(2) It is the intent that all wood structural members of partitions, ceilings and stair soffits shall be completely protected with fire-retarding materials where they may be exposed to fire in entrance, stair and public halls. To this extent these rules and regulations cover only general conditions and are not designed to cover specific or special cases. Where such may occur the owner is required to consult the Department of Buildings and receive instructions before work is started.

(3) Where existing dumbwaiter shafts are located in, or open on public halls which are required to be fire-retarded, such dumbwaiter shafts, when not constructed of fireproof or fire-retarding materials, shall be fire-retarded on the inner

side, from the lowest story to the roof inclusive, in accordance with the requirements of paragraph (1) of subdivision (b) of this section or paragraph (2) of subdivision (b) of this section, except in cellar where such shafts shall be enclosed with fireproof materials.

All doors opening from such dumbwaiter shafts shall be self-closing, and doors and assemblies when of wood or other non-fireproof construction shall be lined on both sides with No. 26 U.S. gauge metal, except in cellar where doors and assemblies shall have a fire-resistive of at least one (1) hour.

(4) It is not intended that these rules and regulations in themselves require plans to be filed. However, should any work involve structural changes, then plans are required to be filed in the Department of Buildings and such changes shall be subject to all other Rules and Regulations applicable thereto.

(5) Work shall not commence until satisfactory evidence has been submitted to the Department of Buildings that compensation insurance has been obtained in accordance with the provisions of the Workmen's Compensation Law.

It is the intent of 238, subdivision 4, Multiple Dwelling Law, that every entrance hall, public hall and stair hall in every old law tenement four stories or more in height shall be fire-retarded.

Every old law tenement three stories and a basement, or three stories, basement and cellar in height shall be deemed to be four stories in height when the main entrance from the grade is to the basement, and every entrance hall, public hall and stair hall in such building shall be fire-retarded.

In old law tenements where the entrance halls, public halls and stair halls are required to be fire-retarded, existing wood stairs shall be fire-retarded in conformity with the requirements of these rules and regulations, whether or not such halls had been fire-retarded in accordance with plans filed with and approved by the former Tenement House Department or Department of Buildings, prior to the enactment of subdivision 4 of §238 of the Multiple Dwelling Law.

(b) **Partitions.** All existing partitions separating from entrance halls, stair halls and public halls, or otherwise forming enclosing partitions of entrance halls, stair halls and public halls, shall be fire-retarded by any one of the following methods:

(1) **Metal lath and cement of gypsum mortar.** Completely remove all existing materials to face of studs or other structural members on hall side of partitions and recover with metal lath and two coats of cement of gypsum mortar. If cement mortar is used it shall be three-quarters inch (3/4") thick, if gypsum mortar is used it shall be one inch (1") thick. The second coat of mortar shall not be applied until the first coat has thoroughly set and in no case shall the second coat be applied on the same day that the first coat of mortar is applied.

In lieu of the above method, completely remove all combustible materials from plaster face of partitions on hall side and repair existing plaster. After inspection, cover existing plaster with herringbone or similar approved type metal lath with rigid rib reinforcement to provide good bond between new and existing plaster. Cover lath with two coats (scratch and brown) of cement of gypsum mortar as above.

The first coat of cement mortar (scratch) shall be composed of one (1) part of Portland cement to one and one-half (1 1/2) parts of sand, with an additional volume of hydrated lime not greater than ten (10) percent of the volume of Portland cement. The second coat (brown) shall be composed of one (1) part of Portland cement to three parts (3) of sand, with an additional volume of hydrated lime not greater than ten (10) percent of the volume of Portland cement.

The first coat (scratch) of gypsum mortar shall be composed of one (1) part of gypsum to one (1) part of sand. The second coat (brown) of gypsum mortar shall be composed of one (1) part of gypsum to one and one-half (1 1/2) parts of sand.

(2) **Plaster boards and gypsum mortar or stamped metal.** Completely remove all existing materials to face of

studs or other structural members on hall side of partitions and recover with plaster boards or perforated rock lath three-eights inch (3/8") thick, covered with two coats of gypsum mortar (scratch and brown) so that the aggregate thickness shall be at least one inch (1"), or in lieu thereof, recover same with plaster boards one-half inch (1/2") thick, covered with No. 26 U.S. gauge stamped metal.

In lieu of the above method, completely remove all combustible material from plaster face of partitions on hall side and repair existing plaster. After inspection, plaster boards or perforated rock lath may be applied directly over the existing plaster face of partitions on hall side. Cover plaster boards or perforated rock lath with two coats of gypsum mortar as above, or plaster boards may be covered with No. 26 U.S. gauge stamped metal.

(3) **Mineral wool.** Fill solidly between partition uprights, from underside of flooring to ceiling with mineral wool blown in place by the pneumatic method, packed solidly to fill all spaces and voids.

(4) **Brick, gypsum, etc.** Fill solidly between partition uprights from underside of flooring to ceiling with brick, gypsum, or other acceptable material packed solidly to fill all spaces and voids. Where brick, gypsum, or other masonry material is intended to be used, application must be filed before installation with the Department of Buildings for approval of strength of existing members intended to support the proposed masonry fire-retarding.

(5) **Other methods.** No other method may be used unless same is acceptable to the Department of Buildings.

(6) **Removal of windows in public hall partitions.** When windows in walls or partitions are removed, both sides of the openings shall be sealed with fire-retarding materials, except that wood lath and plaster may be used on the room side of the opening when the existing surface of the room is constructed of wood lath and plaster.

(7) **Electric meters.** Where direct current (DC) electric meters of public utility companies are present or installed on partitions of public halls the fire-retarding shall continue unbroken behind the meters or the meters shall be mounted on a heavy slate back or non-magnetic fireproof equivalent, such as transite, asbestos board, etc., against which fire-retarding finished up tightly.

(8) **Partitions in class B converted dwellings.** Where fire-retarding is required in any class B converted dwelling referred to in paragraph (7) of subdivision (a) of this section, both sides of all enclosure partitions of entrance halls, stair halls and public halls throughout such building shall be fire-retarded in accordance with the provisions of paragraph (3) or (4) of subdivision (b) of this section.

(9) **Partitions in altered old law tenements.** In any old law tenement where the occupancy is increased on any story, the enclosing partitions of any entrance hall, stair hall or public hall on the story where the occupancy has been increased, shall be fire-retarded on both sides. Such requirements shall apply only to the walls of the entrance hall, stair hall or public hall adjoining the altered apartment. The enclosing partitions of such halls other than those adjoining the altered apartment, and the partitions on any story where the occupancy has not been increased, shall be fire-retarded on the hall side. The method of fire-retarding shall be as set forth in paragraph (1) or (2) of subdivision (b) of this section, or said partitions shall be fire-retarded in accordance with the provisions of paragraph (3) or (4) of subdivision (b) of this section.

(10) **Newly constructed partitions.** In any entrance hall, stair hall or public hall where any partition or part thereof is newly constructed, and where the plaster has been removed from any partition or part thereof, such partition shall be fire-retarded on both sides.

(c) **Ceilings.** Any approved method for fire-retarding partitions shall be acceptable for fire-retarding ceilings, provided that all existing materials are completely removed to face of joists. Mineral wool, brick gypsum or other masonry fill will not be accepted.

(1) Where any entrance hall, public hall or stair hall, or any other portion thereof, in any part of any old law

tenement or converted dwelling is required to be fire-retarded that portion of any ceiling directly underneath any such entrance hall, public hall or stair hall shall be fire-retarded. Where such ceiling is located in any store, apartment or other space it shall also be fire-retarded as required for partitions by paragraph (1) or (2) of subdivision (b) of this section.

Where the above method is impractical due to the existing ceiling construction in any such store, apartment or other space, the Department of Buildings may permit the fire-retarding of such ceilings to be applied from above by removing the floor of any such entrance hall, public hall or stair hall and installing between the floor beams, and directly against the ceiling below, a layer of heavy building paper over which there shall be placed a basket made of reinforced ribbed expanded metal lath weighing at least 3.4 pounds per square yard. Such basket shall be lined with Portland cement or gypsum mortar not less than one inch (1") in thickness. The building paper, metal lath and cement or gypsum mortar shall be carried at least halfway up on the sides of the beams. However, this method will not be accepted for the fire-retarding of any such ceiling located in a space used for a hazardous purpose or business, nor will it be accepted for the fire-retarding of any such ceiling located in the cellar or for the fire-retarding of any ceiling located in any store, apartment or other space when such ceiling is constructed of wood or of wood and metal applied directly to the beams. In such cases the ceilings shall be fire-retarded according to the requirements of paragraph (1) or (2) of subdivision (b) of this section.

(d) **Existing wood stairs.** Except where stairs of incombustible material are required in class B converted dwellings as set forth in paragraph (7) of subdivision (a) of this section, all wood railings, balustrades and newel posts shall be completely removed from every existing wood stairs and such stairs shall be provided with railings, balustrades and newel posts of metal or other hard incombustible material, of such size are secured in such manner to the existing stairs as may be approved by the Department of Buildings, except handrails may be hardwood.

Soffits and stringers of existing wood stairs shall be fire-retarded in accordance with the methods set forth in subdivisions (e) and (f) of this section.

(e) **Stair soffits.** The soffits of every stair in every entrance hall, public hall, and stair hall, including any soffit extending beyond the enclosure partitions of any such hall, shall be fire-retarded.

Any approved method for fire-retarding partitions shall be acceptable for fire-retarding stair soffits provided that all existing materials are completely removed to face of structural members of stair soffits.

(f) **Fascia-stair and well.** Fascia of outside stringer on rake of stairs, and well fascia at floor level, shall be fire-retarded their full depth to form complete seals with the soffits of stairs and ceilings of halls, respectively. Type of fire-retarding shall be one of those herein approved for ceilings of halls, or in lieu thereof, cover fascia with sheet asbestos not less than three-sixteenths inch (3/16") thick with joints well pointed over which there shall be an additional single layer of No. 26 U.S. gauge stamped metal or cover fascia with a single layer of No. 14 U.S. gauge steel.

(g) **Fire-stopping.** All partitions required to be fire-retarded shall be fire-stopped with incombustible material at floors, ceilings and roofs. Fire-stopping over partitions shall extend from the ceilings to the underside of the flooring or roofing above. Fire-stopping under partitions shall extend from the underside of flooring to ceiling below. All spaces between floor joints (directly over and under partitions) shall be completely filled the full depth of the joists. Any space from top of partition to underside of roof boarding shall be completely fire-stopped.

Fire-stopping shall be done with brick, cinder concrete, gypsum, metal lath and Portland cement or gypsum mortar, mineral wool, or other materials acceptable to the Department of Buildings.

(h) **Door openings.** Except as provided in paragraphs (1) and (2) of this subdivision, all door openings into any public hall, entrance hall or stair hall which required to be fire-retarded shall be equipped with self-closing protective assemblies having a fire resistive rating of at least one hour.

(1) In old law tenements where the number of apartments is not being increased, existing wood doors opening into public halls, entrance halls or stair halls may remain provided such doors are made to be self-closing ("butterfly" spring hinges are not acceptable) and, provided further, all glazed transoms and panels in every such door are glazed with wire glass. All such transoms shall be made stationary.

(2) Where, in any old law tenement, the number of apartments is being increased on one or more stories, door openings into public halls, entrance halls or stair halls on each story or stories shall be equipped with self-closing protective assemblies having a fire-resistive rating of at least one hour.

In such old law tenements existing wood doors opening into public halls, entrance halls or stair halls may remain on any story where there is no increase in the number of apartments, provided such doors and every transom and panel in same are made to conform to the requirements set forth in paragraph (1) of subdivision (h) of this section.

(3) All doors shall be properly fitted to their assemblies and there shall be no unnecessary spaces between doors and door bucks or saddles.

(i) **Materials.** All materials used in the process of fire-retarding shall be of a type and manufacture acceptable to the Department of Buildings.

The following shall be considered as minimum requirements:

(1) **Metal lath.** Metal lath shall weigh at least 30 pounds per square yard, except lath used over existing plaster which lath shall weigh at least 3.4 pounds per square yard and be reinforced with rigid ribs not less than three eights inch (3/8") deep, spaced not more than eight (8") on center running full length of sheets. Where ribs exceed 4.8 inches on center, same shall have at least one intermediate one eight inch (1/8") inverted rib running the full length of sheets.

Metal lath fastened to stubs shall be attached at least at six inch (6") intervals with 4-penny nails or one inch (1") roofing nails or No. 14 steel wire gauge wire staples, and to wood joists by at least 6-penny nails, one and one-quarter inch (1 1/4") roofing nails, or one inch (1") No. 14 steel wire gauge wire staples. When metal lath is applied over existing plastered surfaces, same shall be fastened with nails or staples of the same gauge and such nails or staples have anchorage of at least one-half inch (1/2")in studs and three-quarters inch (3/4") in joists. Laps between the studs or joists shall be securely tied or laced. Stiffened metal lath on wood studs, or joists, shall be nailed or stapled at least at eight inch (8") intervals, and the laps between studs similarly tied or laced.

Metal lath shall be galvanized or painted.

(2) **Plaster boards or perforated rock lath.** Plaster boards or perforated rock lath shall be of type and manufacture acceptable to the Department of Buildings. Each board shall bear the name of manufacturer and brand stamped thereon for inspection after erection.

Plaster boards or perforated rock lath nailed directly to wood studding or joists shall be fastened with one and one-eighth inches (1 1/8") wire nails of at least No. 13 steel wire gauge, with flat three-eighth inch (3/8") heads. When such boards are applied over existing plastered surfaces, same shall be fastened with nails of the same gauge and such nails shall have anchorage of at least one-half inch (1/2") in studs and three-quarters inch (3/4") in joists. The maximum space between nails shall be four inches (4"). The joints shall be broken at every other board. The wetting of such boards before plastering is forbidden.

(3) **Stamped metal.** Stamped metal shall be No. 26 U.S. gauge (equivalent thickness .018 inches or 3/160 inches) with one inch (1") lapped seams. Size of sheets shall be not more than twenty-four inches by ninety-six inches (24" x 96"), having a selvage consisting of a half-round bead sufficient to create a one inch (1") overlap at both seams. Nailing shall be secured direct to studs or joists with 6-penny smooth box nails (two inches (2") or No. 12 1/2" gauge) with nails on end seams spaced not more than three inches (3")apart. Nailing to plaster is forbidden and in all cases nails shall

have anchorage of at least one-half inch (1/2") in studs and three-quarters inch (3/4") in joists. All beads at seam shall be chisel sealed, making a tight joint. All sheets shall be marked "26 U.S. Gauge" for identification and inspection after erection.

(4) **Mineral wool.** Mineral wool shall be of a type and manufacture acceptable to the Department of Buildings.

Holes shall be cut approximately three inches (3") in diameter through the wood lath and plaster near the ceiling, in the panels between each two adjacent studs. As an alternative, holes may be cut approximately three inches by six inches (3" x 6") on every second stud. Check each stud panel with a weight and line to find out whether there is any obstruction. If any cross-bridging or other obstruction is encountered additional holes shall be cut until access has been gained to all open spaces within the stud panel in all specified partitions. Mineral wool shall then be blown into all spaces by the pneumatic method with air pressure sufficient to pack the insulation to a density acceptable to the Department of Buildings. Mineral wool for this work shall be in bags or containers marked with the manufacturer's name and label specifying its type.

(5) **Other materials.** No other material may be used unless same is acceptable to the Department of Buildings.

(j) **Exceptions.** Where any portion of any entrance hall, stair hall or public hall has been previously fire-retarded under the supervision of this department, the former Tenement House Department or various former Departments of Buildings, such fire-retarding will be accepted only to the extent that same has been previously approved, provided, however, that such entrance hall, stair hall or public hall is otherwise made to conform to all the requirements set forth in these rules.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER O FIRE-RETARDING OF ENTRANCE HALLS, STAIR HALLS AND PUBLIC HALLS IN OLD LAW TENEMENTS AND CONVERTED DWELLINGS

§25-172 Fire-Retarding of Cellar Ceilings in Old Law Tenements and Converted Dwellings.

(a) **Intent.** The fire-retarding rules herewith set forth are approved by the Department of Buildings for the existing multiple dwellings where the ceilings of the cellar or other lowest story is required, by §185 and §240, subdivision 3, Multiple Dwelling Law, and by §27-2044, Housing Maintenance Code, to be fire-retarded in a manner approved by the Department of Buildings.

(1) It is the intent of the law to provide a continuous fire-retarded covering over the entire ceiling of the cellar, or other lowest story, so as to prevent fire communicating with upper stories of a multiple dwelling.

Where there is a space less than four feet six inches (4'-6") in height from the ground or floor level to the underside of the first tier of beams, such space shall be considered as an "air space" and not as a cellar. However, when such space opens to a cellar where fire-retarding of the ceiling is required, then such space shall be separated from the cellar with a partition constructed of incombustible material in which there is provided a self-closing door and assembly having a fire-resistive rating of at least one hour.

Where the ceiling of the cellar or other lowest story is required to be fire-retarded, all openings in such ceilings for stairways not located directly under a main stair, also openings in ceiling such as pipe shafts, vent shafts, unenclosed dumbwaiter shafts, disused flues, etc., shall be properly closed. (Private stairs within duplex apartments extending into

cellar or basement are not required to be enclosed.)

New partitions erected to enclose existing stair referred to in the preceding paragraph shall be of incombustible materials. Existing partitions enclosing any such stair will be acceptable where same are of incombustible materials or where same are fire-retarded on both sides in accordance with the methods set forth in or §25-171(b)(1) or (2) and with materials conforming with the requirement of §25-171(i) of these rules and regulations. Door openings in such enclosure partitions shall be equipped with self-closing protective assemblies having fire-resistive ratings of at least one hour.

When existing shafts, including dumbwaiter shafts, extend below the ceiling a distance less than one-half (1/2) the height of the cellar, such shafts shall be considered as being part of the cellar ceiling and the enclosures of said shafts shall be fire-retarded in the same manner as required for cellar ceilings. All existing shafts, including dumbwaiter shafts, which extend below the ceiling a distance more than one-half (1/2) the height of the cellar shall be enclosed with incombustible materials. All shafts referred to in this paragraph shall have adequate cleanout at base consisting of fire-proof self-closing door and assembly having a fire-resistive rating of at least one hour.

Where new partitions or enclosures are erected in a cellar they shall be constructed of incombustible materials.

(2) **Wood girders, columns, posts, etc.** The fire-retarding material of ceiling of cellar or other lowest story shall be carried down and around all non-fireproof ceiling projections, such as wood girders, etc., which are less than six inches (6" x 6") in diameter.

The fire-retarding material also shall be turned down at least three inches (3") on all non-fire-retarding columns, posts, etc., which are less than six inches (6") in diameter.

(3) **Non-fire-retarded cellar partitions.** When non-fire-retarded partitions in cellar, or other lowest story, extend to the ceiling, the fire-retarding material of the ceiling shall be turned down at least three inches (3") on said partitions, or the partitions shall be cut off at top to permit the fire-retarding of the ceiling to be continuous.

Where, in any old law tenement three (3) stories and basement in height, there is also a cellar under the basement story, the ceiling of such cellar shall be fire-retarded; and also, in any such old law tenement, where the main entrance from the grade is to the first story that portion of the basement ceiling which is directly under the first story entrance hall, public hall and stair hall shall be fire-retarded.

In every old law tenement three (3) stories and basement in height with no cellar under the basement, where the main entrance from the grade is to the basement story, the ceiling of the basement story shall be fire-retarded throughout. In any such old law tenement where the main entrance from the grade is to the first story no such fire-retarding will be required.

(4) **Heating appliances.** The portion of the ceiling over any furnace, boiler or hot water heater shall be fire-retarded in accordance with the methods set forth in §25-171(b)(1) or (2) and such fire-retarding shall extend for a distance of at least four feet (4'-0") beyond the sides and rear, and eight feet (8'-0") in front of such furnace or boiler.

(5) It is not intended that these rules and regulations in themselves require plans to be filed. However, should any work involve structural changes, then plans are required to be filed in the Department of Buildings and such changes shall be subject to all other rules and regulations applicable thereto.

(6) Work shall not commence until satisfactory evidence has been submitted to the Department of Buildings that compensation insurance has been obtained in accordance with the provisions of the Workmen's Compensation Law.

(b) **Methods.** Cellar ceilings shall be fire-retarded according to any of the following methods:

Metal lath and cement or gypsum mortar conforming to §25-171(b)(1) of these rules.

Plaster boards and gypsum mortar or stamped metal conforming to §25-171(b)(2) of these rules and regulations.

No. 26 U.S. gauge stamped metal over existing plastered ceiling, when erected without damage to the plaster. Furring strips are not required, but if used, they shall be metal covered on both sides and on face surface. Stamped metal shall not be applied until after existing plastered ceiling has been inspected and approved by an inspector of the Department of Buildings.

(c) **Materials.** No other method may be used unless same are acceptable to the Department of Buildings.

Materials used shall be in accordance with the provisions of §25-171(i)(1), (2) or (3) of these rules and regulations.

Mineral wool, brick, gypsum or other masonry fill will not be accepted for fire-retarding cellar ceilings.

No other materials may be used unless same are acceptable to the Department of Buildings.

HISTORICAL NOTE

Section added City Record Mar. 31, 1992 eff. Apr. 30, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-173

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER O FIRE-RETARDING OF ENTRANCE HALLS, STAIR HALLS AND PUBLIC HALLS IN OLD LAW TENEMENTS AND CONVERTED DWELLINGS

§25-173 Fire-Retarding of Cooking Spaces in all Multiple Dwellings.

(a) **Intent.** The rules herewith set forth are approved by the Department of Buildings for the protection of cooking spaces under §§33 and 176 of the Multiple Dwelling Law.

As set forth in §33 of the Multiple Dwelling Law, nothing in these rules shall be construed as permitting fire-retarding partitions in fireproof multiple dwellings.

(b) **Section 33, Multiple Dwelling Law.** Execpt when sprinkler heads are installed in conformity with subdivision (e) of this section, §33 of the Multiple Dwelling Law requires fire-retarding of cooking spaces in existing and newly constructed class A and class B multiple dwellings.

(c) **Ceilings and walls exclusive of doors.** Walls and ceilings shall be fire-retarded according to any of the following methods:

Metal lath and cement or gypsum mortar conforming to §25-171(b)(1) of these rules and regulations.

Plaster boards and gypsum mortar or stamped metal conforming to §25-171(b)(2) of these rules and regulations.

No. 26 U.S. gauge stamped metal over existing plaster when erected without damage to the plaster. Furring strips

are not required, but if used, they shall be metal covered on both sides and on face surface. Stamped metal shall not be applied until after existing plaster has been inspected and approved by an inspector of the Department of Buildings.

Materials used shall be in accordance with the provisions of §25-171(i)(1), (2) or (3) of these rules and regulations.

No other methods or materials may be used unless same are acceptable to the Department of Buildings.

(d) **Combustible material.** In every cooking space, all combustible material immediately underneath or within one foot of any apparatus used for cooking or warming of food shall be fire-retarded in conformity with the applicable provisions of these rules or covered with asbestos at least three-sixteenths inch (3/16") in thickness and twenty-six gauge metal or with fire-resistive material of equivalent rating. There shall always be at least two feet (2'-0") of clear space above such apparatus.

(e) Sprinkler heads installed in ceilings of cooking spaces in lieu of fire-retarding the ceilings and walls. Where sprinkler heads are installed in the ceilings of cooking spaces in lieu of fire-retarding the ceilings and walls, all of the provisions of subdivisions (a) to (f) of this section inclusive, shall be complied with, except that it will not be required that the fire-retarding of the walls and ceilings of cooking spaces be complied with.

Before the installation of sprinkler heads is begun a "Plumbing Repair Slip" shall be filed with and approved by the Department of Buildings.

Sprinkler heads shall be of a type and manufacture approved by the Department of Buildings or previously approved by the Board of Standards and Appeals or by the Underwriters Laboratories Limited, and shall have fusible struts constructed to fuse at a temperature not higher than two hundred twelve degrees (212°) Fahrenheit.

Every sprinkler head shall bear the year of manufacture clearly on its surface. No sprinkler head may be installed after December 31st of the year following the year of manufacture.

There shall be provided at least one (1) sprinkler head for every fifty-nine (59) square feet or fraction thereof of the floor area of the cooking space.

Sprinkler heads shall be connected with the water supply of the building through a pipe of at least one-half (1/2) inch inside diameter.

Where practicable, sprinkler heads shall be located in an upright position on top of the sprinkler piping.

There shall be kept available on the premises at all times a sufficient supply of extra sprinkler heads and also a sprinkler wrench for use to replace promptly any fused or damaged sprinkler heads.

Any head which has opened or has been damaged shall be replaced immediately with a good sprinkler head.

Painting or kalsomining of sprinkler heads is prohibited.

(f) **Cooking spaces constructed after July 1, 1949.** Application and plans must be filed with and approved by the Department before any work is started in connection with the construction of any cooking space after July 1, 1949.

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CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER O FIRE-RETARDING OF ENTRANCE HALLS, STAIR HALLS AND PUBLIC HALLS IN OLD LAW TENEMENTS AND CONVERTED DWELLINGS

§25-174 Fire-Escapes, Fire-Stairs and Fire-Towers.

(a) **Intent.** These rules have been approved by the Department of Buildings to supplement the provisions of §53 of the Multiple Dwelling Law in relation to fire-escapes, fire-stairs, etc.

Where fire-escapes serve as a means of exit from other than multiple dwellings, such fire-escapes shall comply with the laws governing such occupancy.

The voluntary erection of fire-escapes on private residence buildings or business and residence buildings shall be in conformity with these rules and regulations unless otherwise directed by the Borough Superintendent of the Department of Buildings.

It is the intent of these rules to cover only general conditions and they are not designed to cover specific or special cases. When such may occur the owner is required to consult the Department of Buildings and receive instructions before starting of work.

(1) **Fire-escapes on multiple dwellings requiring new certificate of occupancy.** Except as provided in paragraph (2) of subdivision (g) of this section re lodging houses, double-rung ladder type fire-escapes will not be accepted when a new certificate of occupancy is required.

(2) **Alterations for increased occupancy.** Where an alteration is made increasing occupancy on any story and a fire-escape is required such fire-escape shall conform to the provisions of §53 of the Multiple Dwelling Law and to the applicable provisions of these rules.

(b) **General provisions.** (1) **Caution.** No fire-escapes shall be removed from any apartment without due precaution against leaving occupants without fire-escape protection as required by subdivision 9 of §53 of the Multiple Dwelling Law.

(2) **Entrance story, etc.-second means of egress.** Where the distance to safe landing, from the window sill of any apartment on any story, including the entrance story, is more than twelve feet (12'-0"), a balcony and sliding drop-ladder or other approved second means of egress shall be provided for such apartment. Safe egress to street or other safe place shall be provided from the termination of such means of egress.

(3) **Application blanks and plans.** Before the erection of new fire-escapes or alteration of existing fire-escapes upon any multiple dwelling, application must be filed with and approved by the Department of Buildings.

(4) **Projections beyond the building line.** Every part of fire-escapes or balconies erected on the fronts of multiple dwellings shall be at least ten feet (10') above the sidewalk when such fire-escapes or balconies project beyond the building line.

(c) **Illegal fire-escapes shall be removed.** All vertical ladder, wire, chain or cable fire-escapes if required as a means of egress shall be removed and replaced with a legal means of egress.

(d) **Acceptable existing means of egress on existing multiple dwellings.** Except as provided in subdivision (c) of this section, in any existing multiple dwelling any existing means of egress which was lawfully permitted prior to the time the Multiple Dwelling Law became effective may be continued as a legal means of egress as hereinafter enumerated.

If located on the front or rear wall of the building and properly connected with stairs with proper openings.

If located in an outer court at a point distant not more than thirty feet (30'-0") from the outer end of such court and provided such court is not less than five feet (5'-0") in width from wall to wall at any point between such fire-escape and the outer end of said court.

If located in an inner court whose least horizontal dimension is not less than fifteen feet (15'-0") measured from wall to wall.

If a party-wall balcony on the front or rear wall of the building and there are no doors or openings in the walls between the two buildings other than windows in fireproof air shafts.

If a party-balcony located in an outer court not more than fifteen feet (15'-0") in length measured from the outer end of such court to the innermost point thereof, and not less than five feet (5'-0") in width from wall to wall at any point between the fire-escape and the outer end of said court, and provided also that there are no doors or openings in the walls between the two buildings other than windows in fireproof air-shafts.

No fire-escape, however, shall be deemed sufficient unless all the following conditions are complied with:

All fire-escapes, whether a required means of egress or not, shall be maintained in good order, repair and structurally safe.

All parts shall be of iron or stone.

Except as provided in subdivision (bb) of this section every apartment above the ground floor in each multiple

dwelling shall have direct access to a legal fire-escape without passing through a public hall.

Except party-wall balconies, all balconies shall be connected to each other by means of a stair or, when permitted, by double-rung ladders.

All fire-escapes, except party-wall balconies, shall have proper drop-ladders in guides from the lowest balcony of sufficient length to reach a safe landing place beneath.

All fire-escapes not on the street shall have a safe and adequate means of egress from the yard or court to the street or the the adjoining premises.

Prompt and ready access shall be had to all fire-escapes. Except as provided in subdivision (bb) of this section, such access shall be through a living room or private hall in each apartment or suite of rooms at each story above the ground floor and shall not include the window of a stairhall, nor shall any such egress be obstructed by sinks or other kitchen fixtures, or in any other way.

No existing fire-escape shall be extended or have its location changed except with the written approval of the Department of Buildings. Where an existing apartment in a tenement house erected prior to April twelfth, nineteen hundred and one, is located entirely on a court and has no rooms opening on the street or yard, fire-escapes hereafter provided for such apartments may be located in courts under the same conditions as prescribed for existing fire-escapes in this subdivision.

When wire, chain cable or vertical ladder fire-escapes are permitted to remain on multiple dwellings under the provisions of subdivision 9 of §53, they shall be considered only as supplemental fire-escapes.

Such fire-escapes shall be maintained in a safe condition of repair at all times and shall be subject to the applicable requirements of all laws and to these rules in relation to maintenance of existing fire-escapes.

Before a pending violation requiring the removal of such existing fire-escapes is superseded or cancelled, an inspection shall be made in accordance with the specific requirements as set forth in the preceding paragraph.

Each of the owners of adjoining structures, commonly served by party-wall balconies serving as a required means of egress, shall maintain in good order and repair that portion of each such balcony which is on his property, and each such owner shall maintain egress normally unobstructed and unimpeded from each such balcony to and through his stucture.

It shall be unlawful for the owner of a structure on which there is a party-wall balcony serving as a required means of egress from an adjoining structure, to remove such party-wall balcony or any portion thereof or to prevent, eliminate or obstruct egress from such party-wall balcony to and through his structure, unless and until such owner has had erected a legal fire-escape or other approved means of egress.

See also subdivision (bb) of this section.

(e) **Party-wall balconies. (1) New party-wall balconies.** The erection of new party-wall balconies shall be subject to the discretion and jurisdiction of the Department of Buildings, provided, however, that there shall be no doors or openings in the wall between the buildings served by such balconies other than windows in fireproof airshafts. New party-wall balconies will not be permitted on adjoining frame multiple dwellings.

(2) **Existing party-wall balconies.** Party-wall balconies existing on any multiple dwelling shall afford safe egress, be kept in good order and repair, be constructed so as to be structurally strong and shall be maintained in conformity with all other applicable laws, rules and regulations. Such fire-escapes are acceptable on occupied multiple dwellings.

(f) **Party-wall fire-escapes.** The Department of Buildings may consent to the erection of party-wall fire-escapes

on adjoining multiple dwellings, to which the occupants have safe, unobstructed access in common, when such party-wall fire-escapes are constructed and maintained in accordance with the law and these rules and regulations.

(1) Any existing party-wall fire-escape (stairways) connection with and used in common by a multiple dwelling and a non-multiple dwelling is acceptable when such fire-escape is maintained in good order and repair and affords safe egress.

(g) **Double-rung ladders.** (1) Double-rung ladders will not be permitted on new fire-escapes.

(2) Any fire-escape existing prior to the enactment of the Multiple Dwelling Law on any multiple dwelling that does not require a certificate of occupancy resulting from an alteration, if structurally sound and in good condition and provided with existing ladders inclined at an angle not exceeding eighty (80) degrees and equipped with double-rung steps and which affords safe egress, shall be deemed to be a legal fire-escape.

When a certificate of occupancy is requested or required in connection with a lodging house which is equipped with a double-rung ladder fire-escape and such fire-escape is in good repair and adequate, except as to type, and only minor violations exist the correction of which will make the premises conform to all other law requirements, the existing double-rung ladder fire-escape may be accepted.

(3) Except as provided in paragraph (2) of subdivision (g) of this section re lodging houses, double-rung ladders are not acceptable when a new certificate of occupancy is to be issued.

(h) **Alteration of existing two-balcony fire-escapes on existing multiple dwellings.** When a building is not more than three (3) stories in height and provided with a balcony on each of the second and third stories, with connecting vertical ladders, and balconies not less than two feet five inches (2'-5") in width and of adequate length, the Department of Buildings may permit the removal of vertical ladders and replacing of the said ladders with regulation sixty (60) degree connecting stairs. Standards shall be one-half inch (1/2") round or square and height of rail at least two feet nine inches (2'-9").

The stairs shall be not less than seventeen inches (17") wide with a passageway between string and wall or string and top rail of not less than fourteen inches (14"). In lieu of such passageway, the Department of Buildings will permit a drop-ladder to be installed and placed at each end of the lowest balcony in those cases where it is impractical to provide a passageway of such minimum width.

New brackets shall be provided where necessary.

The gateway shall be cut in the front rail with a drop-ladder and guides from second (2nd) story to safe landing. Where fire-escapes are located at rear of building a gooseneck ladder shall be provided. The gooseneck ladder may be placed at an angle from the top floor balcony to the roof. When placed at an angle a minimum space of twenty-four inches (24") shall be maintained between the strings and front top rail and a minimum space of at least twenty-four inches (24") between the string of the gooseneck ladder and the frame of the window.

Conditions may be found where this modification will not exactly apply. When such a condition is found it should be brought to the attention of the Department of Buildings for decision.

When fire-escapes are at the front no gooseneck ladder shall be required.

When access to such existing two-balcony fire-escape is solely by means of a window in a bathroom, the doors of such bathrooms shall be glazed with glass or other than wire glass and all key or cylinder locks shall be removed from doors. In such bathrooms there shall be no fixture located in front of the window opening to fire-escape.

Such altered two-balcony fire-escape shall conform to all other requirements of law and these rules and

regulations.

(i) **Accessibility of fire-escapes from apartments, rooms, kitchenettes and other spaces.** Prompt and ready access shall be had to all fire-escapes and, except as provided in subdivision (bb) of this section, such access shall be through a living room, kitchenette or private hall in each apartment or suite of rooms at each story above the ground floor.

Access to fire-escapes shall not include the window of a stairhall, nor shall any such egress be obstructed by sinks or other kitchen fixtures, or in any other way.

A clear space of at least twenty-one inches (21") must be maintained as a passageway between any fixtures and the side of an opening leading to fire-escapes.

In any apartment which is occupied by a "family" as defined in §4, paragraph 5, Multiple Dwelling Law, and in which one or more living rooms are rented to boarders or lodgers, every such room shall be directly accessible to a fire-escape without passing through a public hall, and for separately occupied living rooms access to fire-escapes shall be direct from such rooms without passing through a public hall or any other separately occupied room, except as may be permitted in sections sixty-six, sixty-seven and two hundred forty-eight of the Multiple Dwelling Law.

(1) **Egress from apartments used for "single room occupancy."** No room in any apartment shall be so occupied for "single room occupancy" unless each room therein shall have free and unobstructed access to each required means of egress from the dwelling without passing through any sleeping room, bathroom or water-closet compartment.

In apartments used for "single room occupancy" there shall be access to a second means of egress within the apartment without passing through any public stair or public hall. On and after July 1, 1957, every tenement used or occupied for single room occupancy in whole or part under the provisions of §248, Multiple Dwelling Law, and which does not have at least two means of egress accessible to each apartment and extending from the ground story to the roof, shall be provided with at least two means of egress, or, in lieu of such egress, every stair hall or public hall, and every hall or passage within an apartment, shall be equipped on each story with one or more automatic sprinkler heads approved by the department. Elevator shafts in such tenements shall be completely enclosed with fireproof or other incombustible material and the doors to such shafts shall be fireproof or shall be covered on all sides with incombustible material.

In apartments used for "single room occupancy" where access to a required means of egress is provided through a room such access to such room shall be through a clear opening at least thirty inches (30") wide extending from floor to ceiling and such opening shall not be equipped with any door frame, or with any device by means of which the opening may be closed, concealed or obstructed.

(j) **Window bars, gates, etc.** No iron bars, gates or other obstructing devices will be permitted on any window giving access to fire-escapes or where such window provides a secondary means of egress in case of fire on any story, including the ground floor, basement, cellar, etc.

Windows on grade level at sidewalk, yard or court, or a roof level of an adjoining building, may have bars, but at least, one window in any apartment or suite of rooms shall be without bars or obstructions of any kind in order to afford a second means of egress and such window shall conform to the provisions of subdivision (k) of this section.

(k) **Windows and doors to fire-escapes.** The window or door giving access to fire-escapes shall not be less than two feet (2') in width and the sill of the window shall not be more than three feet (3') above the floor. Window openings shall be not less than two feet six inches (2'-6") high in the clear.

(1) **Steel casement sash.** Steel casement sash opening outward onto any fire-escape balcony three feet six inches (3'-6") in width will be permitted, provided such sash is equipped with approved extension hinges so that, when opened,

the sash will be flat against the wall, and further provided that there will be no adjusters on the sash as part of its equipment. Passageway of fourteen inches (14") clear width is required to be maintained between the sash or hinges and any portion of the fire-escape when the sash lies flat against the wall.

When casement sash is set at right angle to the fire-escape stairway a clear radial width of twenty inches (20") must be provided.

(2) **Wire screens and storm windows.** Wire screens are permitted on a door or window giving access to a fire-escape. Such screens may be of the rolling type, casement or of a type that slides vertically or horizontally in sections, providing that there shall be a clear unobstructed space two feet (2') in width and two feet six inches (2'-6") in height when the screens are opened and further provided that no such screen shall be subdivided with muntins or other dividing or separating bars into spaces less than two feet (2') in width by two feet six inches (2'-6") in height.

Storm sash and storm doors are permitted on openings giving access to fire-escapes provided they are arranged so as to be easily and readily opened from the inside and do not obstruct or interfere with safe egress.

(l) **Egress from fire-escape balconies not to be obstructed.** Egress from fire-escape balconies must not be obstructed by signs, fixed awnings or any other obstruction.

(m) **Extension roofs used as means of egress or directly under fire-escape balcony.**

(1) **Hereafter erected extension roofs.** Where the roof of an extension hereafter erected is to be used as a means of egress from a fire-escape, or where a fire-escape balcony is located directly above said roof, such roof shall be of fireproof constuction.

(2) **Existing extension roofs.** Except in converted dwellings where sprinklers may be installed, in every multiple dwelling where a fire-escape balcony is situated over and not more than eight feet (8') above a non-fireproof roof, or where a non-fireproof roof of an extension is to be used as egress from fire-escapes, the entire ceiling of said extension must be fire-retarded with metal lath and cement or gypsum mortar in the manner prescribed in §25-171(b)(1) and (i)(1) of these rules and regulations, or with one-half inch (1/2") approved plaster boards lined with No. 26 U.S. gauge stamped metal. In buildings requiring the issuance of a certificate of occupancy as a result of being altered structurally, the only approved method shall be with cement of gypsum mortar and metal lath weighing not less than three (3.0) pounds per square yard which shall be applied directly to the beams or other structural members.

Where the roof of an existing extension is used as fire egress, a balcony shall be provided at the level of the roof and, if the distance between the said balcony and a safe landing is more than sixteen feet (16'-0"), a landing platform must be provided not more than ten feet (10'-0") from said safe landing and this landing platform and the balcony on the roof level must be connected by a regulation stairway. From the landing platform a drop-ladder in guides must be provided so as to reach the safe landing.

A balcony and drop-ladder in guides as per paragraph (11) of subdivision (r) of this section shall be provided for every two fire-escape stacks or fraction thereof using an extension roof for landing and fire egress.

(3) **Skylights on extensions.** Any existing skylights in said roof must be constructed of incombustible material whenever deemed necessary.

Where skylights exist or are hereafter constructed on the roof of an extension used as a means of egress from a fire-escape, they must not interfere with egress in any way and if in the line of said egress, they must be provided with a substantial guard-rail not less than three feet six inches (3'-6") high.

(n) **Egress to street required from fire-escapes located in yards and courts not extending to the street.** In an old law tenement or a converted dwelling where fire-escapes are located in a yard less than thirty feet (30'-0") in depth,

or in a court which does not extend to such a yard or to the street, there shall be egress to the street by means of a fire-proof passageway. In such multiple dwellings, where the yard is less than thirty feet (30'-0") in depth and where the consent of the owner of the adjoining premises is obtained, in lieu of providing such fire-proof passageway, a door or gate in a lot-line fence leading from such yard or court to the yard or court of the adjoining premises may be accepted, provided, however, that such door or gate provides adequate egress and is not locked or secured in any manner except by a readily-accessible, easy to open hook or bolt.

Where fire-escapes are located in the yard of a new law tenement or of a multiple dwelling erected after April 18, 1929, access shall be provided from the street to the yard either in a direct line or through a court as provided in paragraph c of subdivision 2 of §238 and paragraph i of subdivision 2 of § 27, Multiple Dwelling Law.

Where fire-escapes are located in a court of a new law tenement or of a Multiple dwelling erected after April 18, 1929, and such court does not extend to the street, a fireproof passageway leading directly to the street shall be provided as required by paragraph b of subdivision 2 of §53, Multiple Dwelling Law.

All passageways required under these Rules shall be not less than seven feet (7'-0") in height and not less than three feet (3'-0") in width and shall at all times be kept clear and unobstructed. Doors and gates at the end of such passageways are prohibited, except that a door or gate equipped with an approved-type knob or panic bolt which shall be readily openable from the inside will be permitted at the building line. Doors and gates provided with keylocks or padlocks are prohibited.

(o) **Location for new fire-escapes.** No required fire-escape shall be permitted to be placed on an adjoining property without the written consent of the Department of Buildings. No fire-escape shall be erected within ten feet (10') of the termination of a duct. Fire-escapes for existing multiple dwellings shall be located as required by the department and arranged so as to provide legal egress for all rooms and apartments.

(1) **Fire-escapes in court (side yard).** Except as provided in paragraph (6) of subdivision (bb) of this section where an apartment has a street frontage and extends also to a yard, fire-escapes may be permitted to be placed in a court (side yard) if the court (side yard) is not less than seven feet (7'-0") wide. In any multiple dwelling where exterior structural conditions are such as to prevent the erection of a fire-escape on the street or yard, new fire-escapes may be permitted to be erected in a lot-line court (side yard) providing the lot-line court (side yard) extends from street to rear yard and is not less than three feet (3'-0") in width for its full length. Fire-escapes erected in such court may be three feet (3'-0") wide when the width of such court does not permit balconies three feet four inches (3'-4") in width.

The width of stairways and passageways and other arrangement details affected by the permitted reduction in the width of balconies will be determined and furnished to contractor by the Department upon request.

(2) Where an existing apartment in a tenement erected prior to April 12, 1901, is located entirely on a court and has no rooms opening on the street or yard, fire-escapes hereafter provided for such apartments may be located in courts under the same conditions as prescribed for existing fire-escapes in subdivision (d) of this section.

(p) **Materials.** All fire-escapes hereafter constructed shall consist of outside open balconies and stairways of iron, stone, or other approved materials. Wherever the term wrought iron is used in these rules it shall be deemed to include all other especially approved metals.

Cast iron will not be permitted to enter into the construction of fire-escapes.

The use of old material in the construction of new fire-escapes is prohibited.

Bolts used in the construction or repair of fire-escapes shall be machine bolts. The use of stove bolts is prohibited.

The strength and construction of stone balconies hereafter erected forming part of the fire-escape shall be subject

to the approval of the Department of Buildings.

All structural steel used in the construction of fire-escapes shall be at least one-quarter (0.25) inch in thickness.

(q) **Types of fire-escapes.** There shall be two types of fire-escapes: "Type A" and "Type B". Except for brackets and braces as hereafter described, what is applicable to one type is equally applicable to the other whether or not it is so stated specifically.

(1) **Definition of "Type A" and "Type B" fire-escapes.**

Type A. "Type A" shall mean fire-escape is one which has a supporting bracket at each end of the balcony or platform.

Type B. "Type B" fire-escape is one which has brackets not more than four feet (4') apart supporting the balcony or platform.

(2) Cantilever brackets will not be accepted for new fire-escapes on existing buildings.

(3) Details of other types of structural supports for fire-escapes must be submitted to and approved by the Department before being used in the construction of fire-escapes.

(4) "Type A" fire-escapes are not permitted on frame buildings, walls or hollow masonry constructions, on walls of solid masonry less than eight inch (8") in thickness nor on hollow walls of solid masonry unless complete construction details are submitted to and approved by the Department before the construction of fire-escapes.

(r) **Balconies.** All balconies, except those erected upon frame buildings and buildings having eight inch (8") brick walls, shall be not less than three feet four inches (3'-4") in width over all and may project into the public highway to a distance not greater than four feet (4') beyond the building line. Balconies erected upon frame buildings and buildings having eight inch (8") brick walls shall be thirty-six inches (36") in width. Balcony railings must be not less than two feet nine inches (2'-9") high.

(1) **Passageway.** Seventeen inches (17") in width is required between the strings of stairs and the wall, or between the strings of stairs and railings, clear of all projections to a height of six feet six inches (6'-6").

Fourteen inches (14") clear width is required between the hatchway railing and the window sill.

Seventeen inches (17") in width is required between the gooseneck ladder and the hatchway on the upper balcony.

(2) **Openings.** The openings for stairways in all balconies shall be not less than twenty-one inches (21") wide, and of such length as to provide at least six feet six inches (6'-6") clear headroom on all stairways at every tread, and shall have no covers of any kind.

A round, iron guard rail, three-quarters inch (3/4") in diameter shall be provided around all hatchways on all new balconies, and also, when necessary, around hatchways on existing balconies. Such guard rails shall be at least two feet six inches (2'-6") high and shall be properly braced at intervals of three feet (3'). The brace from guard rail to the front top rail shall be so arranged to allow six feet six inches (6'-6") of headroom on the stairway.

Openings are not permitted in the floor of the lowest balcony of any new fire-escapes. Egress must be from a gateway in the front or end rail.

(3) **Top rails.** New top rails must be one and three-quarters inches by one-half inch (1 3/4" x 1/2") wrought iron or steel. Angle iron top rails will not be accepted. Separate bolt ends must be one and one-half inches by one-half inch (1 1/2" x 1/2") at connection with top rails and secured to the same by two three-eighths inch (3/8") bolts well upset.

No welded connections, other than shop welding, for top rails, will be permitted.

Top rails must go through the wall. When the wall is of brick, stone or concrete they must be anchored on the inner face thereof by means of nuts and four-inch by four-inch by three-eighths inch (4" x 4 x 3/8") washers. Where a masonry wall is eight inches (8") in thickness the washers shall be continuous and shall extend vertically from four inches (4") below the bracket anchorage to four inches (4") above the top rail.

Bolt ends must be at least three-quarters inch (3/4") in diameter.

Top rails must be anchored in the wall at least nine inches (9") from the window or door opening.

On recess fire-escapes the top rails need not go through the wall, but must be hot leaded six inches (6") in brick or stone and at least twelve inches (12") from the outside face of the wall.

The front and return top rail, unless in one (1) piece, must be secured at the angle in the following manner: (1) with lap joint, by one-half inch (1/2") rivet and a strap of same dimension as the top rail, with one (1) three-eighths inch (3/8") rivet or bolt in each end of the strap; (2) with butt joint, by a triangular plate four inches by six inches by three-eighths inch (4" x 6" x 3/8") secured to each member of the top rail by two (2) three-eighths inch (3/8") bolts or rivets.

Where front rails are not rigid they must be braced with outside braces. Said braces must be wrought iron not less than one and three-quarters inches by one-half inch (1 3/4" x 1/2") placed on edge. The braces must be properly spaced and secured to the extended brackets and top rails by three-eighths inch (3/8") rivets or bolts. Where brackets are extended to receive outside braces the extended portion must never be less than two inches by one-half inch (2" x 1/2") and secured to the bracket by two (2) three-eighths inch (3/8") rivets or bolts.

Bow braces and overhead braces will not be accepted.

(4) **Bottom rails.** Bottom rails must be one and one-half inches by three-eighths inch (1 1/2" x 3/8") wrought iron and front rail of same must be secured to brackets three-eighths- inch (3/8") rivets or bolts.

Return bottom rails must be leaded or cemented in the wall when the latter is of brick, or may be secured to the brackets when this is practicable.

The bottom front and return rails must be connected at angles by at least one (1) three-eighths inch (3/8") rivet or bolt well burred.

(5) **Standards.** Standards must be not less than one-half inch (1/2") round or square set vertically, riveted to the top and bottom rails, not more than six inches (6") apart on centers. Special designs must be submitted for any variation, and approved before work is begun.

(6) **Floor slats.** Floor slats must be of wrought iron one and one-half inches (1 1/2") in width and three-eighths inch (3/8") thick and placed not more than one and one-quarter inches (1 1/4") apart.

In new balconies floor slats shall not project more than six inches (6"), and in old balconies not more than eighteen inches (18"), beyond the end bracket and shall not be supported by the bottom rail.

All floors must be well secured to the brackets by three-eighths inch (3/8") "U" or clamp bolts.

Floor slats may be spliced with a four-inch (4") splice plate three-eighths inch (3/8") thick, secured by three-eighths inch (3/8") countersunk or roundhead bolts or rivets on each side of the joint.

The ends of the floor slats must not project over stairs so as to overhang the top tread more than one-half inch

(1/2"). The ends of such floor slats shall not be cut or burned off so as to be jagged or uneven. The floor slats shall be in true alignment.

(7) **Battens.** Battens must be one and one-half inches by three-eighths inch (1 1/2" x 3/8") not more than three feet (3') apart, riveted to the slats by five-sixteenth inch (5/16") rivets and so spaced as to secure rigidity.

No welded connections, other than shop welding, for top rails will be permitted.

Top rail must go through the wall. When the wall is of brick, stone or concrete they must be anchored on the inner face thereof by means of nuts and four-inch by four-inch by three-eighths inch (4" x 4"x 3/8") washers. Where a masonry wall is eight inches (8") in thickness the washers shall be continuous and shall extend vertically from four inches (4") below the bracket anchorage to four inches (4") above the top rail.

Bolt ends must be at least three-quarters inch (3/4") in diameter.

Top rails must be anchored to the wall at least nine inches (9") from the window or door opening.

On recess fire-escapes the top rails need not go through the wall, but must be hot leaded six inches (6") in brick or stone and at least twelve inches (12") from the outside face of the wall.

The front and return top rail, unless in one (1) piece, must be secured at the angle in the following manner: (1) with lap joint, by one-half inch (1/2") rivet and a strap of same dimension as the top rail, with one (1) three-eighths inch (3/8") rivet or bolt in each end of the strap; (2) with butt joint, by a triangular plate four inches by six inches by three-eighths inch (4" x 6" x 3/8") secured to each member of the top rail by two (2) three-eighths inch (3/8") rivets or bolts.

Top rails may be spliced with iron of the same dimensions as the rails with two (2) three-eighths inch (3/8") rivets or bolts on each side of the splice, or may be overlapped not less than eight inches (8") and secured by two (2) three-eighths inch (3/8") bolts or rivets.

Where front rails are not rigid they must be braced with outside braces. Said braces must be wrought iron not less than one and three-quarters inches by one-half inch (1 3/4" x 1/2") placed on edge. The braces must be properly spaced and secured to the extended brackets and top rails by three-eighths inch (3/8") rivets or bolts. Where brackets are extended to receive outside braces the extended portion must never be less than two inches by one-half inch (2" x 1/2") and secured to the bracket by two (2) three-eighths inch (3/8") rivets or bolts.

Bow braces and overhead braces will not be accepted.

(8) **Landings.** Landings at the head and foot of stairs shall be at least forty inches by twenty inches (40" x 20"), except on the balcony on the top story where the gooseneck ladder is located such landing shall be not less than forty inches by thirty inches (40" x 30"). On the lowest balcony where the opening to drop-ladder is in the return rail at front of the lowest tread the landing must be at least forty inches by thirty-six inches (40" x 36").

(9) **Egress from lowest balcony.** The gateway in the rail must be of sufficient width to permit the proper installation of the drop-ladder and guide-rods.

Where the opening to the drop-ladder is in the return rail and at front of the lowest step, the landing at the foot of the stairs must be at least three feet by three feet, four inches (3' x 3'- 4").

Top rails must be well braced at the gateway.

(10) **Distance from lowest balcony to ground.** The distance from the lowest balcony to the ground or safe landing shall be not more than sixteen feet (16'-0"), except that in existing multiple dwellings where due to structural conditions,

such as plate glass store fronts, etc., it is not possible to erect such lowest balcony within sixteen feet (16'-0") of the ground, the Department of Buildings may permit such balcony to be erected at a height of not more than eighteen feet (18'-0") above the ground.

(11) **Termination of fire-escapes on extension roofs.** Where fire-escape stairs or ladders rest upon a fireproof roof, no balcony need be provided at the foot of such stairs or ladders.

Where fire-escapes terminate on the roof of an existing extension, a guide-rod drop-ladder shall be provided at the level of the roof of such extension. Where the distance from such roof to a safe landing is more than sixteen feet (16'-0"), an intermediate balcony not more than ten feet (10'-0") above a safe landing shall be provided, and such intermediate balcony shall equipped with a guide-rod and drop-ladder and connected by means of a regulation stairway and balcony at the level of the extension roof.

Balconies, where required, must be anchored and constructed in a manner satisfactory to the Department of Buildings.

The roof of every extension used for egress, or upon which fire-escapes terminate, shall be fireproof or fire-retarded according to the provisions of subdivision (m) of this section of these rules and regulations.

(s) **Brackets and braces. (1) "Type A".** All horizontal members of brackets and all cross beams shall be not less than four-inch (4") channels weighing not less than seven and one-quarter (7.25) pounds to the linear foot.

The end bracket members shall enter the wall at a point not less than nine inches (9") from a door or window and shall be anchored on the inside face of the wall with an eight inch by eight inch by three-eighths inch (8" x 8" x 3/8") washer and one-inch (1") bolt and nut. Where the wall is eight inches (8") in thickness the washer shall be continuous and shall extend across all brackets and cross beams. The bolt end shall be wrought iron not less than two inches by one-half inch (2" x 1/2") which shall be drawn out to form the necessary bolt end without welded connections. The bolt end shall be secured to the bracket with two (2) one-half inch (1/2") rivets. On eight-inch (8") walls the bolt end shall not be less than nine inches (9") long. On twelve-inch (12") walls the bolt end shall not be less than eleven inches (11") long. On sixteen-inch (16") walls the bolt end shall not be less than fifteen inches (15") long.

When the wall is eight inches (8") in thickness the bracket member shall enter the wall not less than seven inches (7").

When the wall is twelve inches (12") in thickness the bracket member shall enter the wall not less than eleven inches (11").

When the wall is sixteen inches (16") in thickness the bracket member shall enter the wall not less than fifteen inches (15").

The intermediate cross beams shall enter the wall not less than eight inches (8") except where they enter the wall under a window. In such case the cross beam shall enter the wall not less than four inches (4").

The member forming the hatchway opening shall be a four-inch (4") channel iron weighing not less than seven and one-quarter (7.25) pounds per foot. It shall be secured to the intermediate cross beam with a three-inch by three-inch by one-quarter inch (3" x 3" x 1/4") lug and two (2) one-half inch (1/2") rivets or bolts.

The front bottom member of the fire-escape shall be of the following size and weights:

Length of Balcony	Weight of Channels	Size of Channels
Up to 11 feet	9.0 pounds per foot	5 inches
Up to 13 feet	10.5 pounds per foot	6 inches

Up to 15 feet	12.25 pounds per foot	7 inches
Up to 17 feet	13.75 pounds per foot	8 inches

The bracket braces shall be angle iron not less than two and one-half inches by two and one-half inches by one-quarter inch (2 1/2" x 2 1/2"x 1/4"). The braces shall drop not less than twenty-four inches (24") from the top of the bracket and shall extend out to a point not less than three-quarters (3/4) of the length of the bracket.

Each member of the brace shall be secured to the bracket with two (2) one-half inch (1/2") rivets.

The drop member of the brace shall be secured to the extended member with two (2) one-half inch (1/2") rivets.

The heel of the brace shall be cut out one-half inch (1/2") to allow for the drainage of water.

Where, owing to cornices, water-tables and porticos, it is impossible to use the standard brackets, inverted brackets may be used. When inverted brackets are used they shall be constructed with an upright wall member and a diagonal member. The wall member shall be an angle iron not less than three inches by four inches by three-eighths inch (3" x 4"x 3/8") and the diagonal member shall be an angle iron not less than three inches by three inches by three-eighths inch (3" x 3"x 3/8").

Each member shall be secured to the bracket with two (2) one-half inch (1/2") rivets.

The wall members shall be secured to the wall with two (2) one-inch (1") bolts which shall pass through the wall and be anchored on the inside face of the wall with a washer four inches by three-eighths inch (4" x 3/8") which shall extend across the two (2) bolts. A one-inch (1") nut shall secure the washer to the bolt. The bolts shall be placed sixteen inches (16") apart on centers. The four-inch (4") member of the wall brace shall bear against the wall and shall extend from the bracket to and above the top return rail of the balcony. The top return rail of the balcony shall be secured to the wall member of the brace with two (2) one-inch (1") rivets or nuts and bolts.

When inverted braced are used the bracket member shall enter the wall not less than four inches (4").

All other portions of "Type A" fire-escapes, except roof balconies, shall be constructed and erected as specified for the construction and erection of "Type B" fire-escapes.

(2) **"Type B".** The horizontal members of brackets shall consist of a one-piece wrought iron bar two inches by one-half inch (2" x 1/2") set so that the two inch (2") dimension is vertical.

Brackets shall be not more than four feet (4'-0") apart.

Welded brackets will not be accepted.

Angle iron brackets will not be accepted.

The top member of the bracket must be drawn out to form the necessary bolt end without welded connection.

Brackets shall be placed not less than eight inches (8") nor more than sixteen inches (16") below the window sill, except by special permission from this Deparment.

The top member of the bracket must go through the wall, and when the wall is of brick, must be anchored as specified for brackets in new buildings.

Brackets on buildings in course of erection must be built into the wall. They must be carried through the wall and turned down three inches (3"), or the top member must be drawn out so as to form a bolt end one inch (1") in diameter and provided with nuts and with washers four inches by six inches (4" x 6") and three-eighths-inch (3/8") in thickness,

or where brackets on existing buildings or buildings in the course of erection pass through the walls under window or door openings, such brackets shall be anchored on the inside face of the wall with a four-inch by three-eighths inch (4" x 3/8") plate extending across the opening and bearing nine inches (9") on the inner face of each pier. In such case as additional one-half inch (1/2") bolt passing through wall and anchored to plate with one-half inch (1/2") nut shall be provided. If wall is recessed said bar must be shaped so as to bear on inner face of recessed wall and the ends of said bar to bear nine inches (9") on inner face of each pier. In addition a four-inch (4") steel channel stiffener must be provided to extend across the entire recessed portion. Blocking the recessed portion will not be permitted. Where walls are eight inches (8") in thickness the four-inch by three-eighths-inch (4" x 3/8") plate must extend across and take in all brackets.

Special designs must be submitted for fire-escape framing other than standard and for masonry openings not included in above schedule.

Horizontal members of brackets must be braced with one-inch (1") square braces and shall rest on a shoulder. The braces shall be secured to the horizontal member with a rivet one-half inch (1/2") in diameter, at a point two-thirds (2/3) of the length of the horizontal member from the wall. The heel of the brace must be secured to the top member by a rivet of the same size.

The brace when entering the wall must be hot leaded in brick or stone three inches (3") and have a proper bearing on the face of the wall for at least eight inches (8").

If wedges are used to obtain full bearing against the wall, they must be of iron and well secured to the brace and must fill in solidly the space between brace and wall.

Anchorage in or bracing in terra cotta is not permitted.

Braces must drop at least one-third (1/3) of the length of the long brackets and must drop not less than eight inches (8") for short brackets.

Where a bracket is to receive additional weight on account of suspension rod for lower balconies, said bracket must be reinforced by an additional one-inch (1") square bracing running from the end of the bracket parallel to the regulation brace.

Where it is impossible to brace the brackets in the manner described above, angle iron and tie rod supports must be used.

(3) **Anchorages for mullion windows, both "Type A" and "Type B".**

Masonry Span	Brackets	Anchorage Member
5'-0"	3'-6" Long	6" Channel 10.5 pounds or 6" x 4" x 9/16" Angle
6'-0"	3'-6" Long	7" Channel 9.8 pounds or 6" x 4" x 11/16" Angle
7'-0"	3'-6" Long	8" Channel 11.5 pounds or 7" Channel 12.25 Angle
8'-0"	3'-6" Long	8" Channel 11.5 pounds
9'-0"	3'-6" Long	8" Channel 13.75 pounds
5'-0"	4'-0" Long	8" Channel 11.5 pounds or 6" x 4" x 3/4" Angle
6'-0"	4'-0" Long	8" Channel 11.5 pounds

7'-0"	4'-0" Long	8" Channel 13.75 pounds
8'-0"	4'-0" Long	8" Channel 16.25 pounds
9'-0"	4'-0" Long	8" Channel 21.25 pounds

Notes:

1-Working stresses taken at 16,000 pounds per square inch.

2- Load taken at 100 pounds per sq. ft. and includes live and dead loads.

3- Loads on anchorage members due to bracket reaction placed for maximum bending moment produced in member.

4- Bearing plates of suitable size must be provided for brackets taking ladder load and for anchorage members.

6" x 4" x 9/16" angle weighs 18.1 pounds per lin. ft.

6" x 4" x 11/16" angle weighs 21.8 pounds per lin. ft.

6" x 4" x 3/4" angle weighs 23.6 pounds per lin. ft.

Angle irons to support balconies where regulation braces cannot be used shall not be less than four inches by four inches by three-eighths inch (4" x 4" x 3/8"). Tie rods shall not be less than one inch (1") in diameter and shall be anchored through the wall in the same manner as brackets.

The angle iron support in such cases shall be set so that the tie rods will pull toward the heaviest part of the webs.

When it becomes necessary to shift a bracket from one location to another in order to carry the stairs, a new regulation two inch by one-half inch (2" x 1/2") bracket shall be installed.

No welded brackets, corroded brackets or brackets set flat with cast iron under-bracing will be accepted. Such brackets shall be replaced, wherever found, by a two-inch by one-half inch (2" x 1/2") bar bracket with cast iron under-bracing is found, said bracket may be permitted to remain if proper one inch (1") square under-bracing is provided.

(t) **Stairways.** All stairways shall be placed at an angle of not more than sixty (60) degrees with flat open steps not less than six inches (6") in width and twenty inches (20") in length and with a rise of not more than nine inches (9").

(1) **Treads.** Treads of such construction as may be approved by the Department from time to time will be permitted.

Flat iron bars forming treads must be one and one-half inches by three-eighths inch (1 1/2" x 3/8") and spaced not more than three-quarters of an inch (3/4") apart.

Bars forming treads must be secured to supporting angle irons by three-eighths-inch (3/8") rivets and these angle irons must be fastened to the strings by two (2) three-eighths-inch (3/8") rivets or bolts, well burred. Galvanized angle irons one and one-half inches by one and one-half inches by one-quarter inch (1 1/2" x 1 1/2" x 1/4") will be accepted but if not galvanized, said angle irons shall be one and one-half inches by one and one-half inches by three-eighths inch (1 1/2" x 1/2" x 3/8").

In all cases the vertical legs of the angle irons must be set tightly against the strings so that there will be no

intervening spaces.

All treads must be set level and must not overhang so as to interfere with foot room on the tread below.

(2) **Patented treads.** Patented treads approved by the Department of Buildings or previously approved by Board of Standards and Appeals for new installations will be accepted by the Department of Buildings as legal for use in buildings under its jurisdiction. Five samples of approved treads to be furnished to the Department of Buildings (once delivered to each Borough) as a permanent record.

(3) **Strings.** Where the strings of the stairs are adjacent to the front rails the strings must be securely fastened to the top rails.

Strings must be braced by round bars three-quarters-inch (3/4") in thickness, properly hot-leaded or secured by four inches by three-eighths inch (4" x 3/8") expansion bolts in brick or stone wall at a height of not less than six feet six inches (6'-6") in the clear above the floor of the balcony. Strings of stairways shall be four inches by three-eighths inch (4" x 3/8") wrought iron and shall rest on a bracket at the bottom and be bolted to a bracket at the top.

Welded strings, other than shop welded, will not be accepted.

(4) **Hand rails.** Hand rails must be of wrought iron, three-quarters-inch (3/4") round or one and one-half inches by three-eighths inch (1 1/2" x 3/8") bar, well braced with intermediate braces not more than five feet (5'-0") apart, and of the same size and material as the handrail, and secured to the strings with two (2) three-eighths inch (3/8") rivets at each end and at each brace; or handrails may be secured to the bottom rail of the upper balcony and top rail of the lower balcony by two (2) three-eighths inch (3/8") rivets at each end.

On all fire-escapes hereafter erected double handrails must be provided for all stairways.

(u) **Drop-ladder.** A drop-ladder shall be provided from the lowest balcony and be of sufficient length to reach a safe landing place beneath. The drop-ladder shall be fifteen inches (15") in width, shall be placed in guides and shall be not more than sixteen feet (16'-0") in length.

Except in multiple dwellings hereafter erected or converted, where the distance from the lowest balcony to a safe landing place is more than sixteen feet (16'-0") but because of structural conditions, such as plate glass store fronts, etc., a balcony is not possible, the Department may accept a drop-ladder in guides, if the distance from the floor of the lowest balcony to a safe landing place is not more than eighteen feet (18'-0").

No drop-ladder is required where the distance from the lowest balcony to a safe landing place does not exceed five feet (5'-0").

No drop-ladder will be permitted to land or terminate on a stoop or any part thereof unless the written approval of the Department of Buildings is obtained.

(1) **Guides.** All drop-ladders shall have guides provided with stops so that the ladders cannot be raised above the same. The drop-ladder must be suspended from a point directly over the opening in the rail of the balcony and arranged to slide in the guides so as to drop in position for use. All drop-ladders shall be provided with a shoe at the bottom.

The guides shall be constructed of one and one-half inches by one and one-half inches by one-quarter inch (1 1/2" x 1 1/2" x 1/4") angle iron, and shall be not less than twenty-one inches (21") apart.

(2) **Strings.** Strings of drop-ladders must be one and one-half inches by three-eighths inch (1 1/2" x 3/8") bar. No welded drop-ladders will be accepted unless shop welded.

(3) **Rungs.** The rungs must be five-eighths inch (5/8") in thickness, not over twelve inches (12") apart and must be

riveted to the strings.

(v) **Gooseneck ladder.** The top balcony of every fire-escape shall be provided with a stair or with a gooseneck ladder leading from said balcony to and above the roof, except that no such stairs or gooseneck ladders will be required in the following locations or under the following conditions:

(1) On multiple dwellings with peak roofs having a pitch of more than twenty (20) degrees.

(2) Where fire-escapes are located on the fronts or in street courts of multiple dwellings facing upon the street.

Where a multiple dwelling does not face upon the street, such as a multiple dwelling located at the rear of a lot upon which there is another building, every fire-escape on such multiple dwelling shall be provided with a stair or gooseneck ladder as required above, except where the roof of such building has a pitch of more than twenty (20) degrees as stated in exception A above.

Except as provided in paragraph (1) and (2) above, every fire-escape on every hereafter erected or converted multiple dwelling, and every new fire-escape hereafter provided on every existing multiple dwelling, shall be provided with a regulation stairway from the top balcony to the roof when such buildings exceed four (4) stories in height. In such multiple dwellings exceeding four (4) stories in height when due to special structural conditions which would not permit the erection of a stair from the top balcony to the roof or where the height from the top balcony to the roof may be such as to make the installation of a stair impractical, the Department of Buildings may accept a gooseneck ladder in lieu of a regulation stairway.

The top balcony of a fire-escape on every multiple dwelling not exceeding four (4) stories in height may be equipped with a gooseneck ladder.

(i) **Construction and location of gooseneck ladders.** The gooseneck ladder shall be fifteen inches (15") wide and shall be so located that it will not obstruct egress from the apartment or apartments on the top floor. The effective opening between the side of any window and the string of gooseneck ladder shall be not less than twenty-four inches (24").

The gooseneck ladder must be fourteen inches (14") from the front rail on existing balconies and twenty-one inches (21") on balconies hereafter erected.

(ii) **Strings.** The gooseneck ladder must be constructed with one piece strings of two inch by one-half inch (2" x 1/2") wrought iron.

Strings must be directly secured to the brackets or secured to a two inch by one-half inch (2" x 1/2") bar bearing on two (2) brackets and well secured to strings and brackets by three-eighths inch (3/8") bolts or rivets.

Strings must spread at the parapet wall or roof to give a passageway of eighteen inches (18").

Strings must be tied through the wall by braces going through the parapet immediately above the roof, or, in the absence of the parapet wall, the said braces must go through the wall immediately below the ceiling of the top floor and be secured by three-quarters-inch (3/4") bolts and four inches by four inches by three-eighths-inch (4" x 4" x 3/8") washers.

The gooseneck ladder strings must extend thirty inches (30") above the roof level. Where there is a parapet, a gateway at the roof level shall be provided.

The strings of the gooseneck ladder must be secured to and braced at the roof.

(iii) **Rungs.** Rungs shall be of wrought iron five-eighths inch (5/8") thick, spaced not more than twelve inches

(12") apart and shall be riveted through the strings.

The top rung of all gooseneck ladders shall be level with the roof.

(w) **Painting.** Section 53, Multiple Dwelling Law, required new fire-escapes to have two (2) coats of paint. The Department of Buildings will require these two (2) coats to be applied on contrasting colors, the first coat at the shop before erection, and the second coat applied after erection.

Existing fire-escapes shall be repainted whenever deemed necessary, in a manner satisfactory to the Department. Notice shall be given by the owner to the Borough Superintendent prior to the painting of fire-escapes.

(x) **Exceptions.** Any deviations or exceptions from these rules other than those specifically mentioned herein shall be submitted to the Department of Buildings for approval. Consent and approval shall be in written form and bear the signature of the Commissioner, Deputy Commissioner, Superintendent or the person designated to sign such consent by the Commissioner, Deputy Commissioner or Superintendent.

(y) **Fire-escapes on frame buildings.** Fire-escapes shall be constructed as for brick or stone buildings with following exceptions, and except also that balconies three feet (3'-0") wide will be acceptable to the Department.

(1) **Brackets.** Horizontal members of brackets must be one and three-quarters inches by one-half inch (1 3/4" x 1/2") wrought iron set on edge; one inch (1") bolt end through a four inches by three-eighths inch (4" x 3/8") iron plate, long enough to take in all brackets, secured to and bearing directly on the inside of the studs. Spaces between the studs behind such plates shall be filled in solidly with timber secured to the studs.

The heel of bracket braces must rest against one and three-quarter inches by one and three-quarter inches by one-quarter inch (1 3/4" x 1 3/4" x 1/4") angle iron extended across and well secured to studs.

(2) **Top rails.** Top rails shall be anchored by three-quarters inch (3/4") bolt ends, through a four inch by three-eighths inch (4" x 3/8") wrought iron plate spanning at least two (2) studs. Space behind plate and between studs shall be blocked solidly.

(3) **Bottom rails.** Bottom rails shall be secured to the siding in a substantial manner with two (2) one and one-quarter inch (1 1/4") No. 14 wood screws, or may be secured to the brackets where practicable.

(4) **Stairways.** Stair braces shall be secured to the wall of the building by two (2) No. 14 wood screws.

(z) **Outside fireproof stairs.** Outside fireproof stairs shall be constructed according to approved plans and applications of the Department of Buildings. Such regulations as govern the measurements of inside stairs shall be applied to outside fireproof stairways except that in multiple dwellings not exceeding three (3) stories and basement in height, a fireproof stairway leading from a front porch roof which is fireproof to the fireproof floor of an unenclosed porch will be deemed an outside fireproof stairway and such stairways may be of the same width as the ordinary fire-escape stairs. Area covered by fireproof outside stairs must not encroach upon the minimum dimensions of yards or courts.

(aa) **Fire-towers.** Fire-towers shall be constructed according to approved plans and applications filed with the Department of Buildings.

(bb) **Egress: hotels and certain other class A and class B dwellings which are subject to the provisions of §67, Multiple Dwelling Law.**

(1) **Exceptions.** Any such multiple dwelling, altered or erected after April fifth, nineteen hundred forty-four, and which is required to conform to the provisions of articles one, two, three, four, five, eight, nine and eleven of Multiple Dwelling Law, shall not be required to conform to the provisions of paragraphs (1), (2), (3) and (4) of subdivision (bb)

of this section.

(i) Except in fireproof class A multiple dwellings erected under plans filed after January first, nineteen hundred twenty-five, and which were completed before December thirty-one, nineteen hundred thirty-three, and except as otherwise provided in paragraph (4) of subdivision (bb) of this section, in every such dwelling three (3) or more stories in height there shall be from each story at least two (2) independent means of unobstructed egress located remote from each other and accessible to each room, apartment or suite.

(2) **First means of egress.** The first means of egress shall be an enclosed stair extending directly to a street, or to a yard, court or passageway affording continuous, safe and unobstructed access to a street, or by an enclosed stair leading to the entrance story, which story shall have direct access to a street. That area of the dwelling immediately above the street level and commonly known as the main floor, where the occupants are registered and the usual business of the dwelling is conducted, shall be considered a part of the entrance story; and a required stair terminating at such main floor or its mezzanine shall be deemed to terminate at the entrance story. An elevator or unenclosed escalator shall never be accepted as a required means of egress.

(3) **Second means of egress.** The second means of egress shall be by an additional enclosed stair conforming to the provisions of paragraph (2) of subdivision (bb) of this section, a fire-stair, a fire-tower or an outside fire-escape. In a non-fireproof dwelling when it is necessary to pass through a stair enclosure which may or may not be a required means of egress to reach a required means of egress, such stair enclosure and that part of the public hall or corridor leading thereto from a room, apartment or suite, shall be protected by one (1) or more sprinkler heads; in a fireproof dwelling only that part of the hall or corridor leading to such stair enclosure need be so protected.

(4) **Required second means of egress-impractical.** Where it is impractical in such existing dwellings to provide a second means of egress, the department may order additional alteration to the first means of egress and shafts, stairs and other vertical openings as the department may deem necessary to safeguard the occupants of the dwelling, may require the public hall providing access to the first means of egress to be equipped on each story with one (1) or more automatic sprinkler heads, and, in non-fireproof dwellings may also require automatic sprinkler heads in the stair which serves as the only means of egress.

(5) **Public halls and corridors providing access to fire-escapes.** Public halls and corridors providing access to fire-escapes, existing and new, are acceptable when a direct and uninterrupted line to travel to the fire-escape is provided.

Public halls and corridors providing access to fire-escapes shall be fire-retarded or shall be equipped with automatic sprinkler heads. The fire-retarding and sprinkler installation shall be in conformity with the rules and regulations of this Department and as required by subdivision 3 of §67 of the Multiple Dwelling Law.

All openings which provide direct access to an existing fire-escape from a public hall or corridor shall be equipped with fireproof doors and assemblies with the doors self-closing or fireproof windows glazed with clear wire glass. Access to new fire-escapes from such halls or corridors shall be by means of fireproof doors and assemblies with doors self-closing. Doors providing access to fire-escapes from public halls or corridors may be glazed with clear wire glass.

(6) **Fire-escapes-existing and new.** Existing fire-escapes which are structurally strong and in good repair, having connecting stairways set at an angle or not more than sixty-five (65) degrees, may be accepted as a secondary means of egress.

Except as otherwise required herein, new and existing fire-escapes shall be provided with a safe landing and the termination shall lead directly to a street or to a passageway which provides access to a street.

When it is impractical to provide a termination for fire-escapes as specified in these rules, the Department may accept a termination from such fire-escapes which leads to safety.

(7) **Supplementary means of egress.** A stair, fire-stair, fire-tower, or fire-escape which is supplementary to the egress requirements of paragraphs (2), (3) and (4) of subdivision (bb) of this section, need not lead to the entrance story or to a street, or to a yard or a court which leads to a street, provided the means of egress therefrom is approved by the department.

Fire-escapes which are supplementary to the required second means of egress, including fire-escapes of the inclined ladder and vertical ladder types, may remain on the dwelling if maintained in good order and repair, are structurally strong and safe and are provided with safe landing and the termination thereof leads to safety in a manner satisfactory to this Department.

(8) **Signs-supplementary means of egress.** Supplementary stairs, fire-stairs, fire-towers or fire-escapes which do not lead to the entrance story or to a street, or to a yard or court leading to a street, shall be clearly marked "NOT AN EXIT" in black letters at least four inches (4") high on a yellow background and at the termination of each such stair, fire-stair, fire-tower or fire-escape, there shall be a directional sign indicating the nearest means of egress leading to a street. All signs shall be constructed, located and illuminated in a manner satisfactory to the department.

(9) **Signs-general provisions.** Every means of egress shall be indicated by a sign reading "EXIT" in red letters at least eight inches (8") high on a white background, or vice versa, illuminated at all times during the day and night by a red light of at least twenty-five (25) watts or equivalent illumination. Such light shall be maintained in a keyless socket. On all stories where doors, openings or passageways giving access to any means of egress are not visible from all portions of such stories, directional signs shall be maintained in conspicuous locations, indicating in red on a white background, or vice versa, the direction of travel to the nearest means of egress. At least one sign shall be visible from the doorway of each room or suite of rooms. Existing signs and illumination may be accepted if, in the opinion of the department, such existing signs and illumination serve the intent and purpose of this subdivision.

(10) **Stairs, fire-stairs and fire-towers.** Stairs, fire-stairs and fire-towers hereafter provided shall be constructed according to plans and applications approved by the Department of Buildings.

(cc) **Egress: lodging houses.** (1) **Arrangement.** There shall be at least two (2) means of unobstructed egress from each lodging-house story, which shall be remote from each other. The first means of egress shall be to a street either directly or by an enclosed stair having unobstructed direct access thereto. If the story is above the entrance story, the second means of egress shall be by an outside fire-escape constructed in accordance with the provisions of section fifty-three, Multiple Dwelling Law, or by an additional enclosed stair. Such second means of egress shall be accessible without passing through the first means of egress.

(2) **Doors and windows.** All doors opening upon entrance halls, stair halls, other public halls or stairs, or elevator, dumbwaiter or other shafts, and the door assemblies, shall be fireproof with the doors made self-closing by a device approved by the department, and such doors shall not be held open by any device whatever. All openings on the course of a fire-escape shall be provided with such doors and assemblies or with fireproof windows and assemblies, with the windows self-closing and glazed with wire glass, such doors or windows and their assemblies to be acceptable to the department.

(3) **Aisles.** There shall be unobstructed aisles providing access to all required means of egress in all dormitories. Main aisles, approved as such by the department to provide adequate approaches to the required means of egress, shall be three feet (3'-0") or more in width, except that no aisles need be more than two feet six inches (2'-6") wide if it it is intersected at intervals of not more than fifty feet (50'-0") by cross-over aisles at least three feet (3'-0") wide leading to other aisles or to an approved means of egress.

(4) **Signs.** Every required means of egress from the lodging-house part of the dwelling shall be indicated by a sign reading "EXIT" in red letters at least eight inches (8") high on a white background illuminated at all times during the day and night by a light of at least twenty-five (25) watts or equivalent illumination. Such light shall be maintained in a

keyless socket. On all lodging-house stories where doors, openings, passageways or aisles are not visible from all portions of such stories, and in other parts of the dwelling which may be used in entering or leaving the lodging-house part and in which a similar need exists, signs with easily readable letters at least eight inches (8") in height, and continuously and sufficiently illuminated by artificial light at all times when the natural light is not sufficient to make them easily readable, shall be maintained in conspicuous locations, indicating the direction of travel to the nearest means of egress. At least one (1) such sign shall be easily visible from the doorway of each cubicle.

(5) **Roof egress.** Access from the public hall at the top story to the roof shall be provided by means of a bulkhead or a scuttle acceptable to the department. Every such scuttle and the stair or ladder leading thereto shall be located within the stair enclosure.

(6) **Persons accommodated.** The number of persons accommodated on any story in a lodging-house shall not be greater than the sum of the following components:

(i) Twenty-two (22) persons for each full multiple of twenty-two inches (22") in the smallest clear width of each means of egress approved by the department, other than a fire-escape.

(ii) Twenty persons (20) for each lawful fire-escape accessible from such story if it is above the entrance story.

(7) In view of the fact that §66, subdivision 3 (formerly §13, subdivision m), Multiple Dwelling Law, required lodging-houses to be sprinklered throughout, including public halls, the Department will accept existing double-rung ladder type fire-escapes on the condition that such fire-escapes are maintained in a good state of repair.

(dd) **Ladders leading to roof scuttles.** Ladders to roof scuttles as required under the provisions of§§187 and 233 of the Multiple Dwelling Law, shall be of incombustible material, not less than fifteen inches (15") wide, with strings not less than one and one-half inches by three-eighths inch (1 1/2" x 3/8"), with five-eighths inch (5/8") rungs not more than twelve inches (12") apart. Strings of such ladders shall be secured at top and bottom and ladder must be so arranged as to permit sufficient toe hold.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 25-191

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER Q LIST OF ALL VIOLATIONS CLASSIFIED AS RENT IMPAIRING

§25-191 List of All Violations Classified as Rent Impairing.

The Department of Housing Preservation and Development has promulgated the following as a complete list of violations, currently classified as rent impairing under Multiple Dwelling Law, §302-a.

The list contains a brief description of the conditions constituting the violations, the section of the Multiple Dwelling Law or Housing Maintenance Code violated and the order number now assigned thereto by the Department of Rent and Housing Main- tenance.

[See tabular material in printed version]

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28 RCNY 25-201

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER R COLLECTION, RETENTION AND DISPOSAL OF GARBAGE, RUBBISH AND REFUSE IN MULTIPLE DWELLINGS

§25-201 Collection, Retention and Disposal of Garbage, Rubbish and Refuse in Multiple Dwellings.

(a) The owner, lessee or person in charge of every multiple dwelling shall keep upon the premises sufficient, proper and separate metal receptacles for the deposit of garbage, rubbish and other waste materials of such capacity and construction as provided for in these rules.

(1) Where dumbwaiter service is provided all garbage, rubbish, refuse and other waste matter in the building shall be collected at least once daily and deposited in separate metal receptacles. These receptacles shall be provided with tight fitting covers and shall be located in the cellar, basement or other lowest story except when placed outside the building for regular collection by the Department of Sanitation. Such receptacles shall always be kept covered with tight fitting covers. They shall be regularly disinfected and kept in a clean sanitary condition.

(b) Where no dumbwaiter service is maintained the following regulations shall apply: (1) Between the hours of 7 a.m. and 9 a.m. or between 6 p.m. and 8 p.m. at least two metal receptacles of such capacities as are provided for in these rules shall be placed within the building so as to be accessible to every occupant therein. Such receptacles shall not be placed so as to obstruct egress or create a nuisance. The owner shall notify all tenants concerning location of receptacles and hours of collection.

(i) Occupants of the respective floors shall deposit all garbage, rubbish and refuse only in the receptacles referred

to in the foregoing rule, and during the hours indicated therein. Throwing garbage or other waste matter out of windows or depositing same in any place other than in receptacles provided for in these rules is forbidden.

(ii) The receptacles referred to in paragraph (1) of subdivision (b) of this section shall be promptly removed from their locations upon the expiration of the period indicated and taken to the cellar, basement or other lowest story and there disposed of in accordance with paragraph (1) of subdivision (a) of this section.

(iii) All receptacles referred to in paragraph (1) of subdivision (b) of this section shall be provided with tight fitting covers and shall be maintained in a sanitary condition as provided in paragraph (1) of subdivision (a) of this section. Capacity of receptacles shall be based upon an allowance of at least one receptacle of a two cubic foot content for every five living rooms.

(iv) Newspapers, periodicals, magazines, paper bags, or similar waste paper shall first be tightly wrapped in small bundles and then placed for collection at the location and during the hours indicated in paragraph (1) of subdivision (b) of this section. Throwing loose paper into public halls,

shafts, courts or yards is prohibited.

(c) In lieu of complying with the foregoing rules, §25-201(b)(1) to §25-201(b)(iv), inclusive, an owner, lessee or other person in charge of the building may elect to call at each apartment or room at least once daily and collect such garbage, rubbish or refuse for deposit in receptacles referred to in paragraph (1) of subdivision (a) of this section.

(d) The provisions of these rules shall not apply to any multiple dwelling where regular incinerator services are provided and maintained.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER S CONSTRUCTION AND MAINTENANCE OF REFUSE CHUTES AND REFUSE ROOMS

§25-211 Construction and Maintenance of Refuse Chutes and Refuse Rooms.

(a) **Refuse chute enclosures.** Refuse chutes used for conveyance of garbage and rubbish from upper floors of a building to a cellar or other location shall be constructed with an enclosure of brick masonry at least eight inches in thickness or of reinforced concrete at least six inches in thickness, except as otherwise provided in this section.

(b) **Height and service openings.** Refuse chutes shall extend from the refuse collection room to a height of at least six feet above the roof. Service openings into the chute shall be equipped with approved self-closing hoppers so constructed that the chute is closed off while the hopper is being loaded and so that no part will project into the chute. The area of the service opening shall not exceed one third the are of the chute. Hopper doors shall have a fire resistive rating of at least one hour, unless separated from the corridor by a fireproof, self-closing door in which case they shall be constructed of incombustible material.

(c) **Existing flues and refuse chutes.** Flues for existing incinerators may be used for refuse chutes provided such flues are in good condition and provided the flues comply with the provisions of subdivisions (a) and (b) of this section. Existing refuse chutes may be continued in use provided they conform to the provisions of subdivisions (a) and (b) of this section, except that existing refuse chutes of other construction, which have been approved by the department may be retained.

(d) **Refuse chutes in new construction.** Where refuse compacting systems are required hereafter in new

construction, refuse chutes shall be required for conveyance of garbage and rubbish to refuse collection rooms, except that refuse chutes will not be required in class A multiple dwellings which are four stories or less in height. Refuse chutes erected hereafter in new construction shall be of a type approved by the board or shall comply with the requirements of subdivisions (a) and (b) of this section. Chutes shall be constructed straight and plumb, without projections of any kind within the chute. Refuse chutes shall have an inside dimension of at least twenty-four inches for the full height of the chute. All chutes shall be supported on fireproof construction having at least a three hour fire resistive rating.

(e) **Refuse collection rooms.** A refuse collection room shall be provided at the bottom of all chutes at the cellar or lowest story level to receive the refuse. Such rooms shall be enclosed with walls and roofs constructed of material having a minimum fire resistive rating of three hours, except that gypsum masonry may not be used for such enclosure walls. Openings to such rooms shall be provided with fireproof, self-closing doors having a minimum fire resistive rating of one and one-half hours. It shall be unlawful to keep such doors open. Refuse chutes shall extend to the underside of the roof of the refuse room or lower. Roofs shall be at least six inches away from combustible floor or wall construction. Refuse rooms shall be used only for receipt of refuse and for refuse compacting equipment. Refuse rooms shall be provided with sufficient sprinklers to sprinkle all parts of the room, with at least two sprinkler heads provided and with sprinklers so separated as to sprinkle a maximum area of the room when one of the sprinklers is blocked or not operating. A hose connection shall be provided with the refuse room. Existing refuse rooms and incinerator rooms that have been approved by the department for such use may be retained as approved.

(f) **Collection room floors.** The floor within the room for the collection of refuse shall be constructed of concrete and shall be sloped to a floor drain within the room connected to the house drain. The drain shall be provided with a protective screen to retain solid material. Floor drain traps shall be readily accessible for cleaning.

(g) **Use of existing combustion chambers.** Existing incinerator combustion chambers may be used in whole or in part as refuse collecting rooms for collection of refuse and for compacting equipment provided the grates are removed and provided they comply with the provisions of subdivision (e) of this section.

(h) **Sprinkler operation and water supply.** Sprinklers shall be designed to operate automatically at a temperature not exceeding one hundred sixty-five degrees Fahrenheit. They may be electrically controlled provided such sprinklers are approved by the Board of Standards and Appeals. Sprinklers may be connected to the cold water supply of the building at the point where such service enters the building or at the base of a water supply riser provided the piping of such service or riser is of adequate size. No connections, except those for sprinklers, shall be made to the sprinkler piping.

(i) **Hoppers, cut off door and compactors.** A hopper and cut off door shall be provided at the bottom of the refuse chute to regulate and guide the flow of refuse into containers. Where compactors are installed so that the refuse flows directly into the compacting equipment, the equipment may be used in place of the hopper and cut off door. Compacting equipment shall be arranged to operate automatically when the level of rubbish is not higher than three feet below the lowest door.

Compactors shall be located entirely within the enclosure of the refuse room and former combustion chamber where the latter is retained, except that motors, pumps and controls may be installed in adjacent rooms.

(j) **Number of sprinkler heads.** Sufficient sprinklers shall be installed in the refuse room and former combustion chamber to provide sprinkler coverage for the entire area of each unit.

(k) **Lighting.** Adequate lighting shall be provided in refuse rooms.

(l) **Maintenance.** Refuse chutes, refuse rooms, hoppers and all parts of the refuse collecting system shall be maintained in a clean and sanitary condition at all times, free of vermin, odors and defects, and shall be maintained in good operating condition. Fused sprinkler heads shall be replaced promptly.

(m) **Pest control.** The owner shall establish a program to ensure that the refuse chute and the refuse room and appurtenances will be treated as often as may be necessary to prevent infestation with insects and rodents. The owner shall maintain a record of such treatments which shall be available at all times for the inspection by the department.

(n) These rules shall apply only to refuse chutes in new construction and to refuse chutes resulting from the conversion of existing incinerator flues and to existing refuse chutes.

(o) **Collection and disposal of refuse within premises.** The collection and disposal of refuse within any building or on any premises shall be performed as deemed necessary to provide for the safety, health and well being of the occupants of buildings and of the public. The construction, operation, maintenance, cleanliness and sanitation of refuse chutes and refuse rooms and extermination treatment for insects and rodents, and the keeping of records of such treatments for refuse chutes and refuse rooms shall be in accordance with regulations established by this department in consultation with the department of health.

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Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER T OBSTRUCTION OF FIRE EXITS IN MULTIPLE DWELLINGS

§25-221 Obstruction of Exits Used as Means of Egress in Case of Fire in Various Multiple Dwellings.

(a) In every multiple dwelling, public halls, stairs, corridors and passageways and every part thereof used as means of egress shall be kept free and clear of encumbrances at all times in order that free, safe and unobstructed egress to the outside of the building may be maintained during all hours of the day and night.

(b) Passageways required by the Multiple Dwelling Law which provide egress from yards and courts shall, at all times, be kept clear and unobstructed. Doors and gates at the ends of such passageways are prohibited except that a door or gate equipped with an approved type knob or panic bolt protected by a steel plate and readily openable from the inside may be permitted at the building line. Doors and gates provided with key locks are prohibited. Windows on grade level at sidewalk, yard or court or at roof level of an adjoining building may have bars, but at least one window in any apartment or suite of rooms shall be without bars or obstructions of any kind in order to afford a second means of egress.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER U SURFACES OF WALLS AND CEILINGS IN MULTIPLE DWELLINGS

§25-231 Surfaces of Walls and Ceilings in Multiple Dwellings.

This department will require that any part of a wall or ceiling required to be replastered or repainted by §§78 and 80 of the Multiple Dwelling Law shall be so painted that the entire wall or ceiling is of a uniform color. Dark colors which tend to diminish the natural light within a dwelling shall not be accepted as meeting the requirements of §80, subdivision 4, of the Multiple Dwelling Law.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER V POSTING OF CERTIFICATE OF INSPECTION VISITS IN MULTIPLE DWELLINGS

§25-241 Posting of Certificate of Inspection Visits in Multiple Dwellings.

(a) In multiple dwellings consisting of more than six families or whenever a certificate of inspection visits is posted, a certificate frame shall be provided inside the building in a conspicuous place within view of the place at which mail is delivered to the building and in a place readily accessible for signature by Office of Code Enforcement inspectors.

(b) The bottom of the certificate frame shall be not less than 48 nor more than 62 inches above the floor.

(c) The frame shall be constructed of corrosion-resistant metal or durable, impact and flame-resistant plastic.

(d) The certificate frame shall be of a size to accommodate properly a standard 6 x 9 certificate.

(e) The certificate frame shall be faced with plastic or other transparent lacing but not glass, adequate to permit the certificate of inspection visits to be read without difficulty.

(f) The frame shall be of tamperproof construction and shall be provided with a six thirty-two (6-32) "Allen Set Screw" located in the center of the top part of the frame to permit removal of the transparent facing and the inspection certificate for inspector's endorsement.

(g) Any replacement of certificate frames shall comply with all requirements specified herein.

(h) Sufficient lighting shall be provided to make the certificate of inspection visits legible at all times.

(i) The owner has a continuing duty to maintain complete and correct information on the certificate of inspection as the premises' address, registration number, name and address of owner or managing agent registered with the Office of Code Enforcement, and a telephone number which tenants may call for service and repairs.

(j) Where the certificate of inspection visits is destroyed or defaced, the owner shall notify the registration unit of the borough Code Enforcement Office requesting a replacement within five days by certified mail, return receipt requested, or in person on the form prescribed by the Department.

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Title 28 Housing Preservation and Development

CHAPTER 25 MULTIPLE DWELLINGS

SUBCHAPTER W SEALING AND PROTECTION OF VACANT AND UNGUARDED BUILDINGS

§25-251 Sealing and Protection of Vacant and Unguarded Buildings.

(a) Where buildings are vacant, unguarded, open to unauthorized entry and are required to be sealed by the provisions of an unsafe building order, they shall be sealed and protected in the following manner:

(1) **Buildings with exterior walls constructed of brick or other masonry.**

(i) All exterior openings including door openings, in the cellar, in the story at street level, in the second story above street level, on the course of a fire escape, or which are less than 12 feet measured horizontally from an opening in an adjoining building, shall be sealed with concrete block. One door opening, readily visible from the street, may, at the discretion of the owner, be sealed with a door. The door shall be of solid wood covered with 26 gauge metal or constructed of 1-inch by 6-inch tongue and groove boards with cross and diagonal battens of 1-inch boards and covered on the outside with 26 U.S. gauge galvanized steel with edging turned over and nailed with flat heads galvanized nails. The door shall be hung in such a manner that no screws are exposed on the outside of the door on either the hinges or the hasps. Hinges shall not have removable hinge pins. Two hasps and locks shall be provided, located so as to divide the height of the door in equal sections.

(ii) Concrete block shall conform to the provisions of Reference Standard RS-10 of the Administrative Code.

(iii) All door and window frames shall be removed before concrete blocks are installed. Brickwork which new

concrete blocks will abut, shall be cleaned and thoroughly wetted before blocks are installed.

(iv) Doors and windows, not exceeding 6 feet in width, shall be sealed with concrete block at least 4 inches in thickness. Openings exceeding 6 feet in width shall be sealed with concrete blocks at least 8 inches in thickness.

(v) Concrete blocks shall be laid in masonry cement mortar with a mix of not more than three parts of sand for each part of masonry cement by volume. Joints in masonry shall be broken. Masonry cement shall conform to the provisions of Reference Standard RS-10. Joints on the exterior faces shall be struck and shall be provided with a smooth finish.

(vi) Openings in masonry walls, which are not required to be enclosed with concrete block in accordance with subparagraph (i) of paragraph (1) of this subdivision, shall be sealed with boards covered by sheet metal in the manner specified in paragraph (4) of this subdivision.

(2) **Buildings with exterior walls constructed of material other than masonry.**

(i) All exterior openings in walls of buildings which do not have walls constructed of masonry, shall be sealed with boards covered by sheet metal in the manner specified in paragraph (a)(4) of this subdivision.

(3) Openings in roofs shall be sealed as follows:

(i) Roof bulkheads, skylights, ventilating equipment and similar structures shall be completely removed. Openings remaining after removal of structures shall be sealed with 1-inch tongue and groove boards, not less than 6 inches in nominal width, laid on 3-inch by 6-inch joists, not more than 16 inches on center. Joists shall be secured to the roof timbers framed about the openings in a sound and secure manner. Boards shall be covered with roofing to provide a watertight durable cover.

(4) Sealing of openings by boards covered with sheet metal, where permitted under subparagraph (vi) of paragraph (l) in masonry walls and under subparagraph (i) of paragraph (4) in walls of material other than masonry, shall be done in the following manner:

(i) Boards shall be 1-inch by 6-inch cut to a length to fit the height and width of the wall opening, with a cross and diagonal battens of l-inch boards, on the inside, or shall be exterior grade plywood, at least 5/8 inches in thickness, cut to fit the wall opening on the inner side of the window frame.

(ii) Outside or exposed surfaces of the boards or plywood shall be covered with No. 26 U.S. gauge galvanized steel, with edging turned over and nailed with flat head galvanized nails.

(iii) Boards shall be nailed to the sides, top and bottom of the window frame with 16-penny, 3 1/2-inch nails, where the window frame is in good, firm condition. Where the window frame is loose or defective, the boards shall be securely fastened to the brick wall.

(5) **Utilities and service lines.** All gas, electric, water, steam and other service lines to the building except sewer lines shall be disconnected and certifications to that effect by the respective utility companies or city agencies having jurisdiction shall be filed with the department.

(6) Prior to the completion of required sealing of exterior openings as detailed pursuant to paragraphs (1), (2), (3) and (4), above, all combustible debris, rubbish, abandoned furniture or materials capable of supporting combustion shall be removed from the premises.

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RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-01 Definitions.

Appeals Committee. "Appeals Committee" shall mean the Commercial Rent Appeals Committee established pursuant to these rules.

City-owned building. "City-owned building" shall mean any building owned by the City of New York and assigned to HPD for management.

Committee. "Committee" shall mean the Commercial Rent Committee established pursuant to these rules.

Cost of Operation. "Cost of Operation" shall mean the amount, as determined by HPD, from time to time, that represents HPD's cost of maintenance of such units and making them available for commercial use.

DPM. "DPM" shall mean the Division of Property Management of the Office of Property Management of the Department of Housing Preservation and Development.

DRO. "DRO" shall mean the Division of Relocation Operations of the Office of Property Management of the Department of Housing Preservation and Development.

Fair Market Rent (FMR). "Fair Market Rent" ("FMR") shall mean the rent that would be paid for the commercial unit, in a bona fide arms length transaction, at the highest and best use of the commercial unit, but in no event shall fair market rent be less than the cost of operation or the current rent.

Governmental Tenant. "Governmental Tenant" shall mean a tenant who is a Community Board, Municipal

Hospital Advisory Board, Mayoral governmental agency, city professional employee association, or any board, commission, or advisory body established by the City Charter, or Executive Order of the Mayor.

Qualified Not-For-Profit Organization. "Qualified Not-For-Profit Organization" shall mean an organization:

(1) that has tax exempt status under §501(c)(3) of the Internal Revenue Code, the New York State Non-For-Profit Corporation Law, or local laws governing real estate tax exemption eligibility; and

(2) that is in good standing with all governmental funding and oversight agencies; and

(3) whose activities provide a service to a substantial segment of the public at large, at nominal cost, and not for the exclusive use of members of the organization; and

(4) whose membership in the organization, and access to its services are not restricted by unrelated or discriminatory criteria, including but not limited to race, sex, ethnicity, political affiliation or sexual orientation; and

(5) that provides on-going programs which fully utilize the city property for non-profit purposes; and

(6) that utilizes the property for non-profit purposes exclusively, without subleasing to for-profit uses.

Rules. "Rules" shall mean these rules.

Sale of the Business Occupying a Commercial Unit. "Sale of the Business Occupying a Commercial Unit" shall occur when a substantial portion of the assets, shares of stocks, partnership interest or other significant indicia of ownership or control passes from the existing tenant, or any principal of the existing tenant, to any other person or entity.

Tenant. "Tenant" shall mean authorized commercial tenant of record. Occupants such as squatters and licensees are not tenants of record.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-02 General.

The Department of Housing Preservation and Development of the City of New York (HPD) is responsible for managing, rehabilitating, and disposing of buildings owned by the City of New York that were acquired through tax foreclosure and other means. HPD recognizes that it has not increased rents to commercial tenants on a regular basis and the result is that some businesses pay less to HPD than the cost of similar space leased by competing businesses, thus providing such commercial tenants an unfair competitive benefit.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-03 Policy.

It is the policy and intention of HPD that commercial units within city-owned buildings be rented at fair market rents, and that commercial units rented to qualified not-for-profit organizations be rented at 50 percent of fair market rent. However, it is also HPD's policy to minimize the impact of rent restructuring on current tenants, by phasing in rent increases as set forth in these rules.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-04 Coverage.

These Rules govern the procedures for the periodic review and resetting of rents in leased commercial units under the jurisdiction of the Division of Property Management and the Division of Relocation Operations.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-05 Commercial Rent Restructuring Committee.

There shall be a Commercial Rent Restructuring Committee consisting of two persons designated by the Assistant Commissioner of Property Management, and one person designated by the Assistant Commissioner of Relocation Operations.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-06 Periodic Review.

The commercial rent for every leased commercial unit under the jurisdiction of DPM and DRO shall be reviewed not more than once every year. Such review shall be conducted by the Commercial Rent Restructuring Committee.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-07 New Rent.

The Commercial Rent Restructuring Committee shall determine the fair market rent of each commercial tenant, other than governmental tenants or community gardens, as determined by HPD. Such fair market rent shall be the new rent for the commercial unit. The new rent for qualified not-for-profit organizations shall be 50 percent of the fair market rent. The rent for governmental tenants shall be the cost of operation of the unit.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-08 Phase-In of New Rents of For-Profit Tenants.

(a) Where the Commercial Rent Restructuring Committee determines that the difference between the new rent and the current rent of a commercial unit is an increase of more than 15 percent of the current rent, the Committee shall direct that the new rent be phased in over a period of not more than five (5) years. The current rent of such unit shall be increased each year until the rent shall equal the new rent, but each such increase shall be no more than 15 percent of the prior year's rent for each of the first four years. On the fourth anniversary of the Commercial Rent Restructuring Committee's implementation of the rent increase, the remainder of any difference between the rent then being charged and the new rent shall be the amount of the increase for the final year of the phase-in period.

(b) Notwithstanding subdivision (a) above, in no event shall the first rent increase of the phase-in result in a rent less than:

(1) 25 percent of FMR or current rent plus 15 percent, whichever is more, for a commercial unit of 1000 square feet or more; or

(2) $300 or FMR, whichever is less, for a commercial unit of less than 1000 square feet.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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***** Current through December 2009 ****

28 RCNY 26-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-09 Phase-In of New Rents of Not-For-Profit Tenants.

(a) Where the Commercial Rent Restructuring Committee determines that the difference between the new rent and the current rent of a commercial unit whose tenant is a qualified not-for-profit organization is an increase of more than 10 percent of the current rent, the Committee shall direct that the new rent be phased in. The current rent of such unit shall be increased each year until the rent shall equal the new rent, but each such increase shall be no more than 10 percent of the prior year's rent for each of the first five years. On the fifth anniversary of the Commercial Rent Restructuring Committee's implementation of the rent increase, the rent shall increase by 15 percent each year until the rent charged shall equal the new rent.

(b) Notwithstanding subdivision (a) above, in no event shall the first rent increase of the phase-in result in a rent less than $150.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-10 Reconsideration of Rent During Phase-In Period.

Where a tenant has received a rent increase eligible for a phase-in under §26-08, the Commercial Rent Restructuring Committee may not review such rent again until the phase-in provided for under §26-08 has been completed or five years have elapsed since the commencement of a phase-in.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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***** Current through December 2009 ****

28 RCNY 26-11

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-11 Termination of Phase-In.

If there is a sale of the business occupying a commercial unit, or a termination of the tenancy, any previously determined phase-in under §26-08 or §26-09 shall terminate immediately and the rent for the unit shall be the fair market rent as determined by HPD's staff, or by auction.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-12 30-Day

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-12 30-Day Notice.

The Commercial Rent Restructuring Committee shall notify the tenant of the new rent, and of the phase-in schedule, if any, at least 30 days prior to the effective date of such new rent.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

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***** Current through December 2009 ****

28 RCNY 26-13

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-13 Appeal.

(a) There shall be a Commercial Rent Restructuring Appeals Committee which shall consist of the Assistant Commissioner of the Division of Property Management, the Assistant Commissioner of the Division of Relocation Operations and one person designated by HPD's General Counsel. An Assistant Commissioner may be represented on the Appeals Committee by an individual designated by such Assistant Commissioner who reports directly to such Assistant Commissioner, provided that such designee did not also serve as a designee in the Commercial Rent Restructuring Committee's decision to set the rent which is appealed from.

(b) The tenant of a commercial unit for which a new rent has been determined shall have the right to state their objections to the Appeals Committee in writing. Such objections may be received at any time up to 60 days after the effective date of the rent increase. However, the filing of such objections shall not postpone the effective date of the new rent, or of any other action that HPD may take with regard to the commercial unit.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-14

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-14 Postponement of Effective Date.

The Appeals Committee shall consider objections promptly. If the Appeals Committee is not scheduled to convene within the next 30 days, the Assistant Commissioner of the Division which has jurisdiction over the commercial unit may postpone the effective date of the new rent until after the next scheduled Appeals Committee meeting.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 26-15

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 26 COMMERCIAL RENT RESTRUCTURING

§26-15 Final Determination.

The determination by the Appeals Committee of any objections by a tenant to a rent restructuring shall be final.

HISTORICAL NOTE

Section added City Record Mar. 18, 1992 eff. Apr. 17, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 27-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER A TRIPARTITE GENERAL ORDER NO. 1: APPROVAL OF SPECIFICATIONS FOR PAPER BAGS USED FOR CONTAINING UNCOMPACTED REFUSE AND INCINERATOR RESIDUE; APPROVAL OF SPECIFICATIONS FOR PLASTIC BAGS USED FOR CONTAINING UNCOMPACTED REFUSE; AND APPROVAL OF SPECIFICATIONS FOR CONTAINERS USED FOR CONTAINING COMPACTED REFUSE

§27-01 Statement of Policy and Intent.

To improve the environment and to improve refuse containment and collection operations, the use of paper bags for containing uncompacted refuse and incinerator residue should be permitted; the use of plastic bags for containing uncompacted refuse should be permitted and the use of containers for containing compacted refuse should be permitted.

Accordingly pursuant to Local Law 11 of the Laws of 1971 and to §13-1.11 of the Health Code, the Department of Sanitation and the Department of Housing Preservation and Development, and the Department of Health hereby approve the specifications set forth in §27-02 below for paper bags for containing uncompacted refuse and incinerator residue; hereby approve the specifications set forth in §27-03 below for plastic bags for containing uncompacted refuse; and hereby approve the specifications set forth in §27-04 below for containers for containing compacted refuse.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

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***** Current through December 2009 ****

28 RCNY 27-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER A TRIPARTITE GENERAL ORDER NO. 1: APPROVAL OF SPECIFICATIONS FOR PAPER BAGS USED FOR CONTAINING UNCOMPACTED REFUSE AND INCINERATOR RESIDUE; APPROVAL OF SPECIFICATIONS FOR PLASTIC BAGS USED FOR CONTAINING UNCOMPACTED REFUSE; AND APPROVAL OF SPECIFICATIONS FOR CONTAINERS USED FOR CONTAINING COMPACTED REFUSE

§27-02 Specifications For Paper Bags Used For Containing Uncompacted Refuse and Incinerator Residue.

(a) **Substance:** Paper bags shall be fabricated from wet-strength*2 kraft paper, wholly extensible or wholly non-extensible or equivalent.

(b) **Strength:** The non-extensible paper used to construct single-ply or multi-ply bags must have a nominal basis weight of 100 pounds per 500 sheets, each 24 inches by 36 inches, and a minimum basis weight of 95 pounds per 500 sheets, each 24 inches by 36 inches.

The extensible or equivalent paper used to construct single-ply or multi-ply bags must have a nominal basis weight of 90 pounds per 500 sheets, each 24 inches by 36 inches, and a minimum basis weight of 85.5 pounds per 500 sheets, each 24 inches by 36 inches.

Minimum tensile energy absorptions for dry and wet extensible or equivalent paper used in single and multi-ply bags are set forth in Table I.

Table I

Minimum Tensile Energy Absorption-Extensible

	Dry	Wet
Cross Direction of Paper (Single-ply or Multi-ply)	9.3 ft. lb./sq. ft.	2.7 ft.lb./sq. ft.
Cross Direction Plus Machine Direction of Paper (Single-plyor Multi-ply)	30.8 ft. lb./sq. ft.	Not specified

Table II

Minimum Tensile Breaking Strengths-Non-Extensible

	Dry	Wet
Cross Direction of Paper (Single-ply or Multi-ply)	34.0 lbs./in. width	9.0 lbs./in. width
Cross Direction Plus Machine Direction of Paper (Single-plyor Multi-ply)	95.0 lbs./in. width	Not specified

The method of testing for nominal and minimum basis weight shall be the Tappi Standard Method T-410 which shall be conducted in accordance with Section 4 of Federal Specification UU-S-48-E. Tensile breaking strength and tensile energy absorption tests shall be performed according to Tappi Standard Methods T-404, T-456, and T-494.

Wet tensile breaking strength and tensile energy absorption are to be determined by using one inch width specimens that have been immersed in water for two hours at 73 degrees Fahrenheit 3.5 degrees Fahrenheit.

(c) **Adhesives:** Any Adhesive used for seams and closures must meet the water resistant requirements for Federal Specification UU-S-48E.

(d) Any tape used on sewn ends of bags shall be 2 1/8 inches wide (1/8 inch minus tolerance unlimited plus tolerance) and shall be made from kraft paper having a nominal basis weight of not less than 70 pounds per 500 sheets each 24 inches by 36 inches.

(e) **Thread:** The strength of any stitching on the ends of sewn bags shall be not less than that of 12/5 cotton needle and 12/4 cotton looper thread or equivalent.

(f) **Capacity:** The usable capacity of bags shall not exceed four cubic feet. Measurement of capacity will be determined by the application of the following formula, applying the prescribed measurements of the unfilled bag.

Cubic Foot Capacity = [**T**-0.4 (**FG**)] [(**FG**)]

5425

Where: T = Inside Tube Tube Length of Bag (in inches) Where: F = Inside Face Width of Bag (in inches) Where: G = Inside Gusset Width of Bag (in inches)

No restrictions are made on bag dimensions provided that they do not deviate from the prescribed dimensions by more than the following tolerances:

Width: ±3/16 inch

Bottom: ±3/16 inch

Length: ±1/4 inch

(g) **Labeling:** On and after January 1, 1971, but prior to April 1, 1971, all bag packaging shall be labeled with an approved logo imprinted or pasted onto the principal panel of all such packaging. On or after April 1, 1971, each bag and all bag packaging shall be labeled with an approved logo marked and imprinted visibly, respectively, along the center of the face of such bag and on the principal display panel of all bag packaging. Such logo shall not be less than one square inch in size. Display of such logo on bags and all bag packaging shall be deemed the manufacturer's certification that such bags and all bags contained in such packages conform to these specifications and testing procedures.

Each bag and all bag packaging shall have marked thereon the name and address of the principal place of business of the manufacturer or distributor of the same and a code identifying the date and location of bag manufacture.

Each bag and retail package of bags shall be prominently marked with the words, "NOT LAWFUL FOR COMPACTED WASTE IN NEW YORK CITY", in block letters not less than 1/4 inch high.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

2

[Footnote 2]: * All wet-strength paper will be specially marked on the outer surface for verification by longitudinal stripes spaced not less than 2" and not more than 10" apart across the paper width, and each strip will be not less than 1/8" in width. Any other grade of paper used in the bags will not be striped in this manner. For multi-ply bags, the verificatiion marking will appear on the outside surface of the bag. Set forth in Table II is the minimum tensile breaking strengths for dry and wet non-extensible paper used in single and multi-ply bags.

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***** Current through December 2009 ****

28 RCNY 27-03

RULES OF THE CITY OF NEW YORK

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CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER A TRIPARTITE GENERAL ORDER NO. 1: APPROVAL OF SPECIFICATIONS FOR PAPER BAGS USED FOR CONTAINING UNCOMPACTED REFUSE AND INCINERATOR RESIDUE; APPROVAL OF SPECIFICATIONS FOR PLASTIC BAGS USED FOR CONTAINING UNCOMPACTED REFUSE; AND APPROVAL OF SPECIFICATIONS FOR CONTAINERS USED FOR CONTAINING COMPACTED REFUSE

§27-03 Specifications for Plastic Bags Used for Containing Uncompacted Refuse.

(a) **Substance:** The film from which plastic bags are constructed shall be manufactured from polyethylene or ethylene copolymer resin.

(b) **Film Strength:** The film used to fabricate plastic bags shall have a dart impact strength at folds and seals not less than 40 grams per 1.0 mil when tested in accordance with ASTM D-1709, Method A.

(c) **Film Thickness:** The gauge of the film used to fabricate plastic bags shall have an average of no less than 1.5 mils with a point-to-point variation not exceeding ± 20 percent.

(d) **Film Flammability:** The film used to construct plastic bags shall be capable of incineration under normal municipal incinerator practices.

(e) **Bag Dimensions:** From inside or seals, plastic bags shall have a minimum inside circumference of 40 inches and a minimum inside length of 22 inches and a maximum inside circumference of 60 1/2 inches and a maximum length of 37 1/2 inches.

(f) **Heat Seal Strength:** Any heat seal shall withstand a ten-minute tensile loading of 1 lb./inch of seal without failure in accordance with ASTM F-88-68.*3

(g) **Slip Coefficient:** Plastic bags shall be readily opened by hand and shall have a slip coefficient between 0.1 and 0.25 when tested in accordance with ASTM D-1894.

(h) **Closures:** Each package of plastic bags shall contain a number of tie closures (at least five inches in length) equal to the number of bags.

(i) **Drop Resistance:** Plastic bags shall be capable of withstanding a drop of five feet onto smooth concrete when filled with a material having weight density of twenty pounds, per cubic foot, and when securely closed with a twist tie and when tested in accordance with the National Sanitation Foundation test method.**4

(j) **Labeling:** On and after January 1, 1971, but prior to April 1, 1971, all bag packaging shall be labeled with an approved logo imprinted or pasted onto the principal panel of all such packaging. On or after April 1, 1971, each bag and all bag packaging shall be labeled with an approved logo marked and imprinted visibly, respectively, along the center of the face of such bag and on the principal display panel of all bag packaging. Such logo shall not be less than one square inch in size. Display of such logo on bags and all bag packaging shall be deemed the manufacturer's certification that such bags and all bags contained in such packages conform to these specifications and testing procedures.

Each bag and all bag packaging shall have marked thereon the name and address of the principal place of business of the manufacturer or distributor of the same and a code identifying the date and location of bag manufacture.

Each bag and retail package of bags shall be prominently marked with the words, "NOT LAWFUL FOR COMPACTED WASTE IN NEW YORK CITY", in block letters not less than 1/4 inch high.

(k) Plastic bags larger than the sizes specified in subdivision (e) above shall have an average of no less than 3.0 mils gauge with a point-to-point variation not exceeding 20 percent and shall not exceed an inside circumference of 66 inches and an inside length of 48 inches. The bags exclusive of packaging and ties shall have a minimum weight of 210 pounds per 1,000 bags.

(l) **Bag opacity:** Plastic refuse bags shall be of high opacity with a minimum reading of 65 percent as determined by a hazemeter or recording spectrophotometer when tested in accordance with ASTM D-1003.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

3

[Footnote 3]: ** Refer to "Incineration Guidelines, 1969; U.S. Public Health Service.

4

[Footnote 4]: ** Available from the National Sanitation Foundation are the complete details of the test method. Write to 2355 W. Stadium Boulevard, Ann Arbor, Michigan 48103.

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***** Current through December 2009 ****

28 RCNY 27-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER A TRIPARTITE GENERAL ORDER NO. 1: APPROVAL OF SPECIFICATIONS FOR PAPER BAGS USED FOR CONTAINING UNCOMPACTED REFUSE AND INCINERATOR RESIDUE; APPROVAL OF SPECIFICATIONS FOR PLASTIC BAGS USED FOR CONTAINING UNCOMPACTED REFUSE; AND APPROVAL OF SPECIFICATIONS FOR CONTAINERS USED FOR CONTAINING COMPACTED REFUSE

§27-04 Specifications for Containers Used for Containing Compacted Refuse.

(a) As used herein the term "container" shall mean any container used for the storage of compacted refuse, including, but not limited to any such bag, sack, box, bin, barrel, tub, or tube.

(b) Containers shall have been evaluated and approved by the Department of Sanitation pursuant to the performance standards and specifications of the Department for the approval of refuse compactor systems. The manufacturer or distributor of such containers shall submit a certification with his request for container approval listing detailed specifications of such containers attesting to the container's compliance with the performance standards and specifications of the Department and setting out any conditions relevant to the use of such container, including a list of compactor systems with which the container is compatible. Such performance standards shall include without limitation the following:

(1) Containers shall be capable of containing refuse with an output density range of from 450 pounds to 700 pounds per cubic yard (16.7 pounds to 25.9 pounds per cubic foot) unless specific approval of an alternate capability is made by the Department of Sanitation.

(2) Containers shall during filling in the course of evaluation not allow tears or punctures in excess of one (1) inch in more than ten (10) percent of observed samples, and shall during handling in the course of evaluation not allow tears or punctures in excess of one (1) inch in more that ten (10) percent of samples.

(3) Containers shall not allow their contents to spill from tears or punctures.

(4) Returnable containers shall be capable of easily discharging their contents by gravity.

(5) Containers shall be of unit construction when supplied to users and shall not require additional components to be considered ready for use, unless specific exception to this requirement is given by the Department of Sanitation pursuant to §27-04(b) above.

(c) Containers shall not exceed four (4) cubic feet in capacity unless specific approval of a larger capacity is made by the Department of Sanitation pursuant to §27-04(b) above.

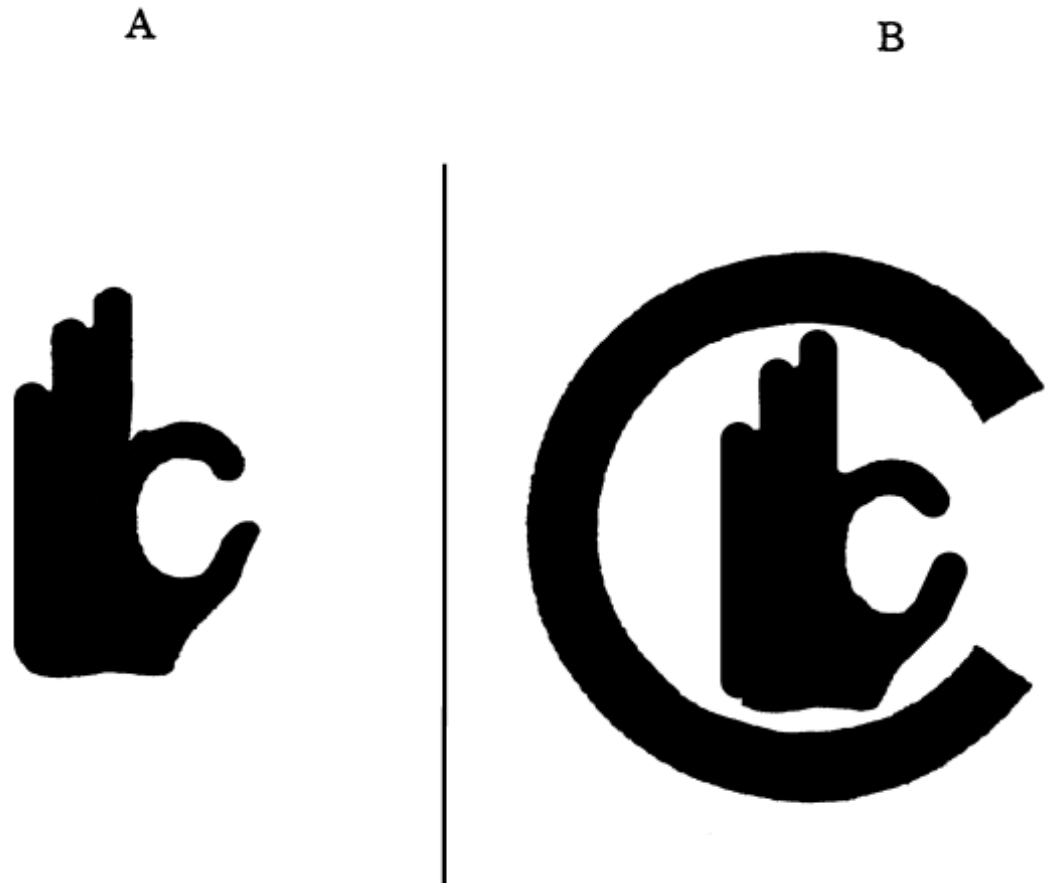
(d) Containers shall be free of jagged or sharp edges.

(e) Containers shall be of high opacity and not transparent.

(f) **Labeling:** On or after January 1, 1974, each approved disposable container or sealable separate section shall be marked with an approved logo along the center of its widest side and the applicable identifying model number registered with the Department of Sanitation. If enclosed in an outer wrapping, said wrapping shall be similarly marked. Such logo shall be no less than 1 percent of the area on which it is marked, but not be less than one square inch in size. Display of such logo on disposable containers and wrappings or sealable separate sections shall be deemed the manufacturer's or distributor's certification that such disposable containers and wrappings or sealable separate sections conform in detail to the specifications of the prototypes evaluated and approved by the Department of Sanitation and to the specification set forth in the certification submitted pursuant to §27-04(b) above.

Each disposable container and wrapping or sealable separate section shall have marked thereon the name and address of the principal place of business of the manufacturer or distributor of the same and a code identifying the date and location of container manufacture.

From and after the respective dates of the foregoing amendments, the approved logo for bags and retail packages of bags which meet the specifications set forth in §27-02 or §27-03 of the said Tripartite General Order No. 1 shall be as illustrated in Box A below, and the approved logo for disposable containers, wrappings and sealable separate sections which meet the specifications set forth in §27-04 of the said Tripartite General Order No. 1 shall be as illustrated in Box B below.



FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

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28 RCNY 27-05

RULES OF THE CITY OF NEW YORK

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SUBCHAPTER A TRIPARTITE GENERAL ORDER NO. 1: APPROVAL OF SPECIFICATIONS FOR PAPER BAGS USED FOR CONTAINING UNCOMPACTED REFUSE AND INCINERATOR RESIDUE; APPROVAL OF SPECIFICATIONS FOR PLASTIC BAGS USED FOR CONTAINING UNCOMPACTED REFUSE; AND APPROVAL OF SPECIFICATIONS FOR CONTAINERS USED FOR CONTAINING COMPACTED REFUSE

§27-05 Requirements for Employment of Bags and Containers Meeting Specifications Set Out in §§27-02, 27-03 and 27-04.

(a) Bags and containers which meet the specifications approved under this order:

(1) shall not be filled so as to prevent the effective closure thereof:

(2) shall not weigh more than 100 pounds when filled:

(3) shall be in such condition as to hold their contents without leakage:

(4) shall be effectively closed:

(5) when stored in the building shall be kept in a metal receptacle or rat-proof and fire-proof room:

(6) when awaiting collection outside the building, shall be removed from any metal receptacle and shall be neatly stacked in front of such building.

(b) Containers which meet the specifications approved under this order: shall not contain compacted refuse bound with non-combustible ties.

(c) The Commissioners of the Department of Sanitation or Housing Preservation and Development or Health may conduct or order the manufacturer or distributor of any product displaying a logo as provided in §27-04(f) to conduct in an independent testing laboratory selected by any such administrator or commissioner, such tests as are necessary to determine whether such product is in conformity with the provisions of this order. The expenses for all such tests shall be borne by the aforementioned manufacturer or distributor. Such Commissioner may require such appearance of any manufacturer, distributor, retailer or user of any product displaying a logo as provided in §27-04(f) as are necessary to determine if a violation of any of the provisions of this order has occurred.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

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***** Current through December 2009 ****

28 RCNY 27-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER A TRIPARTITE GENERAL ORDER NO. 1: APPROVAL OF SPECIFICATIONS FOR PAPER BAGS USED FOR CONTAINING UNCOMPACTED REFUSE AND INCINERATOR RESIDUE; APPROVAL OF SPECIFICATIONS FOR PLASTIC BAGS USED FOR CONTAINING UNCOMPACTED REFUSE; AND APPROVAL OF SPECIFICATIONS FOR CONTAINERS USED FOR CONTAINING COMPACTED REFUSE

§27-06 Amendment and Repeal.

This order may be amended or repealed only upon joint order of the Departments of Sanitation, Housing Preservation and Development and Health pursuant to Section 1043 of the City Charter of the City of New York.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing

Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 27-11

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER B TRIPARTITE GENERAL ORDER NO. 2: APPROVAL OF SPECIFICATIONS FOR WASTE CONTAINERIZATION SYSTEMS

§27-11 Purpose and Scope.

The Departments of Sanitation, Housing Preservation and Development and Health find that the use of systems for the disposal of waste that utilize large containers which are mechanically lifted and emptied into, loaded onto or attached to collection vehicles (hereinafter "waste containerization systems") will tend to improve waste containment and increase the efficiency of waste collection operations, and accordingly approve as to specifications, pursuant to §27-2021 of the Housing Maintenance [Administrative] Code, any waste containerization system that meets the specifications set forth below.

Nothing contained in this order shall constitute an agreement by the Department of Sanitation to provide hoist compactor, hoist-fitted chassis, roll-on roll-off or any other specialized service to any person using containers covered by this order. Such service shall continue to be available only by contract with the Department of Sanitation and subject to such conditions as the Department of Sanitation may impose.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 27-12

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER B TRIPARTITE GENERAL ORDER NO. 2: APPROVAL OF SPECIFICATIONS FOR WASTE CONTAINERIZATION SYSTEMS

§27-12 Specifications for Waste Containerization Systems.

(a) The owner or other person in charge of the premise served by a waste containerization system (hereinafter the "premises") shall maintain in a safe, clean, odor-free and properly operating condition all containers and other equipment kept on such premises in connection with the operation of such system and shall keep the place of storage for the containers safe, clean and odor-free at all times. There shall be kept on the premises a hose and brush or a steam cleaner and all other necessary equipment to properly clean the containers, unless such containers are regularly cleaned at a location off the premises and such equipment is not required by any other law or regulation. Each container shall be cleaned on a concrete or other paved surface properly drained into the sewer or a septic system. Such surface and drainage system shall be maintained in a safe, clean, odor-free and properly operating condition.

(b) A waste containerization system shall be of sufficient capacity to permit the safe and sanitary storage of 150 percent of all waste normally accumulated on or generated within the premises between any regularly scheduled collections, unless otherwise agreed by the Commissioner of the Department of Sanitation. Notwithstanding the foregoing, unless a waste containerization system is sufficient to permit the safe and sanitary storage of all waste normally accumulated on or generated within the premises during a period of 72 hours, the owner or person in charge of the premises shall keep on hand sufficient additional lawful waste receptacles to permit such storage.

(c) Except when in the process of being collected or emptied, all containers shall be kept and stored on the

premises at all times, in rooms or compartments which comply with §27-837 of the Building [Administrative] Code or in any other location not prohibited by law. If the place of storage is outside the premises, the containers shall be kept in location where they will not be unsightly and will not cause a nuisance to residents of the premises or of neighboring premises. If possible they should be screened from view by an attractive enclosure. The place of storage of the containers shall be one from which the containers may be safely moved to the location where they are emptied or collected. Such location shall be one to which collection vehicles have safe and convenient access and which shall be suitably equipped, adequately lit and of sufficient size for the safe loading or emptying of the containers. The place of storage of the containers and the location where the containers are emptied or loaded shall be subject to the approval of the Department of Sanitation on behalf of itself, the Department of Housing Preservation and Development and the Department of Health.

(d) Containers shall be compatible in all respects, including without limitation dimensions and loading mechanisms, with the collection vehicles which service them.

(e) Containers in which tenants are required or permitted to deposit waste shall be of types which can safely, easily, and conveniently be opened and closed by all tenants using them and while available for tenant use shall be kept in a place which provides safe and convenient access for tenants.

(f) Containers shall:

(1) be made of continuously welded steel with all welds and edges ground smooth;

(2) be capable of holding 700 pounds of waste per cubic yard of capacity, when at rest and during loading and unloading, without permanent distortion;

(3) have adequate provision for reinforcement, stiffening and protection at points of high stress or wear;

(4) hold liquids without leaking and be equipped with a drain plug at the bottom on one end; and

(5) have heavy duty skids or rollers or other devices to keep the bottom of the container off the ground and reduce wear when it is moved.

(g) Containers shall have tight-fitting doors and/or lids which shall

(1) be attached by means of heavy duty hinges;

(2) be equipped with counterbalance springs whenever necessary to prevent destructive or dangerous overswinging;

(3) be reinforced to prevent bending and warping; and

(4) completely seal the containers to prevent rodents, insects and other pests from entering.

(h) The Department of Sanitation shall keep and make available to the public a list of containers which in the opinion of such Department, the Department of Housing Preservation and Development and the Department of Health meet the physical specifications of subdivisions (f) and (g) of this section.

(i) Unless made of stainless steel or another material not subject to corrosion or wear, containers shall be completely primed and painted inside and out with corrosion-resisting primer and paint. They shall be repainted whenever the metal shows through the paint and whenever necessary to prevent them from becoming unsightly. Containers shall have painted in block letters on one vertical side (and in the case of a container that is loaded onto or attached to a collection vehicle, in a position where it is easily visible when loaded or attached) the name and principal business address of the owner of the container, the capacity of the container in cubic yards and the gross allowed weight

of the container (calculated on the basis of 700 pounds per cubic yard of capacity plus the tare weight of the container). The words "STAND CLEAR WHEN CONTAINER IS BEING SERVICED" shall be painted in a prominent position on all four vertical sides in block letters at least four inches high.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of Sanitation (Title 16, Chap 9).

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 27-13

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 27 TRIPARTITE GENERAL ORDERS*1

SUBCHAPTER B TRIPARTITE GENERAL ORDER NO. 2: APPROVAL OF SPECIFICATIONS FOR WASTE CONTAINERIZATION SYSTEMS

§27-13 Amendment or Repeal.

This order may be amended or repealed only upon joint order of the Department of Health, the Department of Housing Preservation and Development and the Department of Sanitation pursuant to §1043 of the New York City Charter. §51-66 effective August 29, 1973.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * The following orders were jointly announced by the Departments of Housing Preservation and Development and Health and Sanitation. They appear in full in each title as follows: Department of Housing Preservation and Development (Title 28, Chap 27); Department of Health (Title 24, Chap 17); Department of

Sanitation (Title 16, Chap 9).

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 28-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-01 General Provisions.

(a) **Definitions.**

Action. "Action" shall mean the Agency's selection of a community group, approval of a project, or execution of an EDA.

Agency. "Agency" shall mean the city's Department of Housing Preservation and Development and any successor agency, or its designee.

Agreements. "Agreements" shall mean escrow agreements, syndication agreements, NSA syndication agreements and any other agreements through which developers are obligated to provide syndication funds.

Applicant. "Applicant" shall mean any entity applying for designation as a community group.

CAPA. "CAPA" shall mean the City Administrative Procedure Act set forth in §1041 et seq. of the city charter, as amended from time to time.

City. "City" shall mean city of New York.

Commissioner. "Commissioner" shall mean the commissioner of the agency or his or her designee.

Community Group. "Community Group" shall mean a locally-based not-for-profit corporation formed pursuant to the not-for-profit corporation law of the State of New York which has been selected by the agency to receive

syndication funds to perform a project.

Comptroller. "Comptroller" shall mean the comptroller of the city.

Developer. "Developer" shall mean the business entity which received certain tax benefits as general partner of the business entity which developed a development.

Development. "Development" shall mean a housing development in New York City funded pursuant to §8 of the United States Housing Act of 1937 (42 U.S.C. §1437f) and rules promulgated pursuant thereto by the United States Department of Housing and Urban Development.

EDA. "EDA" shall mean an escrow disbursement agreement by which syndication funds are distributed to a community group in order to fund eligible improvements as approved by the agency.

Eligible Activities. "Eligible Activities" shall mean those improvements or services approved by the agency to be performed by community groups with syndication funds, as set forth more fully in the scope of work of the EDA for each such project.

Encumbered Funds. "Encumbered funds" shall mean syndication funds which have been appropriated or otherwise set aside to be used for a project pursuant to a currently valid and binding EDA.

EO Clearance. "EO clearance" shall mean that (i) the community group and, if required by the agency, its principals (and, where the agency deems such additional review to be appropriate, the contractors retained by such community group and all of their respective principals) have completed, executed, and submitted the required forms to and attended any required meetings with the agency's office of equal opportunity, and (ii) the agency's office of equal opportunity, after review of such information and any other available information, has made no finding of noncompliance with the applicable laws regarding equal opportunity, labor compensation, locally based enterprises, and other matters monitored by the agency's office of equal opportunity.

Escrow Account. "Escrow account" shall mean one or more escrow accounts administered by the city to retain the syndication funds until distribution.

Escrow Agreement. "Escrow agreement" shall mean an instrument by which some developers were required to provide syndication funds.

Guidelines. "Guidelines" shall mean the §8 syndication sharing program guidelines governing the program, which were approved by the city's board of estimate on September 19, 1985 (Cal. No. 644) and thereafter annually renewed until 1990. These rules replace and supersede the guidelines, which expired by their own terms on December 31, 1990.

IG Clearance. "IG clearance" shall mean that (i) the community group and, if required by the agency, its principals (and, where the agency deems such additional review to be appropriate, the contractors retained by such community group and all of their respective principals) have completed, executed, and submitted the required forms to and attended any required meetings with the agency and/or the department of investigation's office of the inspector general, and (ii)the agency and/or the department of investigation's office of the inspector general, after review of such information and any other available information, has made no findings of derogatory information, which indicates that the city should not do business with the community group, or if applicable, its contractors.

Laws. "Laws" shall mean any applicable laws, ordinances, orders, rules, and regulations promulgated by any local, state, or federal authority having jurisdiction over the subject matter thereof, as amended from time to time.

NSA Syndication Agreement. "NSA syndication agreement" shall mean an instrument by which some developers were required to provide syndication funds.

Program. "Program" shall mean the tax syndication sharing program governed by these rules.

Project. "Project" shall mean the activities set forth in the scope of work of an EDA which are to be undertaken by a community group using syndication funds.

Public Hearing. "Public hearing" shall mean a meeting convened by the agency in accordance with §28-06(c) at which interested persons shall be afforded the opportunity to comment upon the community group(s), project(s), and EDA(s) which are the subject of one or more actions proposed by the agency. A public hearing shall be held only if the agency determines, based upon the written comments received by it in accordance with §28-06(b) that further consideration of the proposed action(s) is required.

RFP. "RFP" shall mean a request for proposals.

Rules. "Rules" shall mean these rules, which replace and supersede the guidelines.

Syndication Agreement. "Syndication agreement" shall mean an instrument by which some developers were required to provide syndication funds.

Syndication Funds. "Syndication funds" shall mean the funds which the agreements required developers to provide from either (i) shares of the proceeds of the sale or syndication of the developments, or (ii) any equivalent amounts (where developers elected to retain rather than sell or syndicate development equity).

Unencumbered Funds. "Unencumbered funds" shall mean syndication funds in an escrow account which have not been appropriated or otherwise set aside to be used for a project pursuant to a currently valid and binding EDA, including, but not limited to, funds which never were the subject of an EDA and funds which were the subject of an EDA which has been terminated.

(b) **Program.** Under the program, the city administers the syndication funds paid into the escrow account by developers pursuant to syndication agreements and disburses such syndication funds to groups for projects pursuant to these rules.

(c) **Purpose of rules.** These rules set forth the standards for, inter alia, selection of community groups, approvals of projects, execution of EDA's, and disbursements of syndication funds.

(d) **Purpose of tax syndication sharing program.** The agency may undertake actions for any public purpose, provided that all actions undertaken in connection with the tax syndication sharing program are authorized by applicable laws. Such public purposes shall include, but shall not be limited to:

(1) promoting the preservation and rehabilitation of existing residential housing,

(2) eliminating conditions in existing residential housing which are unsafe or detrimental to health,

(3) facilitating the creation and maintenance of open spaces, parks, playgrounds, and trees in neighborhoods,

(4) providing technical assistance and support to community groups in creating and implementing projects,

(5) furthering neighborhood preservation,

(6) administering and maximizing revenue upon the accounts containing syndication funds,

(7) minimizing city expenses, and

(8) otherwise furthering the best interest of the city.

(e) **General authority.** (1) **General.** The agency may take actions and otherwise act for the purposes of an in accordance with the procedures described in these rules.

(2) **Escrow account.** The agency or the city may retain syndication funds in an escrow account pending disbursement. The provisions regarding the escrow account are contained in §28-02.

(3) **Selection of community groups.** The agency may from time to time select community groups to receive syndication funds through any competitive or non-competitive process authorized by these rules or applicable laws which the agency deems to be in the best interest of the city. The provisions regarding the selection of community groups are contained in §28-03.

(4) **Conditional designation.** The agency may conditionally designate applicants as community groups, and may subsequently terminate such conditional designations. The provisions regarding the conditional designation of community groups are contained in §28-04.

(5) **Projects.** The agency may negotiate with any conditionally designated community group concerning the terms of the EDA pursuant to which such community group will perform one or more projects. The provisions regarding such projects are contained in §28-05.

(6) **Disbursement.** The agency may disburse syndication funds pursuant to EDA's, these rules, and applicable laws. The provisions regarding disbursement procedures are contained in §28-06.

(7) **Project administration.** The agency shall require community groups to utilize syndication funds in accordance with these rules, the agreements, the EDA's and applicable laws. The provisions regarding project administration are contained in §28-07.

(f) **Other rules.** With respect to this program, these rules shall preempt and supersede any other rules promulgated by the agency (unless such other rules specifically refer to, and state that they apply to, the program). These rules replace and supersede the guidelines.

(g) **Borough president consultation.** With respect to any proposed action pursuant to these rules, the commissioner may consult with the borough president for the borough in which the development which generated the syndication funds and/or the project for which such syndication funds will be used are located and with such other parties as the commissioner shall deem appropriate.

HISTORICAL NOTE

Section added City Record Aug. 13, 1992 eff. Sept. 12, 1992.

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28 RCNY 28-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-02 Escrow Account.

(a) **General.** The city or the agency shall establish an interest-bearing escrow account into which syndication funds received from developers shall be deposited and held until such syndication funds are disbursed pursuant to these rules.

(b) **Trust and agency account.** Syndication funds received by the agency shall be deposited into:

(1) The trust and agency account administered by the comptroller pursuant to the resolution adopted by the city's board of estimate on September 19, 1985 (Cal. No. 644), as renewed and/or amended on February 6, 1986 (Cal. No. 33), April 30, 1987 (Cal. No. 55), February 25, 1988 (Cal. No. 325), March 9, 1989 (Cal. No. 35), and March 8, 1990 (Cal. No. 245), or

(2) Any other interest bearing escrow account established and administered pursuant to these rules and applicable laws.

(c) **Interest.** Any interest accruing from the syndication funds deposited into the escrow account shall become, and shall remain, the property of the city. The city shall retain or utilize such interest for any lawful purpose determined by the city to be in the best interests of the city.

(d) **Principal.** Encumbered funds shall be disbursed from the escrow account in accordance with the applicable EDA, these rules, and all applicable laws. Unencumbered funds shall be disbursed from the escrow account in accordance with these rules and all applicable laws.

(e) **Beneficiaries.** The syndication funds have been provided by developers for the benefit of the citizens of New York City, who are the sole intended beneficiaries of the syndication funds, the program, and these rules. The agency shall determine, in its sole discretion, whether to apply syndication funds for the benefit of any geographical area in New York City or for the benefit of the citizens of the city as a whole. Notwithstanding any provision of these rules or any agreement or EDA to the contrary, the agency may require, in connection with any selection pursuant to §28-03 or any designation pursuant to §28-04, that any applicant or community group sign an agreement or other statement acknowledging that the syndication funds are for the benefit of the citizens of New York city and not for the benefit of any other individual or group (or any subset of such group).

HISTORICAL NOTE

Section added City Record Aug. 13, 1992 eff. Sept. 12, 1992.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 28-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-03 Selection of Community Groups.

(a) **General.** This §28-03 sets forth standards for the selection of community groups to receive syndication funds for projects. Such determinations shall be made by the agency, in accordance with the standards set forth herein, for the purposes of (i) ascertaining whether a community group meets the requirements of the program and has the ability to perform the project, and (ii) furthering the best interests of the city. The agency may select a community group to receive syndication funds by any method permitted by law which it determines will best meet the program's objectives, including, but not limited to, sole source, application, RFP, selection by a process mandated by an entity other than the agency, and selection by an entity other than the agency.

(b) **Grandfathered selection.** Notwithstanding any provision of these rules to the contrary, the agency may select:

(1) Any community group which was the co-sponsor of a development; or

(2) Any community group with which it began to negotiate before the date upon which the guidelines ceased to be effective; or

(3) Any community group which was selected by a developer in accordance with an agreement prior to the agency's use of EDA's as if, and to the same extent as if, such community group had been selected by the agency pursuant to these rules.

(c) **Sole source.** Where the agency deems it to be necessary or desirable, a community group may be selected to receive syndication funds without any competitive process. In such event, the agency shall, prior to taking any action

with respect to disbursement of such syndication funds, prepare a written statement signed by the commissioner setting forth the reasons why a more competitive process was not appropriate or desirable. Such statement shall thereafter be placed with the records concerning the project which are retained by the agency and shall be kept on file in accordance with the agency's usual record retention procedures.

(d) **Application.** Where and at such time as the agency deems it to be necessary or desirable, a community group may be selected via an application process.

(1) **Distribution.** (i) **Notice.** At such time as the agency commences an application process for selection of one or more community groups, the agency shall place advertisements in **The City Record** and such other publications as the agency shall deem appropriate. The advertisement shall include, at a minimum, a short description of the program, the availability of syndication funds, any required or suggested project, the place where application forms can be obtained and the deadline for submission of applications.

(ii) **Application forms.** The agency or its designee shall prepare or cause to be prepared the forms upon which application are to be submitted, which forms may require such information as the agency deems to be necessary or desirable to effectuate the purposes of the program. Application forms shall be made available by the agency to all potential applicants.

(iii) **Amendments.** The agency may change any aspect of the information set forth in the advertisement at any time. The agency shall amend the advertisement accordingly and shall place such amended advertisement in **The City Record,** the publications in which the original advertisement appeared, and such other publications as the agency shall deem appropriate. If it is infeasible for the agency to publish the amended advertisement in the publications in which the original advertisement appeared, the agency shall endeavor to provide substantially the same type of notice as was provided with respect to the original advertisement. The agency may also mail copies of such amended advertisement to potential applicants who have done prior business with the agency or who have requested to be on a mailing list for such purpose. Notwithstanding the foregoing, an application process may be terminated by the agency at any time without adver- tisement.

(2) **Submissions.** (i) **Time period.** The agency may impose a deadline for submission of applications, which shall be a reasonable period of time after the advertisement first appears. The agency may, in the alternative, impose no deadline, in which case the agency shall receive, review, and approve or reject applications on a rolling basis as and when such applications are received.

(ii) **Completeness.** The agency shall require applications to be submitted on the required forms and to be completed and executed in the manner set forth therein.

(3) **Selection.** (i) **Completeness.** The application must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission. The agency may reject an application if it determines that such requirements are not met.

(ii) **Selection.** The agency may review and judge applications and select community groups by any method and upon any criteria permitted by law or these rules.

(4) **Limitations.** (i) **No obligation.** The publication of an advertisement and the provision and acceptance of application forms shall not represent any obligation or agreement whatsoever on the part of the city or the agency, which may only be incurred or entered into by an EDA approved by the law department and duly executed by both parties. The city and the agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any applicant at any time, including, but not limited to, the cost of preparing an application.

(ii) **No warranty.** The agency shall make no warranties, express or implied, with respect to any factual information contained in any advertisement.

(5) **Rights retained by agency.** Where it is deemed by the agency to be in the best interests of the city:

(i) The agency may terminate any application process in whole or in part at any time.

(ii) The agency may reject any and all applications.

(iii) The agency may at any time allow applicants to make modifications or additions to their applications.

(iv) The agency may negotiate with applicants and may negotiate with parties which have not submitted applications.

(v) The agency may negotiate on terms other than those set forth in the advertisement.

(e) **RFP.** Where the agency deems it to be feasible and desirable, a community group may be selected to receive syndication funds via an RFP. The RFP shall state that it is the type of selection process which the agency deems appropriate and shall describe the program, the availability of syndication funds, any required or suggested project(s), the selection process, and such other matters as the agency deems to be relevant. Where a potential community group has previously submitted a proposal and the agency has issued an RFP soliciting additional proposals to compete with such proposal, such RFP shall contain a copy or summary of such proposal and shall set forth in detail the standards by which the competition shall be judged.

(1) **Issuance.** The agency may issue RFP's at any time it deems appropriate and desirable.

(2) **Distribution.** (i) **Notice.** At such time as the agency issues an RFP for selection of one or more community groups, the agency shall place advertisements in **The City Record** and such other publications as the agency shall deem appropriate. The advertisement shall include, at a minimum, a short description of the program, the availability of syndication funds, any required or suggested project, the place a copy of the RFP can be obtained and the deadline for submission of proposals.

(ii) **Availability.** A copy of the RFP shall be made available to all potential applicants prior to the submission deadline. The agency shall require all recipients of any RFP to furnish identification and shall cause a list of recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process.

(iii) **Amendments.** The agency may issue written amendments to the RFP at any time prior to the submission deadline. The agency shall provide copies of such amendments to all recipients of the RFP.

(3) **Public Information.** (i) **Conference.** Prior to the submission deadline, the agency may, but shall not be required to, hold an open conference where agency staff answer questions about submission and program requirements. The time and place for such conference, if any, shall be indicated in the RFP solicitation.

(ii) **Agency contacts.** Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the RFP. The agency may require that contact with agency personnel by prospective applicants with respect to an RFP be limited to one or more person(s) designated in the RFP and/or that such contact be in writing.

(4) **Submissions.** (i) **Deadline.** The deadline for submissions shall be a reasonable period of time after the advertisement first appears and shall be stated in the RFP.

(ii) **Completeness.** The agency shall require proposals to be submitted in the format and number prescribed in the RFP and to contain all information and forms required therein.

(5) **Selection.** (i) **Basic requirements.** The agency may reject a proposal if it determines that either of the

following basic requirements are not met:

(A) **Completeness.** The proposal must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission.

(B) **Compliance.** The proposal must comply in all respects with all material terms of the RFP.

(ii) **Threshold criteria.** The agency may impose such additional threshold criteria in the RFP as it deems necessary or desirable. Provided that a proposal has passed all basic requirements, the agency shall consider such threshold criteria as are established in the RFP. Such threshold criteria may include, but shall not be limited to, those characteristics of applicants which have a bearing on their ability to successfully complete the project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload), those characteristics of the applicant's proposal which have a bearing on the performance of the project, and any other factors which the agency deems appropriate.

(iii) **Competitive criteria.** The agency may impose such additional competitive criteria in the RFP as it deems necessary or desirable. Provided that a proposal has passed all threshold criteria, the agency shall consider such competitive criteria as are established in the RFP. Such criteria may include, but shall not be limited to, those characteristics of applicants which have a bearing on their ability to successfully complete the project (e.g., organizational capacity, comparable experience, and current and expected workload), those characteristics of the applicant's proposal which have a bearing on the performance of the project, and any other factors which the agency deems appropriate.

(6) **Limitations.** (i) **No obligation.** An RFP shall not represent any obligation or agreement whatsoever on the part of the city or the agency, which may only be incurred or entered into by written EDA approved as to form by the city's law department and duly executed by both parties. The city and the agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any applicant at any time, including, but not limited to, the cost of responding to the RFP.

(ii) **No warranty.** The agency shall make no warranties, express or implied, with respect to any factual information contained in any RFP.

(7) **Rights retained by agency.** Where it is deemed by the agency to be in the best interests of the city:

(i) The agency may withdraw any RFP in whole or in part prior to conditional designation of a community group.

(ii) The agency may reject any and all proposals submitted in response to an RFP.

(iii) The agency may at any time waive compliance with an RFP, change any of the terms and conditions of an RFP, or allow certain applicants to make modifications or additions to their respective proposals.

(iv) The agency may negotiate with one or more applicants who have submitted proposals pursuant to an RFP, and may negotiate with parties which have not responded to the RFP.

(v) The agency may negotiate and execute an EDA on terms other than those set forth in the RFP.

(f) **Non-agency selection.** The agency may select an applicant to be a community group without any agency selection process where such applicant has already been selected or designated by (i) another agency or instrumentality of the city, (ii) any agency or instrumentality of the state or federal government, (iii) any public authority, public benefit corporation, or other quasi-governmental entity, (iv) a developer pursuant to an agreement, or (v) any other entity designated by the agency to perform such selection. Notwithstanding anything to the contrary in the preceding sentence or elsewhere in these rules, the agency shall only select a community group pursuant to this §28-03(f) where the agency

deems such method of selection to be necessary or desirable, and the agency shall not be required to select any applicant solely because such applicant has been selected by any other entity.

(g) **Non-agency process.** The agency may select a community group by a process not set forth in these rules where funding for the project is provided by, and/or the alternative selection process is mandated by, either (i) another agency or instrumentality of the city, (ii) any agency or instrumentality of the state or federal government, (iii) any public authority, public benefit corporation, or other quasi-governmental entity, (iv) a developer pursuant to an agreement, or (v) any other entity designated by the agency to perform such selection. Notwithstanding anything to the contrary in the preceding sentence or elsewhere in these rules, the agency shall only select a community group pursuant to this §28-03(g) where the agency deems such method of selection to be necessary or desirable, and the agency shall not be required to utilize any selection process solely because such selection process has been mandated by any other entity.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 28-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-04 Conditional Designation of Community Groups.

(a) **Rejection letters.** The agency shall notify all unsuccessful applicants in writing. Such letter shall state the reasons for the rejection of such applicant's proposal or other submission.

(b) **Conditional designation.** The agency shall notify all successful applicants of their conditional designation as community groups. Such notification may be, but shall not be required to be, in writing and may be in any form which the agency deems to be appropriate, including, but not limited to, a conditional designation letter. Such letter, if any, shall be signed by the commissioner and shall constitute the selection and conditional designation of the applicant, subject to satisfaction of all conditions stated in the letter or in these rules or imposed by the agency or by applicable law. The letter may include, but shall not be limited to, the following matters:

(1) **Acceptance deadline.** The letter may require the applicant to unconditionally accept the designation within a time period for acceptance established therein.

(2) **Program requirements.** The letter may set forth program requirements and conditions upon which the designation was made and may state that any non-conformance or change in any of such requirements may be deemed by the agency to constitute a default.

(3) **Schedule.** The letter may contain a schedule of activities which must be completed as pre-conditions for the actions to be taken in connection with the disbursement of syndication funds.

(c) **No liability.** Conditional designation shall mean only that the agency intends to negotiate with the community

group concerning a project and EDA until such conditional designation is terminated, a requirement of the agency or the city is not satisfied, or an EDA is executed. Conditional designation is not a contract or agreement and shall not create any rights on the community group's part, including, without limitation, rights of enforcement, equity, or reimbursement. No such contract or agreement shall exist, and no such rights shall be created, until the city and the community group enter into a written EDA approved as to form by the law department and duly executed by both parties.

(d) **Termination of conditional designation.** (1) **Causes for termination.** After conditional designation of a community group, the agency may terminate such conditional designation at any time if the agency determines that the city should not enter into an EDA with the community group for any reason, including, but not limited to, the following:

(i) **Failure to comply with terms of designation.** The community group has failed to comply with any term or condition of the conditional designation letter.

(ii) **Failure to meet city requirements.** The community group has either (A) failed to clear one or more of the required city reviews, including, but not limited to, IG clearance and EO clearance, or (B) failed to satisfy other requirements established by the agency or the city.

(iii) **Lack of resources.** The community group lacks the necessary expertise, administrative or other resources, or legal capacity to perform the project.

(iv) **Lack of funding.** Adequate funding for the entire project, whether from syndication funds, other city funds, or any other public or private source, is not available or is not provided in a timely manner.

(v) **Best interests of city.** The agency or the city has not approved the required actions for any reason determined by the agency or the city to be in the best interests of the city.

(2) **Notice of termination.** If the agency elects to terminate the conditional designation of a community group, the agency shall notify the community group of such termination in writing.

(3) **Right to comment.** The agency shall give any terminated community group an opportunity to comment on the reasons for such termination, either in writing or by a conference with a responsible official of the agency. The agency shall give due consideration to any comments made by such community group, but shall retain the sole discretion whether to revoke the termination, set specific conditions for a revocation of the termination, or retain the termination. If the agency decides to revoke or conditionally revoke the termination, the agency shall notify the community group of its decision in writing. Nothing in this §28-04(d)(3) or this §28-04 shall be deemed to restrict the power and authority of the agency to negotiate with other parties, to enter into EDA's, or to take such other actions with respect to the syndication funds as the agency shall determine to be necessary or desirable, prior to receipt of comments from a terminated community group.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 28-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-05 Projects.

(a) **EDA.** The agency shall negotiate with each conditionally designated community group concerning the terms of the EDA pursuant to which such community group will perform one or more projects. Such negotiation shall continue until either the community group's conditional designation is terminated pursuant to these rules or an EDA is executed by the city and the community group. The city and the agency shall not disburse any syndication funds from the escrow account to the community group for any project until the city and the community group have executed an EDA in form approved by the law department and in form and substance acceptable to the agency. Each disbursement of syndication funds from the escrow account to a community group for a project shall be made in accordance with such EDA. The agency shall not be obligated to disburse any funds pursuant to an EDA beyond those syndication funds received from the developer of the applicable development.

(b) **Scope of work.** Each EDA shall include a scope of work describing the project in form and substance satisfactory to the agency. Such scope of work shall include, without limitation, a detailed description of the eligible activities to be performed with the syndication funds, and timetables for commencement, progress, and completion of the project.

(c) **Eligible activities.** The eligible activities to be included in the scope of work of any EDA may include, but shall not be limited to, the following:

(1) **Project activities:** (i) Acquisition, rehabilitation (including all costs of maintenance and operation of occupied residential buildings during rehabilitation), and/or construction of housing accommodations and/or community facilities.

(ii) Rehabilitation or repair of city-owned occupied residential buildings.

(iii) Community improvements, including, but not limited to,

(A) demolition or resealing and securing of buildings in accordance with an area improvement plan or housing strategy,

(B) development and/or maintenance of permanent site improvement projects,

(C) facade and street improvements, and

(D) development, enhancement or maintenance of new or existing community facilities or open spaces.

(iv) Landlord/tenant activities, including, but not limited to,

(A) tenant organizing, education and counseling,

(B) negotiations and mediations of landlord-tenant disputes,

(C) landlord-tenant referral services.

(2) **Related administrative costs.** Not more than twenty percent (20%) of the syndication funds disbursed to a community group shall be used for administrative expenses incurred by the community group in connection with the project, including, but not limited to,

(i) salaries for staff who provide services which are particular to the project,

(ii) consultant fees,

(iii) office supplies,

(iv) rent,

(v) insurance,

(vi) other costs directly related to the performance of the project.

(3) **Other approved use.** The agency may approve any other use of syndication funds which is consistent with these rules, even though such use is not listed in §28-05(c)(1) or §28-05(c)(2).

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 28-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-06 Disbursements.

(a) **General.** The agency may disburse syndication funds from the escrow account pursuant to these rules and applicable laws.

(b) **Written comment.**

(1) **Notice to public.** At such time as the agency proposes to execute an EDA with a community group, the agency shall place an advertisement in The City Record and such other publication as the agency shall deem appropriate, which advertisement shall include, at a minimum:

(i) a description of the program,

(ii) a description of the proposed project,

(iii) the designated community group(s) or other proposed recipient of the syndication funds,

(iv) where and when the public may inspect the proposed EDA, and

(v) where and when members of the public may comment in writing on any action described in the advertisement and/or EDA.

(2) **Notice to borough president.** Prior to or simultaneously with publication of the advertisement required pursuant to §28-06(b)(1), the agency shall mail copies of the advertisement and proposed EDA to the following officials

or their designees:

(i) the borough president in the borough in which the project is located,

(ii) the community board in the community district in which the project is located, and

(iii) such other public officials or agencies as the agency shall deem appropriate.

(3) **Submission of written comments.** The agency shall impose a deadline for submission of written comments, which shall be a reasonable time after the advertisement first appears, but in no event less than fourteen (14) calendar days.

(4) **Review of written comments.** After the deadline for submission of written comments, the agency shall review the written comments received by it and shall determine whether such comments raise substantive issues which require further consideration. If the agency concludes that further consideration is required, the agency shall convene a public hearing in accordance with §28-06(c). If the agency concludes that further consideration is not required, the agency shall either (i) approve the proposed EDA, (ii) approve the proposed EDA with modifications, or (iii) disapprove the proposed EDA. If the agency approves the proposed EDA, the agency may, but shall not be required to, proceed with the execution of the EDA. If the agency approves the proposed EDA with modifications, the agency may, but shall not be required to, proceed with the execution of the modified EDA, and no additional public comment procedure shall be required concerning such modifications. If the agency disapproves the proposed EDA, the agency shall thereafter either (i) resume negotiations with the community group on a new or modified EDA, or (ii) terminate the conditional designation of the community group.

(c) **Public hearing.** If the agency determines, based upon the written comments received by it, that further consideration of the proposed action(s) is required, the agency shall convene a public hearing in accordance with this §28-06(c).

(1) **Notice to public.** The agency shall place an advertisement in **The City Record** and such other publications as the agency shall deem appropriate, which advertisement shall include, at a minimum, (i) a description of the program, (ii) a description of the proposed project, (iii) the designated community group(s) or other proposed recipient of the syndication funds, (iv) where and when the public may inspect the proposed EDA, and (v) the date, time, and location at which members of the public may comment in person on any action described in the advertisement and/or EDA. The agency shall endeavor to mail copies of such advertisement to (i) the borough president in the borough in which the project is located, (ii) the community board in the community district in which the project is located, (iii) such other public officials or agencies as the agency shall deem appropriate, and (iv) if feasible, all parties who submitted written comments pursuant to §28-06(b).

(2) **Conduct of public hearing.** A representative of the agency shall commence the public hearing by describing the action proposed by the agency. The agency shall then afford all persons attending who desire to comment upon such action a reasonable opportunity to speak; provided, however, that the agency may establish and enforce a uniform time limit upon the comments of all speakers; provided further, however, that such time limit shall in no event be less than two (2) minutes per speaker. An audio tape or transcript shall be made of the proceedings and a record shall be made of persons in attendance at the hearing.

(3) **Review of public comments.** After the public hearing, the agency shall review the comments of the speakers and shall determine whether to (i) approve the proposed EDA, (ii) approve the proposed EDA with modifications, or (iii) disapprove the proposed EDA. If the agency approves the proposed EDA, the agency may, but shall not be required to, proceed with the execution of the EDA. If the agency approves the proposed EDA with modifications, the agency may, but shall not be required to, proceed with the execution of the modified EDA, and no additional public comment procedure shall be required concerning such modifications. If the agency disapproves the proposed EDA, the agency shall thereafter either (i) resume negotiations with the community group on a new or modified EDA, or (ii) terminate

the conditional designation of the community group.

(d) **Unencumbered funds.** The agency may disburse unencumbered funds in any manner permitted by law and these rules, including, without limitation, the following methods:

(1) **New community group.** The agency may select a new community group and make disbursements to it in accordance with these rules;

(2) **Agency project.** The agency may prepare a scope of work and EDA for a project and/or disburse unencumbered funds for the performance of such project to the agency rather than to a community group;

(3) **Tax levy.** The agency may apply unencumbered funds toward the cost of providing city services in the borough of the development which generated such syndication funds; and

(4) **Best interests of the city.** The agency may utilize unencumbered funds in any other manner deemed by the agency to be in the best interests of the city, including, but not limited to, disbursement of such unencumbered funds into the general fund of the city.

(e) **Non-escrowed syndication funds.** Where developers and community groups entered into agreements which provided for the payment of syndication funds directly from the developers to the community groups, the agency shall seek to enforce these rules to the extent practicable. Where the respective agreements provide the agency with sufficient authority to do so, the agency may (1) order developers to thereafter make all payments of syndication funds to the city rather than directly to community groups, and (2) order community groups to surrender all syndication funds in their possession to the city. Any syndication funds so obtained or recovered shall be deposited into the escrow account and made subject to the requirements of these rules.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 28-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-07 Project Administration.

(a) **Accounts established by community groups.** The community group shall establish a separate checking or savings account and shall submit a banking resolution to the agency which shall provide that (1) the commissioner shall be authorized to stop all disbursements from each such account or seize all funds therein, in the event of any failure to comply with the applicable EDA or agreement, or for any other reason deemed necessary or desirable by the agency to protect the best interests of the city consistent with these rules and applicable laws, and (2) checks or drafts shall be signed by at least two officers or designated, authorized signatories of the community group before a check or draft may be negotiated or funds withdrawn. Any syndication funds received by a community group, whether from the escrow account pursuant to an EDA or directly from a developer pursuant to an agreement, or monies repaid to the community group from any project activities, shall be deposited into such account and shall be held and utilized strictly in accordance with these rules. No syndication funds shall be disbursed to the community group and no funds shall be disbursed by the community group from such account until and unless the agency shall approve such banking resolution in writing.

(b) **Reporting requirements and audits.** (1) **Reports.** At the end of the first six-month period after a community group receives its first disbursement, and every six months thereafter for as long as syndication funds remain in use by the community group, it shall provide the agency with a report and interim financial statement summarizing the use of the syndication funds received by it, together with copies of all bank statements and cancelled checks, and with a reconciliation of the checking and/or savings account.

(2) **Audits.** Starting with the end of the first full calendar year in which syndication funds were available to the community group for six months or longer, (i) the community group shall provide yearly audited financial statements to

the agency, and (ii) all of the books and records of the community group shall be subject to review and audit by the agency or the comptroller. The community group shall maintain such books and records and shall make them available for audit for a period of six (6) years after the expiration of its EDA. Any agreements between a community group and its contractors shall contain substantially the same language as contained in this §28-07(b)(2). The community group shall require the certified public accountant retained by it to prepare its audited financial statement to (i) make its "work papers" available upon demand to the agency or the comptroller, and (ii) register with the comptroller upon demand by the city.

(c) **EDA defaults.** In the event that a community group defaults on its obligations pursuant to an EDA, the agency may terminate such EDA and/or invoke any other remedy available to the city pursuant to the EDA, these rules, or applicable laws.

HISTORICAL NOTE

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***** Current through December 2009 ****

28 RCNY 28-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 28 TAX SYNDICATION SHARING PROGRAM RULES

§28-08 Miscellaneous Provisions.

(a) **Adverse findings.** Nothwithstanding any provision to the contrary in these rules or in any document concerning any selection process, any project, or the program, the agency may reject any applicant or terminate any conditional designation of a community group if the agency determines at any time that good and sufficient reasons exist why the city should not do business with such party or should not allow such party to act as community group for the particular project in question. Such reasons shall include, but shall not be limited to, evidence with respect to the applicant or any member of its development team or any contractor retained by such applicant or any of its principals of:

(1) Arson conviction or pending cases,

(2) Harassment conviction or pending cases,

(3) Arrears or default upon any debt, lease, contract, tax, lien, fee, charge, or obligation to the city,

(4) City mortgage or tax foreclosure proceedings or arrears,

(5) Unsuccessful record with comparable projects, including, but not limited to, poor workmanship, failure to complete a project expeditiously, building violations or litigation history against other properties, or unsuccessful record of managing residential real property,

(6) Inability, due to lack of organizational capacity, competing demands from other projects, or any other factor to

perform all work required to successfully complete the project,

(7) Bankruptcy or insolvency,

(8) Violation of the conflict of interest provisions of the city charter or any other applicable laws, or

(9) Failure to obtain IG clearance and/or EO clearance.

(b) **Agency discretion.** All determinations to be made by the agency and/or the commissioner in accordance with these rules shall be in the sole discretion of the agency and/or the commissioner; provided, however, that the agency and/or the commissioner shall comply in all respects with applicable laws.

(c) **Statutory authority not limited.** Nothing in these rules shall be deemed to prevent the agency from exercising such greater or additional rights, remedies, privileges, powers, and authority as shall be provided by law.

(d) **Rights not conferred.** These rules are not intended to confer rights or benefits upon the general public or upon any individual, entity, or actual or potential community group. Nothing in these rules shall be deemed to confer any rights or benefits whatsoever upon any party which are in addition to any rights deriving from applicable laws or written contracts with the agency.

(e) **No legal obligation.** At any time prior to the execution of a legally binding written EDA by the agency and the community group, the agency may withdraw its approval of all or any portion of a project, change the contemplated actions and project, change the community group selection process for a project, terminate the designation of a community group, select a new community group, or take any other action deemed by the agency to be necessary or appropriate. A selection process shall not represent any obligation or agreement whatsoever on the part of the city or the agency, which may only be incurred or entered into by written EDA approved as to form by the law department and duly executed by both parties. The city and the agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any applicant at any time, including, but not limited to, the cost of applying for selection as a community group. Conditional designation of a community group shall mean only that the agency intends to negotiate with such community group concerning one or more potential projects until either an EDA is executed or such conditional designation is terminated. Conditional designation of an applicant is not a contract or agreement and shall not create any rights on the applicant's part, including, without limitation, rights of enforcement, equity or reimbursement. No such contract or agreement shall exist, and no such rights shall be created, until the city and the community group enter into an EDA approved as to form by the law department and duly executed by both parties. Approval of a project and/or EDA by any party pursuant to these rules shall not obligate the agency to proceed with the project or with the execution of such EDA.

(f) **Technical violations.** Technical violations of these rules shall not invalidate the selection of any community group, any EDA, or any other action taken pursuant to these rules, nor shall such technical violations give rise to any rights, claims, or causes of action in favor of members of the general public or potential community groups.

(g) **Compliance with laws.** All actions by the agency pursuant to these rules shall be made in accordance with applicable laws. Each community group selected and project undertaken pursuant to these rules shall meet the eligibility criteria of the laws which authorize the agency to undertake the actions necessary or incident to the performance of such project.

(h) **Amendments.** These rules may be amended pursuant only to the procedures and requirements contained in CAPA.

(i) **Waivers.** The commissioner may at any time waive in writing one or more of the provisions of these rules with respect to any community group or project. Such writing shall state the reasons for such waiver.

(j) **Singular and plural.** With respect to any of the terms used in these rules, the singular shall be deemed to include the plural and the plural shall be deemed to include the singular, unless the context requires otherwise.

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28 RCNY 29-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-01 General Provisions.

Definitions.

Applicant. The term "applicant" shall mean any potential sponsor of a project who has requested or been requested to be a sponsor of a project.

Building. The term "building" shall mean a residential multiple dwelling occupied by tenants and (prior to disposition) owned by the City which was developed as part of the Special Initiative Program ("SIP") by HPD and which is not currently in any other HPD disposition program.

City. The term "city" shall mean the City of New York.

Disposition. The term "disposition" shall mean the sale of a building by the city to a sponsor.

Grant. The term "grant" shall mean a grant made by the City for eligible project activities.

HPD. The term "HPD" shall mean the City's Department of Housing Preservation and Development and any successor agency.

Laws. The term "laws" shall mean any and all applicable laws, ordinances, orders, rules and regulations promulgated by any local, state or federal authority.

Loan. The term "loan" shall mean a loan made by the City for eligible project activities.

Pre-Disposition Notice. The term "pre-disposition notice" shall have the meaning set forth in §28-07(a).

Program. The term "program" shall mean the SIP program as it relates to the sale of occupied SIP buildings currently in City ownership.

Project. The term "project" shall mean a building in the program.

Project activity. The term "project activity" shall mean any activity performed or required to be performed by the sponsor in connection with a project, including, but not limited to, the acquisition, rehabilitation and management of a building.

Rehabilitation. The term "rehabilitation" shall mean the Scope of Work approved by HPD in connection with a Project, including but not limited to all work necessary to effect compliance with Federal Housing Quality Standards as set forth by the United States Department of Housing and Urban Development.

Rules. The term "rules" shall mean the rules set forth in this chapter.

Schedule of rent. The term "schedule of rent" shall have the meaning set forth in §28-04(a).

SIP Program. The term "SIP Program" shall mean the Special Initiative Program of HPD's Division of Homeless Housing Development.

Sponsor. The term "sponsor" shall mean the applicant selected or approved by HPD to perform or to be responsible for the performance of the project activities in connection with a project.

Subsidy. The term "subsidy" shall mean any available governmental program offering rental assistance payments.

Tenants. The term "tenants" shall mean authorized residential tenants of record.

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***** Current through December 2009 ****

28 RCNY 29-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-02 Sponsor Selection.

(a) **General.** The SIP program utilized vacant City-owned buildings to develop homeless housing. Most of these buildings remain under City ownership and management. The purpose of the SIP occupied sales program is to dispose of these buildings to qualified sponsors. Sale of the buildings is anticipated to be pursuant to Article 16 of the General Municipal Law and each disposition will require approval of the Mayor and the City Council, acting in their respective capacities pursuant to applicable Laws. HPD may select a sponsor for a project by any method it determines will best meet the purposes of the program including, without limitation, a request for proposal process, a request for qualifications process or, in the discretion of HPD, by a direct designation of an entity judged by HPD to be suitable for the task. HPD, in selecting an applicant, may consider any relevant factors, including, but not limited to, the applicant's prior record in housing projects done under other City programs, the applicant's prior selection by the City as a sponsor in another program, the applicant's record as a property owner or manager, the applicant's relevant experience in and knowledge of the neighborhood where the project is located and any relevant written comment by tenants.

(b) **Joint venture sponsors.** In selecting sponsors, HPD may give a preference to qualified not-for-profit community-based organizations which apply as joint venturers with qualified for-profit organizations with experience in management of real estate. Such preference, if any, shall be given first to a shared ownership joint venture with a for-profit and a not-for-profit and second to a not-for-profit owner with a for-profit manager.

(c) **Other sponsors.** In selecting sponsors other than joint venture sponsors, HPD may give a preference to qualified not-for-profit community-based organizations. HPD may also select qualified for-profit real estate organizations with management experience.

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28 RCNY 29-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-03 Designation of Sponsors.

(a) **Conditional designation.** HPD shall provide written notification to all selected Applicants of their conditional designation as Sponsor.

(b) **No liability.** Conditional designation of an applicant as a sponsor shall mean only that HPD intends to recommend disposition of the project to such sponsor if such conditional designation has not been terminated and all requirements of HPD have been satisfied. Disposition is subject to obtaining all required governmental approvals, including, but not limited to, approval by the Mayor and the City Council, acting pursuant to applicable laws. Conditional designation of an applicant is not a contract or agreement and shall not create any rights on the applicant's part, including, without limitation, rights of enforcement, equity or reimbursement. No such contract or agreement shall exist, and no such rights shall be created, until the city and the sponsor enter into a written agreement with all requisite approvals and duly executed by both parties.

(c) **Termination of conditional designation.** After conditional designation of a sponsor, HPD may at any time terminate such conditional designation at its sole discretion.

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***** Current through December 2009 ****

28 RCNY 29-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-04 Schedule of Rent.

(a) **Schedule of rent.** Prior to disposition, HPD shall establish a schedule of rent for each apartment in a building. The schedule of rent shall be set by HPD based on its estimates of the cost of operating the building, including, to the extent deemed necessary by HPD, reasonable reserves, allowance for vacancy and collection losses, insurance, utilities, water and sewer charges, taxes, heating fuel, provision for social services, and a reasonable management fee for the sponsor. The schedule of rent shall set rents at no greater than the Federal Section 8 fair market rent. The schedule of rent and the rationale therefor shall be kept on file by HPD and be available for public inspection. Sponsor shall be required to register the schedule of rents with the New York State Division of Housing and Community Renewal.

(b) **Subsidies.** Notwithstanding the schedule of rent, such rent shall not be collected until completion of all required Rehabilitation, including compliance with Federal Housing Quality Standards to enable subsidies to flow to tenants. Tenants eligible for federal rent subsidies may be offered housing vouchers and/or Section 8 certificates as determined by HPD. In the event that a tenant does not qualify for such subsidies, the rent collected shall in no event be greater than the applicable public assistance shelter allowance or, if the tenant does not qualify for public assistance, thirty percent (30%) of the income of the tenant.

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CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-05 Tax Exemption, Grants and Loans.

(a) **Tax exemption.** Partial or full exemption from real property taxes may be available for the buildings in accordance with applicable laws.

(b) **Project activity grants and loans.** HPD intends to provide grants or loans to sponsors to cover the cost of eligible project activities, including but not limited to acquisition and rehabilitation.

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***** Current through December 2009 ****

28 RCNY 29-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-06 Project Operation.

(a) **Regulatory agreement.** A sponsor shall be required to execute a regulatory agreement with HPD as a condition for disposition of a building. The regulatory agreement shall be recorded and shall run with the land for a period set forth therein. The regulatory agreement shall require the sponsor and all of sponsor's successors and assigns to comply with program requirements.

(b) **Use restrictions.** HPD shall impose restrictions upon the use of a building and shall require sponsor to agree to comply with such restrictions as a condition for acquisition of a building. Such use restrictions may be enforced by any means which HPD determines to be necessary or appropriate, including, but not limited to, provisions in any deed, land disposition agreement, regulatory agreement, note, mortgage, security agreement, lien, restrictive declaration, or other document. HPD may require a sponsor to secure its obligations to comply with use restrictions in such form as is determined by HPD to be necessary or desirable.

(c) **Occupancy in buildings.** Occupancy on vacancy shall be limited to persons and families whose annual income does not exceed eighty percent (80%) of the median income for the New York Metropolitan Statistical Area as determined by the United States Department of Housing and Urban Development. HPD may require that a portion of any future vacancies be reserved for referrals by the City of persons in need of shelter.

(d) **Rent stabilization.** Sponsors shall be required to register an HPD approved schedule of rents with the New York State Department of Housing and Community Renewal and to operate the buildings within the rent stabilization system.

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***** Current through December 2009 ****

28 RCNY 29-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-07 Tenant Notice.

(a) **Pre-disposition notice.** Upon the selection of a proposed sponsor for a building in the program, HPD shall so notify all tenants of such building ("pre-disposition notice") by providing them with

(1) the name of the proposed sponsor;

(2) a notification of the schedule of rent and of the available subsidies;

(3) a statement that tenants may comment in writing on HPD's proposed action, including the proposed sponsor and schedule of rents, within thirty (30) days of service of the notice.

(b) **Manner of notice.** The Pre-disposition notice shall be posted in a common area of the building and affixed to or placed under each apartment door of the building, or shall be sent by regular mail to each tenant in the building. The Pre-disposition notice shall be in both English and Spanish.

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***** Current through December 2009 ****

28 RCNY 29-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 29 SIP OCCUPIED SALES PROGRAM

§29-08 Miscellaneous Provisions.

(a) **HPD discretion.** All determinations to be made by HPD in accordance with these Rules shall be in the sole discretion of HPD.

(b) **Statutory authority not limited.** Nothing in these Rules shall be deemed to limit HPD's authority pursuant to all applicable laws.

(c) **Method of Notification.** Unless otherwise provided herein, notification shall be in English and Spanish, and shall be either posted in a common area of the building and affixed to or placed under each apartment door of the building, or mailed to every apartment in the building, as determined by HPD.

(d) **Technical violations and other variances.** Provided that there has been a good faith effort to comply with these Rules, technical violations of these Rules shall not invalidate any action taken pursuant to these Rules, nor shall such technical violations give rise to any rights, claims, or causes of action. The commissioner, upon good cause shown, may alter the timing or sequence of the actions described in these Rules, provided all affected parties are given reasonable notice.

HISTORICAL NOTE

Section added City Record May 21, 1993 eff. June 20, 1993.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 30-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 30 NEIGHBORHOOD REDEVELOPMENT PROGRAM*1

§30-01 Definitions.

Administrative Code. "Administrative Code" shall mean the Administrative Code of the City.

Building. "Building" shall mean any multiple dwelling which is occupied by Tenants and (prior to Disposition) owned by the City, including any vacant land adjacent thereto, which is or may be the subject of a Project.

City. "City" shall mean the City of New York.

Commissioner. "Commissioner" shall mean the Commissioner of HPD or his or her designee.

DHCR. "DHCR" shall mean the State of New York Division of Housing and Community Renewal.

Disposition. "Disposition" shall mean the date of title transfer of a Building from the City to a Sponsor.

Final Selection. "Final Selection" shall mean a decision by HPD to select a Building for the Program.

FMR. "FMR" shall mean the fair market rent set by the §8 program or any other successor program of the United States Department of Housing and Urban Development.

Housing Maintenance Code. "Housing Maintenance Code" shall mean Chapter 2 of Title 27 of the Administrative Code.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City, or its designee.

Intake Rent. "Intake Rent" shall mean the rent set by HPD which takes effect after Project Commencement.

Interim Payment Agreement. "Interim Payment Agreement" shall mean an agreement entered into between HPD, the Sponsor and a Tenant eligible for rental assistance to temporarily accept less than the full rent from the Tenant prior to the provision of rental assistance.

Laws. "Laws" shall mean any and all applicable laws, ordinances, orders, rules and regulations.

Lessee. "Lessee" shall mean the Sponsor during the period between Project Commencement and Disposition if HPD and Sponsor enter into a temporary lease of the Building.

Post-Rehabilitation Rent. "Post-Rehabilitation Rent" shall mean the rent set by HPD which takes effect after Substantial Completion.

Preliminary Selection. "Preliminary Selection" shall mean a preliminary determination by HPD to select a Building for the Program.

Program. "Program" shall mean the Neighborhood Redevelopment Program.

Project. "Project" shall mean a project in the Program.

Project Activity. "Project Activity" shall mean any activity performed or required to be performed by the Sponsor in connection with a Project.

Project Commencement. "Project Commencement" shall mean the date the Project has commenced, as set forth in the notice described in §30-04(e).

Qualified Not-For-Profit Corporation. "Qualified Not-For-Profit Corporation" shall mean a not-for-profit entity selected by HPD to participate in the Program.

Rehabilitation. "Rehabilitation" shall mean the installation, replacement, or repair of one or more Building systems or the correction of inadequate, unsafe, or insanitary conditions.

Rules. "Rules" shall mean the rules set forth in this chapter.

Sponsor. "Sponsor" shall mean the entity selected by HPD to lease, own and/or develop the Project, and any entity substantially controlled by such Sponsor.

Subsidy. "Subsidy" shall mean a loan or a grant made by HPD to a Sponsor for Project Activities.

Substantial Completion. "Substantial Completion" shall mean the date on which HPD certifies that (a) construction work comprising at least 95 percent of the approved Rehabilitation cost has been satisfactorily completed, and (b) all work required to remove Housing Maintenance Code violations which were of record before the Rehabilitation of the Building and were then classified as "B" and "C" has been completed.

Tenants. "Tenants" shall mean residential tenants of record occupying a dwelling unit in a Building. Other residential occupants, such as squatters and licensees, are not Tenants. Non-residential tenants or occupants, such as those who occupy space in a Building for retail, commercial, manufacturing, or community facility purposes, are not Tenants.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

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28 RCNY 30-02

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CHAPTER 30 NEIGHBORHOOD REDEVELOPMENT PROGRAM*1

§30-02 General.

(a) **Coverage.** These Rules govern the procedures for: selecting Buildings for the Program, selecting Sponsors for the Program, providing Subsidies for Projects, Project operation, determination and establishment of rents, and providing notices to Tenants. Buildings in the Program shall be subject to these Rules.

(b) **Program Description.** Under the Program, titles to Buildings will be conveyed to Sponsors who will thereafter be responsible for the Rehabilitation of such Buildings. Sale of the Buildings will be pursuant to applicable Laws and each Disposition will require approval of the Mayor and the City Council, acting in their respective capacities pursuant to such Laws.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff.

Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

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§30-03 Selection of Sponsors.

HPD may select a Sponsor for a Project by any method which it determines will best further the purposes of the Program, including, without limitation, pursuant to a request for qualifications process, pursuant to a request for proposals process, selection from a pre-qualified list or, in the discretion of HPD, by a direct designation of an entity judged by HPD to be suitable for the task. HPD, in selecting a Sponsor, may consider any relevant factors, including, but not limited to:

(i) the Sponsor's prior record in other City housing programs;

(ii) the Sponsor's prior selection by the City as a developer in another program;

(iii) the Sponsor's record as a property owner, developer, or manager;

(iv) the Sponsor's relevant experience in and knowledge of the neighborhood where the Project is located, and

(v) any relevant written comments by Tenants. It is intended that the Sponsor will be a Qualified Not-For-Profit Corporation.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

28 RCNY 30-04

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Title 28 Housing Preservation and Development

CHAPTER 30 NEIGHBORHOOD REDEVELOPMENT PROGRAM*1

§30-04 Selection of Buildings, Tenant Notification.

(a) **Eligible Buildings.** HPD may select Buildings for the Program if:

(1) Rehabilitation of the Building is technically and financially feasible;

(2) The Building has not been accepted into another HPD disposition program.

(b) **Notice of Preliminary Selection.** After HPD has found a Building to be eligible pursuant to subdivision (a) of this section and has preliminarily selected the Building for the Program, HPD shall provide all Tenants of the Building with a document containing the following:

(1) A statement that HPD is considering placing the Building in the Program;

(2) A description of the Program;

(3) A statement that an Intake Rent will be set;

(4) A statement that the Building may be eligible for other HPD programs and the name, address and phone number of an HPD employee who may provide information on how to apply for such other programs;

(5) The name of the Sponsor selected by HPD to develop the Project; and

(6) A statement that the Building will remain in the Program unless accepted into another HPD program.

(c) **Tenant Meeting.** HPD shall hold a Tenant meeting prior to making a Final Selection, giving notice to Tenants at least two business days prior to such meeting.

(d) **Notice of Final Selection.** No sooner than thirty (30) days after the Preliminary Selection, HPD shall notify the Tenants of a Building of the Final Selection of the Building for the Program. No later than ninety (90) days after the notice of Final Selection, the Tenants of a Building selected for the Program may apply for any other HPD disposition program that accepts applications from Tenants.

(e) **Notice of Project Commencement.** No sooner than ninety (90) days after the notice of Final Selection, HPD shall notify the Tenants of a Building that the Project has commenced, unless the Tenants have applied for another HPD disposition program that accepts applications from Tenants within such time period. If the Tenants have applied for another HPD disposition program that accepts applications from Tenants within such time period and have been rejected from such program, then, immediately after the later of such rejection or ninety (90) days after the notice of Final Selection, HPD shall notify such Tenants that the Project has commenced.

(f) **Notice of Intake Rent.** Either at the time of the notice of Project Commencement or thereafter, HPD shall notify each Tenant of the Intake Rent and the date it becomes effective, which effective date shall be not less than thirty (30) days after the date of the notice of Intake Rent, and shall, in accordance with §30-09 of these Rules, provide information on rental assistance which may be available to Tenants and the procedures to apply for such assistance.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

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28 RCNY 30-05

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§30-05 Subsidy.

(a) **Eligible Costs.** Subject to the limitations set forth in applicable Laws, a Subsidy may be made in such amounts as may be required for Project Activities.

(b) **Commitment Letter.** HPD may state Subsidy terms in a commitment letter signed by the Commissioner. Such commitment letter, if any, may contain such terms as HPD may deem necessary or desirable in order to effectuate the purposes of these Rules and to protect the City's interests. The provision of the Subsidy shall be made subject to satisfaction of all the terms and conditions contained in such commitment letter.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed

amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

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28 RCNY 30-06

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CHAPTER 30 NEIGHBORHOOD REDEVELOPMENT PROGRAM*1

§30-06 Rent Setting.

(a) **Establishment of Intake Rents.** HPD shall from time to time on a program-wide basis establish Intake Rents for all dwelling unit Buildings selected for the Program based upon a minimum rent level per zoning room based on operating costs in similar Buildings. The Intake Rent and the rationale therefore shall be kept on file by HPD and be available for public inspection. HPD shall provide notice of Intake Rent pursuant to §30-04(f).

(b) **Pre-commitment meeting.** After the notice of Project Commencement pursuant to §30-04(e), and prior to the issuance of a commitment letter containing the terms and conditions for a Subsidy, HPD shall send a notice informing the Tenants of the time and place of a meeting to discuss the Program at least two business days prior to such meeting. A representative of HPD shall attend such meeting.

(c) **Projection of Post-Rehabilitation Rents.** HPD shall determine a rent for each dwelling unit in the Building to take effect upon Substantial Completion. The Post-Rehabilitation Rent per occupied dwelling unit may be based upon the Tenants' income or may reflect the expenses for the Building as projected by HPD less the effective annual net commercial income, if any. If the Post-Rehabilitation Rent reflects the Building's expenses, HPD shall project the annual maintenance and operating expenses for the Building after Substantial Completion, including allowances for vacancies and debt service coverage. The expenses shall be projected by HPD based on its experience and knowledge of the operation of similar buildings. For those apartments which are vacant at the time of the sending of the notice of Substantial Completion pursuant to subdivision (h) of this section, HPD shall set Post-Rehabilitation Rents at no greater than one hundred and ten percent (110%) of the FMR for the area in which the Building is located.

(d) **Pre-Disposition notice.** Following the pre-commitment meeting held pursuant to subdivision (b) of this

section, and not less than thirty (30) days prior to Disposition, HPD shall send a notice which shall

(1) inform each Tenant of the contemplated Rehabilitation which will be performed in the Project;

(2) advise each Tenant of the expected rental increase to result from the Rehabilitation which will take effect after Substantial Completion (i.e., the Post-Rehabilitation Rent);

(3) provide information on rental assistance which may be available to the Tenant and the procedures to apply for such assistance in accordance with §30-09 of these Rules;

(4) apprise each Tenant of such Tenant's right to submit written comments; and

(5) advise each Tenant that where relocation during Rehabilitation is necessary, HPD will use its best efforts to minimize inconvenience to affected Tenants.

(e) **Implementation of Intake Rent.** Commencing no earlier than the date set forth in the notice of Intake Rent sent pursuant to §30-04(f), HPD shall charge the Intake Rent, except that rents for Tenants whose rents at such time are greater than the Intake Rent shall not be decreased.

(f) **Registration of Rent.** Not less than thirty (30) days after Disposition, Sponsor shall register with DHCR the rent charged to each Tenant in the Building at the time of Disposition. Leases shall contain a provision satisfactory to HPD requiring notice to the Tenant of the subsequent establishment of the Post-Rehabilitation Rent.

(g) **Increase in Projected Post-Rehabilitation Rents.** If the Post-Rehabilitation Rents established by HPD pursuant to subdivision (c) of this section reflect the Building's expenses, and HPD determines that its projection of maintenance and operating costs must be increased based on unforeseen changes in the circumstances and factors which formed the basis of the original projection, including, but not limited to, unexpected increases in fuel or utility costs, HPD shall notify Tenants of the amount of the expected rent increase over and above the Post-Rehabilitation Rent set forth in the pre-Disposition notice sent pursuant to subdivision (d) of this section.

(h) **Notice of Substantial Completion.** Following Substantial Completion, HPD shall send a notice to each Tenant that the Rehabilitation is substantially complete and that the Tenant's rent will be increased to the Post-Rehabilitation Rent in not less than sixty (60) days. Such notice shall state that the Tenant has an opportunity to comment regarding the quality of Rehabilitation. Such notice shall also include the amount of the Post-Rehabilitation Rent, its effective date, and provide information on rental assistance which may be available to the Tenant and the procedures to apply for such assistance in accordance with §30-09 of these Rules. Prior to the establishment of Post-Rehabilitation Rents, HPD shall give due consideration to Tenant comments regarding the quality of the Rehabilitation.

(i) **Implementation and Registration of Post-Rehabilitation Rents.** Not less than sixty (60) days after the sending of the notice of Substantial Completion pursuant to subdivision (h) of this section, HPD shall complete and sign a rent order, and shall mail such order to the Tenant with a copy to the Sponsor. The rent set forth on each rent order shall be the Post-Rehabilitation Rent for such apartment as was determined in accordance with subdivision (c) of this section and as set forth in the pre-Disposition notice or as adjusted pursuant to subdivision (g) of this section. If an apartment is vacant at the time of establishment of rents, the rent order shall be mailed to the Sponsor. Immediately upon receipt of the rent order or a copy thereof, the Sponsor shall register the Post-Rehabilitation Rent for each Tenant in the Building with DHCR.

(j) **Two year leases.** The Sponsor must offer two year leases to all Tenants upon Substantial Completion.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

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28 RCNY 30-07

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§30-07 Project Operation Prior to Disposition if HPD Temporarily Leases the Building to the Sponsor.

(a) **Lease.** Prior to Disposition, HPD may temporarily lease the Building to a Lessee pursuant to the terms of a written lease.

(b) **Tenant selection policy.** Lessee shall rent vacant apartments only to low and/or moderate income Tenants as defined by HPD and in accordance with HPD guidelines. HPD may also, in the public interest, require that other persons, determined by HPD to be in need of housing, receive priority in the renting of apartments. HPD may require that rentals be pre-approved by HPD, that specified lists of eligible persons be used, or may direct any other Tenant selection method be used.

(c) **Successor Tenants.** Persons claiming to be successor Tenants, if any, prior to a unit entering rent stabilization, are subject to the rules set forth in Chapter 24 of Title 28 of the Rules of the City of New York.

(d) **Interim Payment Agreement.** HPD may require the Lessee to enter into one or more Interim Payment Agreements in accordance with §30-09 of these Rules.

(e) **Limitation on Collection of Arrears.** At such time as a Tenant is one month or more in arrears on the payment of rent to Lessee, Lessee may commence a proceeding for such rent arrears and/or for possession of the apartment. Lessee may not sue for arrears which accrued more than three (3) months prior to the commencement of the lease for the Building.

(f) **Vacancy Rents.** Rents for vacant apartments shall be set by Lessee, subject to HPD approval.

(g) **Commencement of Legal Proceedings.** Lessee may commence legal proceedings, including eviction proceedings for failure to pay rent in accordance with §21-23(c) of chapter 21 of this title, with the prior approval of HPD.

(h) **Tenant Complaints.** (1) Complaints shall, in the first instance, be directed to Lessee.

(2) Tenants shall have the right to file written complaints with HPD staff if a Tenant deems Lessee's response to be inadequate or unsatisfactory.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

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28 RCNY 30-08

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CHAPTER 30 NEIGHBORHOOD REDEVELOPMENT PROGRAM*1

§30-08 Project Operation After Disposition.

(a) **Regulatory Agreement.** A Sponsor may be required to execute a regulatory agreement with HPD as a condition for the Project. The regulatory agreement shall be recorded and shall run with the land for the period set forth therein. The regulatory agreement shall require the Sponsor and all of Sponsor's successors and assigns to comply with Project requirements.

(b) **Use Restrictions.** HPD may impose restrictions upon the use of a Building and may require Sponsor to agree to comply with such restrictions as a condition for Disposition or Subsidy. Such use restrictions may be enforced by any means which HPD determines to be necessary or appropriate, including, but not limited to, provisions in any deed, land disposition agreement, regulatory agreement, note, mortgage, security agreement, lien, restrictive declaration, or other legal document. HPD may require a Sponsor to provide security for its compliance with use restrictions in such types and amounts as are determined by HPD to be necessary or desirable. Such types of security may include, but shall not be limited to, surety bonds, letters of credit, or cash.

HISTORICAL NOTE

Section amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

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28 RCNY 30-09

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CHAPTER 30 NEIGHBORHOOD REDEVELOPMENT PROGRAM*1

§30-09 Rental Assistance.

(a) HPD will assist eligible Tenants in applying for existing rental assistance programs during the period of the Building's participation in the Program. HPD will provide Tenants with applications for §8 of the United States Housing Act of 1973, as amended, and senior citizen rent increase exemptions, advise Tenants which rental assistance program is most suitable for their individual needs and assist Tenants in completing rental assistance applications.

(b) Each Tenant who applies for rental assistance is solely responsible for supplying all required documentation and materials necessary to process an application: i.e., attending required interviews, providing the necessary income certification and complying with all procedures to process an application.

(c) HPD shall review all applications for rental assistance and make a preliminary determination of a Tenant's eligibility within sixty (60) days of receipt of a completed application. HPD shall promptly notify the Sponsor of all applicants for rental assistance and shall forward to the Sponsor copies of the applications, letters granting or denying rental assistance, Interim Payment Agreements entered into, and letters extending or terminating Interim Payment Agreements. Upon a finding of preliminary eligibility, HPD will provide the Tenant with an Interim Payment Agreement, which shall be signed by the Sponsor, the Tenant and HPD before it becomes effective. This Interim Payment Agreement shall include:

(1) the amount of the increased rent for the apartment;

(2) the amount of rent that the Tenant must pay pending the final eligibility determination of the rental assistance application (as such amount is determined in accordance with subdivision (d) of this section);

(3) a statement of the grounds for termination pursuant to subdivision (e) of this section; and

(4) notice to the Tenant that s(he) remains liable for the full amount of the rent retroactive to the effective date of the increase if, at any time, the rental assistance application is denied by HPD or the Interim Payment Agreement is terminated pursuant to paragraphs one, three or four of subdivision (e) of this section, provided, however, that if the Interim Payment Agreement is terminated pursuant to paragraph one of subdivision (e) of this section, the Tenant shall not be liable for the full amount of the rent increase retroactive to its effective date if s(he) notifies HPD within thirty (30) days of any change in household income which renders the Tenant ineligible for rental assistance.

(d) A Tenant who receives an Interim Payment Agreement will be required to pay the greater of (1) the amount set forth in the Interim Payment Agreement, which is the amount that s(he) would pay on a monthly basis if the rental assistance application is approved, or (2) the rent charged prior to implementation of the rent increase.

(e) The Interim Payment Agreement will terminate one year after the date of issuance or upon the earlier occurrence of any of the following:

(1) any change in the Tenant's household income which renders the Tenant ineligible for rental assistance; or

(2) any change in the rent charged by the City; or

(3) failure by the Tenant to comply with any of the requirements necessary to process the application for rental assistance; or

(4) failure by the Tenant to pay, within thirty (30) days of the date due, the rent payable under the Interim Payment Agreement pursuant to subdivision (d) of this section, unless payment of such rent is being withheld for lack of services which the Tenant has given written notice of to the Sponsor; or

(5) receipt by Tenant of rental assistance pursuant to a rental assistance application filed in accordance with this section.

(f) HPD will permit any Tenant who has applied for rental assistance in accordance with subdivision (b) of this section and who has not been provided with an Interim Payment Agreement pursuant to subdivision (c) of this section, to pay a rent increase in stages of $10.00 per room per quarter.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 30 footnote]

FOOTNOTES

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28 RCNY 30-10

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CHAPTER 30 NEIGHBORHOOD REDEVELOPMENT PROGRAM*1

§30-10 Miscellaneous Provisions.

(a) **HPD Discretion.** All determinations to be made by HPD in accordance with these Rules shall be in the sole discretion of HPD.

(b) **Statutory Authority not Limited.** Nothing in these Rules shall be deemed to limit HPD's authority pursuant to applicable Laws.

(c) **Method of Notification.** Unless otherwise provided herein, notification shall be in English and Spanish, and shall either be posted in a common area of the Building and affixed to or placed under each apartment door of the Building, or mailed to every apartment in the Building, as determined by HPD.

(d) **Technical Violations.** Provided that there has been a good faith effort to comply with these Rules, technical violations of these Rules shall not invalidate any action taken pursuant to these Rules, nor shall such technical violations give rise to any rights, claims, or causes of action. The Commissioner, upon good cause shown, may alter the timing or sequence of the actions described in these Rules, provided all affected parties are given reasonable notice.

(e) **Funding Source Requirements.** Notwithstanding any provision of these Rules to the contrary, if the requirements of any funding source for a Project conflict with the requirements of these Rules, the requirements of the funding source shall govern.

HISTORICAL NOTE

Section renumbered and amended (formerly §30-09) City Record Jan. 7, 2002 eff. Feb. 6, 2002.

[See Chapter 30 footnote]

Section added City Record Sept. 22, 1993 eff. Oct. 22, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 1993; Chapter amended City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note provisions of City Record Jan. 7, 2002 Statement of Basis and Purpose. The proposed amendments to the rules alter the provisions regarding the timing of notification to the tenants of the selection of their building for the program and project commencement. They also amend the rent setting provisions by providing an alternative which authorizes utilization of tenants' income as a basis for post-rehabilitation rents, and establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules. The amendments spell out the process by which tenants may obtain rental assistance. Additionally, the proposed amendments make certain technical changes, such as the capitalization of defined terms.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 31-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 31*1 TAX EXEMPTIONS UNDER §420-C OF THE REAL PROPERTY TAX LAW

§31-01 General Provisions.

(a) **Scope.** These Rules govern the grant of tax exemption pursuant to §420-c of the Real Property Tax Law including the procedure for filing an application for tax exemption and the issuance of Certificates of Eligibility by the Office.

(b) **Definitions.**

Aggregate Floor Area. "Aggregate Floor Area" shall mean the sum of the gross areas of the several floors of a building, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings.

Allocation Document. "Allocation Document" shall mean a document issued by the Housing Credit Agency with respect to Real Property indicating either (i) that such Real Property has received a binding reservation for tax credits or (ii) that such Real Property has been allocated tax credits pursuant to §42 of the Code.

Application Date. "Application Date" shall mean the date of submission to the Office of a completed application (including all required documentation), as determined by the office for benefits under this chapter.

Certificate of Eligibility. "Certificate of Eligibility" shall mean the certificate issued by the Office pursuant to §31-04(d) of these Rules.

City. "City" shall mean the City of New York.

Code. "Code" shall mean the United States Internal Revenue Code of 1986, as amended.

Commissioner. "Commissioner" shall mean the commissioner of the Department of Housing Preservation and Development or the commissioner of any successor agency or department thereto or her or his designee.

Controlling Interest. "Controlling Interest" shall mean: (i) in the case of a corporation, direct or indirect ownership of a majority of shares of each class of voting stock in such corporation, and (ii) in the case of a partnership, a majority ownership in each general partner in such partnership.

Department. "Department" shall mean the Department of Housing Preservation and Development of the City.

Department of Finance. "Department of Finance" shall mean the Department of Finance of the City or any successor agency or department thereto.

Eligible Property. "Eligible Property" shall mean Real Property containing Housing Accommodations and conforming to the criteria listed in §31-02(a) of these rules. Real property not containing Housing Accommodations is not Eligible Property. If a portion of Real Property is not Eligible Property, tax exemption shall be apportioned in accordance with §31-03(b) of this chapter. Eligible Property shall be exempt if a Regulatory Agreement with the City or the State or the Housing Trust Fund Corporation is in effect and contemplates construction or rehabilitation of such property for use for housing for persons of low income by a date certain.

Housing Development Fund Company or HDFC. "Housing Development Fund Company or HDFC" shall mean a corporation organized pursuant to Article XI of the Private Housing Finance Law and incorporated pursuant to §402 of the Not-For-Profit Corporation Law.

Housing Accommodations. "Housing Accommodations" shall mean Real Property used for (i) residential purposes including dwelling units, common sanitary and cooking and dining facilities, common recreation areas including outdoor recreation areas and public areas such as cellars, basements, public halls and stairs and roofs; (ii) ancillary residential purposes including management, administrative and social service offices and facilities used to provide social services (including job training, as defined herein) primarily for Persons or Families of Low Income residing in such Housing Accommodations; or (iii) on or after July 1, 2004, community facility uses that (A) provide services to individuals who reside in the area, (B) limit any fees charged for such community facility uses to fees that are affordable to individuals whose household incomes do not exceed sixty percent (60%) of the area median income adjusted for family size, and (C) are located on the same Real Property as the dwelling units that constitute such Housing Accommodations. Notwithstanding the foregoing, any portion of the combined floor area of such ancillary residential purposes and/or community facility uses which exceeds twenty-five percent (25%) of the Aggregate Floor Area of the Real Property shall not qualify as Housing Accommodations.

Housing Corporation. "Housing Corporation" shall mean a non-profit housing corporation as defined in Article XI of the Private Housing Finance Law which is not incorporated as an HDFC as defined in such Article XI.

Housing Credit Agency. "Housing Credit Agency" shall mean the New York State Division of Housing and Community Renewal or the City's Department of Housing Preservation and Development or such other agency as shall be designated as a housing credit agency in the city for the State of New York under §42 of the Code.

Housing Trust Fund Corporation. "Housing Trust Fund Corporation" shall mean the corporation established pursuant to §45-a of the Private Housing Finance Law.

Initial Filing Date. The term "Initial Filing Date" shall mean the date an initial application is submitted to the office (which application may be incomplete).

Job Training. "Job Training" shall mean programs, services and commercial activities occurring within an Eligible Property in space occupied by a not-for-profit corporation. Such programs, services and commercial activities must be for the benefit primarily of Persons or Families of Low Income residing in the Housing Accommodations.

Loan "Loan" shall mean a loan for the acquisition and/or construction and/or rehabilitation and/or permanent financing of Housing Accommodations provided by the City, the State or the Housing Trust Fund Corporation.

Office. "Office" shall mean the Tax Incentive Programs Unit of the Department of Housing Preservation and Development or any successor thereto authorized to administer these rules.

Participant. "Participant" shall mean an owner of Real Property that is the subject of an Allocation Document.

Persons or Families of Low Income. "Persons or Families of Low Income" shall mean persons or families who are in low income groups and who cannot afford to pay enough to cause private enterprise in their municipality to build a sufficient supply of adequate, safe and sanitary dwellings as set forth in §2 of the Private Housing Finance Law.

Qualified Owner. "Qualified Owner" shall mean an entity: (a) which is either (i) an HDFC, or (ii) a Housing Corporation, or (iii) is a wholly owned subsidiary of such a company or corporation, or (iv) a limited partnership in which the Controlling Interest is held by (A) an HDFC or Housing Corporation or (B) a wholly owned subsidiary of an HDFC or Housing Corporation, or (v) a corporation sponsored or formed by such an HDFC company or Housing Corporation and (b) in which no officer, director, shareholder, member, partner or employee shall receive any pecuniary profit, income or other distributions from the Eligible Property except (i) low income housing tax credits and non-cash tax benefits available pursuant to the Code and (ii) reasonable compensation for services rendered and (c) which is a participant in the federal low income housing tax credit program pursuant to §42 of the Code and has not defaulted in its obligations thereunder. An example of a qualified owner is a limited partnership in which the Controlling Interest is held by: (a) an HDFC or Housing Corporation or (b) a wholly owned subsidiary of an HDFC or Housing Corporation. Housing Corporations are only eligible if in existence on the effective date of chapter 647 of the Laws of 1994 (August 2, 1994).

Real Property. The term "Real Property" shall mean the land, buildings and other improvements subject to taxation pursuant to §102 of the Real Property Tax Law which are the subject of an application under §31-04 of these Rules.

Regulatory Agreement. "Regulatory Agreement" shall mean an agreement with the City, the State or the Housing Trust Fund Corporation (i) restricting the use of Real Property to Housing Accommodations for Persons or Families of Low Income and (ii) imposing the rental and occupancy restrictions established by §42 of the Code on at least seventy percent (70%) of the dwelling units in such Real Property. Such agreement may be contained in the mortgage securing the Loan or may be a separate agreement recorded of record against the Real Property.

Rules. "Rules" shall mean these Rules.

State. "State" shall mean the State of New York.

HISTORICAL NOTE

Section added City Record Mar. 7, 1997 eff. Apr. 6, 1997.

Subd. (a) amended City Record Oct. 22, 1999 §1, eff. Nov. 21, 1999. [See Note 1]

Subd. (b) Aggregate Floor Area definition added City Record Oct. 22, 1999 §2, eff. Nov. 21, 1999.

[See Note 1]

Subd. (b) Allocation Document definition amended City Record Oct. 22, 1999 §3, eff. Nov. 21,

1999. [See Note 1]

Subd. (b) Commissioner definition amended City Record Oct. 22, 1999 §4, eff. Nov. 21, 1999. [See

Note 1]

Subd. (b) Controlling Interest definition amended City Record Oct. 22, 1999 §5, eff. Nov. 21, 1999.

[See Note 1]

Subd. (b) Department definition added City Record Oct. 22, 1999 §2, eff. Nov. 21, 1999. [See

Note 1]

Subd. (b) Housing Accommodations amended City Record Feb. 20, 2008 §1, eff. Mar. 21, 2008.

[See Note 2]

Subd. (b) Housing Accommodations definition amended City Record Oct. 22, 1999 §7, eff. Nov.

21, 1999. [See Note 1]

Subd. (b) Housing Development Fund Corporation definition amended City Record Oct. 22,

1999 §6, eff. Nov. 21, 1999. [See Note 1]

Subd. (b) Job Training definition added City Record Oct. 22, 1999 §2, eff. Nov. 21, 1999. [See

Note 1]

Subd. (b) Office definition amended City Record Oct. 22, 1999 §8, eff. Nov. 21, 1999. [See Note 1]

Subd. (b) Qualified Owner definition amended City Record Oct. 22, 1999 §9, eff. Nov. 21, 1999.

[See Note 1]

Subd. (b) Regulatory Agreement definition amended City Record Oct. 22, 1999 §10, eff. Nov. 21,

1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 22, 1999:

Section 420-c of the Real Property Tax Law authorizes the Department of Housing, Preservation and Development to promulgate rules governing tax exemption. The proposed changes are intended to assist the City in its effort to authorize benefits for the types of projects contemplated by the Rules in a more clear and precise manner.

2. Statement of Basis and Purpose in City Record Feb. 20, 2008: Section 420-c of the Real Property Tax Law was originally enacted in 1993 to provide tax exemption for eligible owners who develop affordable housing by syndicating federal low income housing tax credits. Under Real Property Tax Law §420-c, eligible owners are corporations, partnerships or limited liability companies in which at least 50% of the controlling interest is held by a charitable or social welfare organization formed under 501(c)(3) or 501(c)(4) of the Internal Revenue Code. They also must own legal and beneficial title or a legal and beneficial leasehold interest with a term of at least 30 years. Furthermore, the municipality must sign or approve a regulatory agreement requiring that the real property be used to provide low income housing for the entire term of the tax exemption (i.e., even after the tax credits have expired). Currently, only ancillary residential purposes that primarily serve the residents of such housing accommodations can receive Real Property Tax Law §420-c benefits. The rule amendments extend this important tax exemption to community facility

uses that meet eligibility criteria similar to those provided for in the tax credit program. Any project that has this type of community facility use as of July 1, 2004 or thereafter can now receive Real Property Tax Law §420-c benefits for such facility. This amendment recognizes the importance of such community facility uses to the entire community in which the housing accommodations are located and not just to the residents thereof. Collectively, the ancillary residential purposes and community service facilities in such housing accommodations cannot exceed 25% of the aggregate floor area of the real property. The portion that does will be ineligible for the Real Property Tax Law §420-c tax exemption.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Mar. 7, 1997 eff. Apr. 6, 1997. Note: There was no Statement of Basis and Purpose.

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28 RCNY 31-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 31*1 TAX EXEMPTIONS UNDER §420-C OF THE REAL PROPERTY TAX LAW

§31-02 Eligibility Requirements.

(a) **Eligible Property.** Real Property may be eligible for an exemption from Real Property taxes as set forth in §31-05 if:

(1) It has been acquired and/or rehabilitated and/or constructed, and/or otherwise financed with a Loan; and

(2) It is bound by a Regulatory Agreement; (i) restricting the use of Real Property to Housing Accommodations for Persons or Families of Low Income and (ii) imposing the rental and occupancy restrictions established by §42 of the Code on at least seventy percent (70%) of the dwelling units in such Real Property. Such agreement may be contained in the mortgage securing the Loan or may be a separate agreement recorded of record against the Real Property; and

(3) An Allocation Document has been issued for the Eligible Property; and

(4) It is owned, at the Application Date and for the duration of such exemption, by a Qualified Owner; and

(5) It constitutes Housing Accommodations for Persons or Families of Low Income as set forth in the Regulatory Agreement or Allocation Document.

(b) **Time Requirements.**

(1) In order to receive retroactive tax exemption pursuant to §31-05(a)(2) hereof, the Initial Filing Date of an application for a Certificate of Eligibility must have been on or before October 24, 1993, unless application is made under Chapter 513 of the Laws of 1993 in which case application must be made ninety days after the effective date of

said chapter (July 26, 1993).

(2) An application for a Certificate of Eligibility must contain all documentation required by §31-04(b) and be completed within twenty-four months of the Initial Filing Date with the Office or the application may be deemed withdrawn.

(3) If the Allocation Document submitted with the application for the Certificate of Eligibility was a binding or non-binding reservation or determination of eligibility for low income housing tax credits or a credit carry over allocation issued pursuant to §42(h)(1)(E) of the Code, then a United States Treasury Form 8609 of which Part I of said form is completed by a Housing Credit Agency must be submitted for the Real Property to the Office within thirty-six months of the Initial Filing Date of the application. In all cases the application file must ultimately contain a copy of Form 8609.

HISTORICAL NOTE

Section added City Record Mar. 7, 1997 eff. Apr. 6, 1997.

Subd. (a) amended City Record Oct. 22, 1999 §12, eff. Nov. 21, 1999. [See T28 §31-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Mar. 7, 1997 eff. Apr. 6, 1997. Note: There was no Statement of Basis and Purpose.

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28 RCNY 31-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 31*1 TAX EXEMPTIONS UNDER §420-C OF THE REAL PROPERTY TAX LAW

§31-03 Ineligible Projects and Portions of Projects.

(a) **Ineligible Projects.** Tax exemption is not available and shall not be granted with respect to the Real Property if, at the time application is made for a Certificate of Eligibility, the owner of the Real Property is in default under the terms of the Loan and/or the Regulatory Agreement.

(b) **Ineligible Portions of Real Property.** Tax exemption is not available for portions of Real Property not used for Housing Accommodations for Persons or Families of Low Income, as determined by the Office.

HISTORICAL NOTE

Section added City Record Mar. 7, 1997 eff. Apr. 6, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Mar. 7, 1997 eff. Apr. 6, 1997. Note: There was no Statement of Basis and Purpose.

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28 RCNY 31-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 31*1 TAX EXEMPTIONS UNDER §420-C OF THE REAL PROPERTY TAX LAW

§31-04 Application Procedure and Documentation.

(a) **Application forms and filing for certificate of eligibility.** Prescribed forms and applications are available from the Office. All applications must be submitted to the Office on forms approved by the Office.

(b) **Documentation required of all applicants.** All completed applications for tax exemption must include the following documentation:

(1) Original and two copies of the fully completed application form;

(2) Copy of the deed for the Real Property;

(3) Copy of all mortgages and notes evidencing the Loan(s) for the Real Property;

(4) Copy of the Regulatory Agreement binding the Real Property;

(5) Copy of the Allocation Document for the Real Property;

(6) Copy of the filed Certificate(s) of Incorporation, stock certificates, filed Certificate(s) of Limited Partnership and partnership agreements, as applicable, evidencing that the applicant is a Qualified Owner.

(7) Schematic drawings of all proposed or completed buildings or improvements to the Real Property, including all floors thereof, which schematic drawings identify those portions of the Real Property which are not dwelling units and clearly specify (i) areas used for common residential or ancillary residential purposes which qualify as Housing

Accommodations for Persons and Families of Low Income and (ii) all areas used for commercial and otherwise ineligible purposes which do not qualify as Housing Accommodations; indicate the square footage of each such space, all drawn to a scale acceptable to the Office which scale is clearly indicated on each drawing, provided, however, that the Office may waive schematics if there is no space not used for dwelling units or other residential purposes;

(8) A certification from the City, the State or the Housing Trust Fund Corporation indicating that the applicant is not in default under the terms of the Loan and the Regulatory Agreement with respect to the Real Property which is the subject of the application if requested by the Office; and

(9) A copy of the Temporary or Permanent Certificate of Occupancy, if issued.

(10) Any such additional documentation which the Office may require.

(11) An application may contain more than one building provided that each such building is part of a project, and is specified in the deed, mortgages and notes and the Regulatory Agreement(s) for such project; and provided further that there is a final Allocation Document for each such building.

(c) **Completion of application.** An application for a Certificate of Eligibility must contain all documentation required by §31-04(b) and be completed within twenty-four months of the Initial Filing Date with the Office or the application may be deemed withdrawn. An application for a Certificate of Eligibility shall be deemed complete if the application includes all the documentation required in §31-04(b). The requirements of §31-04(b)(5) may be temporarily satisfied as provided in §31-02(b)(3) by a binding or non-binding reservation or a credit carry over allocation issued pursuant to §42(h)(i)(E) of the Internal Revenue Code pending compliance with §31-02(b)(3) hereof or proof of application for such reservation or allocation. Applicants must notify the Office of any change of address and/or change of ownership of the premises and any change in the designated filing agent.

(d) **Issuance of a certificate of eligibility.**

(1) It is the applicant's responsibility to complete the application within twenty-four months, or, where applicable, within thirty-six months of the Initial Filing Date as provided in 31-04(c). The Office shall issue a Certificate of Eligibility for all approved applications.

(2) Failure to produce documentation satisfactory to the Office or failure to comply with these Rules may result in the denial of a Certificate of Eligibility, and rejection of the application.

(3) Notwithstanding the issuance of a Certificate of Eligibility, the tax exemption may be revoked or revised pursuant to §31-06 of these rules.

(e) **Implementation of benefit.** Upon issuance of a 420-c Certificate of Eligibility and payment of outstanding fees, the Office will transmit the Certificate of Eligibility to the Department of Finance

HISTORICAL NOTE

Section added City Record Mar. 7, 1997 eff. Apr. 6, 1997.

Subd. (b) opening par amended City Record Oct. 22, 1999 §13, eff. Nov. 21, 1999. [See T28 §30-01

Note 1]

Subd. (b) par (7) amended City Record Oct. 22, 1999 §13, eff. Nov. 21, 1999. [See T28 §30-01

Note 1]

Subd. (b) par (11) added City Record Oct. 22, 1999 §13, eff. Nov. 21, 1999. [See T28 §30-01 Note 1]

Subd. (c) amended City Record Oct. 22, 1999 §14, eff. Nov. 21, 1999. [See T28 §30-01 Note 1]

Subd. (e) amended City Record Oct. 22, 1999 §15, eff. Nov. 21, 1999. [See T28 §30-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Mar. 7, 1997 eff. Apr. 6, 1997. Note: There was no Statement of Basis and Purpose.

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28 RCNY 31-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 31*1 TAX EXEMPTIONS UNDER §420-C OF THE REAL PROPERTY TAX LAW

§31-05 Tax Exemption: Effective Date, Duration and Amount.

(a) **Effective date of exemption.** Tax exemption under this chapter shall commence on the latter of: (i) the date of acquisition of the Eligible Property by the Qualified Owner or, (ii) the date of execution of a Regulatory Agreement, or (iii) the date upon which the property becomes a participant in the Federal Low Income Housing Tax Credit Program which is either the date of issuance of an Allocation Document or the date of signing of a Regulatory Agreement provided that an Allocation Document is issued prior to the issuance of a Certificate of Eligibility, except as follows:

(1) Where Eligible Property acquired after January 5 was exempt from Real Property taxation on the date of such transfer, the property shall remain exempt for the balance of the tax year in progress and for the next full tax year.

(2) **Duration of exemption.** The exemption shall expire upon the expiration or termination of the Regulatory Agreement or thirty years from commencement of exemption if the Regulatory Agreement exceeds thirty years. If the extended use period as defined in the Code is terminated in accordance with §42 of the Code, the Regulatory Agreement shall be deemed terminated.

(3) **Amount of tax exemption.** With respect to the portions of Real Property which are not Eligible Property, the Department of Finance will apportion assessed value between exempt portions of Real Property and non-exempt portions thereof (both as determined by the Office) based upon each portion's relative percentage of the entire parcel's full market value.

HISTORICAL NOTE

Section amended City Record Oct. 22, 1999 §18, eff. Nov. 21, 1999. [See T28 §30-01 Note 1]

Section added City Record Mar. 7, 1997 eff. Apr. 6, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Mar. 7, 1997 eff. Apr. 6, 1997. Note: There was no Statement of Basis and Purpose.

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28 RCNY 31-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 31*1 TAX EXEMPTIONS UNDER §420-C OF THE REAL PROPERTY TAX LAW

§31-06 Record Keeping; Revocation of Tax Exemption.

(a) **Subpoenas, Oaths, Books and Records.** For the purpose of ascertaining the correctness of any application, the Commissioner may: (1) examine any books, papers, records or other data which may be relevant or material to such inquiry; (2) summon any person, including the owner or an officer or any employee of the owner, or any person having possession, custody or care of books, papers or records relating to the correctness of the application, to appear before the Commissioner or his or her designee at the time or place named in the summons or to produce such books, paper, records or other data and to give such testimony under oath, as may be relevant or material to such inquiry; and (3) take such testimony under oath as may be relevant to such inquiry.

(b) **Retention of Books and Records.** All books, records and documents listed in §31-04, together with all other documents which may be used to substantiate entries in the applicant's books and records shall be kept by the applicant at all times available for inspection by the Office and shall be retained for the duration of the tax exemption.

(c) **Preservation and Inspection of Records.** Records of each application shall be maintained by the Office. Records of approved applications are available for inspection and copying upon prior written request to the Office. Copies of records are available upon payment in advance of an amount to be determined by the Office.

(d) **Suspension or Revocation of Tax Exemption.**

(1) The Commissioner may suspend future tax exemptions if she or he finds reasonable evidence indicating that the application for tax exemption, including any substantiating documentation submitted or considered in connection with the application, contains a false statement or false information as to a material matter or omits a material matter. In

the event the Commissioner determines, on the basis of the total available evidence, that the application contains false statements or false information as to a material matter or omits a material matter, all past and future benefits hereunder may be revoked.

(2) The Commissioner may revoke the tax exemption retroactively in whole or in part during the tax exemption period if there has been fraud or misrepresentation or for a failure to provide notice under §31-06(f) hereof.

(3) The Commissioner shall revoke or revise, as applicable, tax exemptions prospectively in the event the Real Property or any portion thereof is no longer Eligible Property. An Eligible Property shall not be deemed "no longer an Eligible Property" for the purposes of this paragraph solely because the term of the Loan has expired.

(e) **Additional Grounds for Suspension or Revocation.**

(1) The Commissioner may suspend tax exemptions prospectively in the event that the owner of the Real Property is in default under the terms of the Loan and/or the Regulatory Agreement. The suspension of tax exemption shall commence upon the date of the issuance of a notice of default from the City. In the event the default is not cured, the Commissioner shall revoke all future tax exemptions.

(2) If the Allocation Document for the Real Property submitted with the application for Certificate of Eligibility was not a United States Treasury Form 8609 of which Part I of said form has been completed by the Housing Credit Agency, the Commissioner may revoke past and future tax exemption if the Applicant has not submitted such form 8609 within thirty-six months of the Initial Filing Date of the application. The Commissioner may revoke past and future tax exemptions if the Applicant has not submitted to the Office a Permanent Certificate of Occupancy for the Eligible Property within thirty-six months after the Initial Filing Date.

(f) **Owner's Notification.** Throughout the period of the exemption, if there is any material change in the information upon which the Office has relied in granting the Certificate of Eligibility, the owner of the Real Property benefiting from tax exemption shall notify the Office within one month of such changes. Such notification shall be by certified mail and in a form acceptable to the Office. Such material changes shall include, but not be limited to, changes in the use of any portion of the Eligible Property as Housing Accommodations and changes in any aspect of the ownership status or management of Applicant.

(g) **Notice of Suspension, Revocation or Reduction.** Prior to suspension, revocation or reduction of tax exemption hereunder, notice of the breach or omission shall be given by the Office to the applicant by certified mail to the address of the owner or agent duly registered on the City Collector's Owner Registration File. Benefits shall not be suspended, revoked or reduced if, within thirty days after the date of the mailing of such notice, the owner establishes that such breach or omission did not occur.

(h) **Fees.** For Applications received after the effective date of these Rules, the Office shall charge a filing fee of one hundred ($100) dollars per Application. In addition, there shall be a charge of eighty ($80) dollars per Class A dwelling unit and sixty ($60) dollars per Class B dwelling unit, as applicable, due at the time of issuance of a Certificate of Eligibility. Such fee shall be non-refundable under any circumstances, including but not limited to the subsequent revocation or revision of a Certificate. A declaratory ruling with respect to an analysis of a specific fact pattern, document or organizational structure or an interpretation of the applicability of a specific provision of the 420-c statute or Rules to an actual or hypothetical site, project, fact pattern, document or organizational structure or any other issue related to eligibility may be given by the Office upon payment of a non-refundable fee of two hundred fifty ($250) dollars payable at the time such declaratory ruling is requested in writing. In no event shall a prior ruling bind the Office as to the overall eligibility of a project for 420-c benefits.

HISTORICAL NOTE

Section added City Record Mar. 7, 1997 eff. Apr. 6, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Mar. 7, 1997 eff. Apr. 6, 1997. Note: There was no Statement of Basis and Purpose.

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28 RCNY 32-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 32*1 TAX EXEMPTION AND TAX ABATEMENT UNDER §421-G OF THE REAL PROPERTY TAX LAW

§32-01 Scope and Construction.

(a) **Scope of Rules.** This chapter governs the grant of tax abatement and exemption pursuant to §421-g of the Real Property Tax Law of the State of New York, including the procedure for filing an application for tax abatement and exemption and the issuance of Certificates of Eligibility by the Office of Tax Incentives of the Department of Housing Preservation and Development. Upon issuance of the Certificate of Eligibility, the calculation and implementation of the tax abatement and exemption are under the jurisdiction of the Department of Finance.

(b) **Construction.** This chapter is to be construed to secure the effectuation of the purposes of §421-g of the Real Property Tax Law in accordance with the general principle of law that tax exemption and abatement statutes are to be strictly construed against the taxpayer applying for the tax exemption or abatement.

HISTORICAL NOTE

Section added City Record July 2, 1997 eff. Aug. 1, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 2, 1997 eff. Aug. 1, 1997. Note further provisions: Section 421-g of the Real Property Tax Law authorizes the Department to promulgate Rules governing administration of the program. The proposed Rules deal with (i) application procedure, documentation, and filing fees, (ii) effective date, duration of exemption and abatement, implementation procedure with the Department of Finance, (iii) rent registration, and (iv) certifying continuing use, record keeping, revocation of taxd exemption and abatement; discrimination prohibited.

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28 RCNY 32-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 32*1 TAX EXEMPTION AND TAX ABATEMENT UNDER §421-G OF THE REAL PROPERTY TAX LAW

§32-02 Definitions.

As used in this chapter, the following terms shall have the following meanings:

Act. "Act" shall mean §421-g of the Real Property Tax Law.

Aggregate Floor Area. "Aggregate Floor Area" shall mean the sum of the gross areas of the several floors of a building, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings.

Applicant. "Applicant" shall mean any person obligated to pay real property taxes on the property for which exemption from or abatement of real property taxes under the Act is sought or in the case of exempt property, the record owner or lessee thereof.

Benefit Period. "Benefit Period" shall mean the period of time when a Recipient is eligible to receive benefits pursuant to the Act.

Certificate of Eligibility. "Certificate of Eligibility" shall mean the document issued by the Department certifying a tax lot as eligible for benefits pursuant to the Act.

Class A Multiple Dwelling. "Class A Multiple Dwelling" shall mean a Class A multiple dwelling as defined in §4 of the Multiple Dwelling Law.

Commencement of Conversion. "Commencement of Conversion" shall mean the date of issuance by the

Department of Buildings of a building permit for the conversion of a Non-Residential Building to an Eligible Multiple Dwelling, provided however that such permit is issued on or after July 1, 1995 and no later than June 30, 2007.

Commissioner. "Commissioner" shall mean the Commissioner of Housing Preservation and Development, or his or her designee, or the chief executive officer of any successor agency or department thereto authorized to administer these Rules.

Completion of Conversion. "Completion of Conversion" shall mean the date of issuance by the Department of Buildings of a Temporary or Permanent Certificate of Occupancy for the portion of the building for which an application for a Certificate of Eligibility is filed.

Department. "Department" shall mean the Department of Housing Preservation and Development of the City of New York or any successor agency or department thereto.

Department of Buildings. "Department of Buildings" shall mean the Department of Buildings of the City of New York or any successor agency or department thereto.

Department of Finance. "Department of Finance" shall mean the Department of Finance of the City of New York or any successor agency or department thereto.

Eligible Area. Subject to the Zoning Resolution, the "Eligible Area" in which tax benefits pursuant to the Act for Eligible Multiple Dwellings are available shall mean the area in the borough of Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street; running easterly along the center line of Murray Street; connecting through City Hall Park with the center line of Frankfort Street and running easterly along the center lines of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street.

Any tax lot which is located partly inside the Eligible Area shall be deemed to be located entirely inside such area.

Eligible Multiple Dwelling. "Eligible Multiple Dwelling" shall mean a Class A multiple dwelling, except a Hotel, created from conversion of a Non-Residential Building, provided, however, that such multiple dwelling is located within the Eligible Area, and provided further, however, that the Aggregate Floor Area of Commercial, Community Facility and Accessory Use Space within such multiple dwelling does not exceed twenty-five per cent (25%) of the Aggregate Floor Area of such multiple dwelling.

Exempt Dwelling Unit. "Exempt Dwelling Unit" shall mean a dwelling unit exempt from rent regulation or deregulated pursuant to the Rent Regulation Reform Act of 1993, the Rent Regulation Reform Act of 1997, Local Law 4 of 1994, or by reason of the condominium or cooperative status of the dwelling unit.

Floor Area of Commercial, Community Facility and Accessory Use Space. "Floor Area of Commercial, Community Facility and Accessory Use Space" shall mean the gross horizontal areas of all space in a multiple dwelling or dwellings designated for commercial or community facility or accessory uses (as defined in §12-10 of the Zoning Resolution). Home occupation space within dwelling units shall not be counted as accessory use space.

Hotel. "Hotel" shall mean (i) any Class B multiple dwelling, as such term is defined in the Multiple Dwelling Law, (ii) any structure or part thereof containing living or sleeping accommodations which is used or intended to be used for transient occupancy, (iii) any apartment hotel or transient hotel as defined in the Zoning Resolution, or (iv) any structure or part thereof which is used to provide short term rentals or owned or leased by an entity engaged in the business of providing short term rentals. For purposes of this definition, a lease, sublease, license or any other form of rental

agreement for a period of less than six months shall be deemed to be a short term rental. Notwithstanding the foregoing, a structure or part thereof owned or leased by a not-for-profit corporation for the purpose of providing governmentally funded emergency housing shall not be considered a hotel for purposes of this chapter.

Landmark. "Landmark" shall mean a structure designated a landmark or a structure in a historic district designated by the Landmarks Preservation Commission of the City of New York or any successor commission, agency or department thereto.

Non-Residential Building. "Non-Residential Building" shall mean a structure or portion of a structure having at least one floor, a roof and at least three walls enclosing all or most of the space used in connection with the structure or portion of the structure, and which has a Certificate of Occupancy for commercial, manufacturing or other non-residential use for not less than ninety per cent (90%) of the aggregate floor area of such structure or portion of such structure, or other proof of such non-residential use as is acceptable to the Department.

Office. "Office" shall mean the Office of Tax Incentives of the Department or any successor thereto.

Person. "Person" shall mean an individual, corporation, limited liability company, partnership, association, agency, trust, estate, foreign or domestic government or subdivision thereof, or other entity.

Recipient. "Recipient" shall mean an applicant to whom a Certificate of Eligibility has been issued pursuant to the Act or the successor in interest of such applicant, provided that where a person who has entered into a lease or purchase agreement with the owner or lessee of exempt property has been a co-applicant, such person or the successor in interest of such person shall be deemed the Recipient.

Rules. "Rules" shall mean this chapter of the Rules of the City of New York.

Temporary Certificate of Occupancy. "Temporary Certificate of Occupancy" shall mean, for the purpose of establishing eligibility pursuant to the Act, a Temporary Certificate of Occupancy issued by the Department of Buildings for all of the dwelling units in an Eligible Multiple Dwelling for which benefits pursuant to the Act are sought.

Zoning Resolution. "Zoning Resolution" shall mean the Zoning Resolution of the City of New York.

HISTORICAL NOTE

Section added City Record July 2, 1997 eff. Aug. 1, 1997.

Commencement of Conversion amended City Record Dec. 10, 2004 §4, eff. Jan. 9, 2005. [See T28 §6-01 Note 3]

Hotel amended City Record Apr. 21, 2005 §3, eff. May 21, 2005. [See T28 §5-03 Note 4]

Hotel amended City Record Dec. 10, 2004 §5, eff. Jan. 9, 2005. [See T28 §6-01 Note 3]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 2, 1997 eff. Aug. 1, 1997. Note further provisions: Section 421-g of the Real Property Tax Law authorizes the Department to promulgate Rules governing administration of

the program. The proposed Rules deal with (i) application procedure, documentation, and filing fees, (ii) effective date, duration of exemption and abatement, implementation procedure with the Department of Finance, (iii) rent registration, and (iv) certifying continuing use, record keeping, revocation of taxd exemption and abatement; discrimination prohibited.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 32-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 32*1 TAX EXEMPTION AND TAX ABATEMENT UNDER §421-G OF THE REAL PROPERTY TAX LAW

§32-03 Application Procedure, Documentation, Filing Fees.

(a) **Application Forms.** All applications shall be submitted to the Department by the March 31 immediately following the first taxable status date following Completion of Conversion on such form or forms as shall be prescribed by the Department. All application forms may be obtained from the Department of Housing Preservation and Development, Office of Tax Incentives, 100 Gold Street, New York, NY 10038. Only applications complete in all detail shall be considered for a Certificate of Eligibility. All forms must be filled out fully and legibly by the applicant and shall be typewritten or inscribed in permanent ink.

An application shall consist of the following:

(1) A copy of the pre-construction Certificate of Occupancy, or, if no such Certificate of Occupancy is available, a letter from the Department of Buildings establishing the pre-conversion use of the Non-Residential Building, or other proof that the Eligible Multiple Dwelling was a Non-Residential Building prior to conversion.

(2) A copy of the new Temporary or Permanent Certificate of Occupancy issued as a result of the conversion of a Non-Residential Building to an Eligible Multiple Dwelling. The new Temporary or Permanent Certificate of Occupancy must be issued by the Department of Buildings by the taxable status date in order for the Eligible Multiple Dwelling to receive tax benefits the following tax year.

(3) (i) If the Eligible Multiple Dwelling shall be owned as a cooperative or condominium: a copy of the prospectus or offering plan which has been accepted for filing by the Attorney General (if required by law), and all subsequent

amendments which become effective prior to the time the Office issues a Certificate of Eligibility. If the prospectus or offering plan has not yet been approved by the Attorney General, a statement by the owner that if the prospective cooperative or condominium plan has not been declared effective for filing at a time fifteen months after the issuance of a Certificate of Eligibility, that such owner will register the rental units with the New York State Division of Housing and Community Renewal no later than fifteen calendar days after such fifteen month period or

(ii) If the Eligible Multiple Dwelling shall be owned as a rental building:

(A) evidence satisfactory to the Office that the owner of rental dwelling units has registered all dwelling units in the Eligible Multiple Dwelling other than Exempt Dwelling Units with the New York State Division of Housing Community and Renewal or

(B) if the Eligible Multiple Dwelling is not registered at the time of issuance of a Certificate of Eligibility, an affidavit, on a form approved by the Office, stating that the owner shall register all units other than Exempt Dwelling Units as they become occupied and shall submit proof of registration thereof.

(4) A copy of one set of plans covering the Eligible Multiple Dwelling approved by the Department of Buildings, as evidenced by a seal of the Department of Buildings thereon or an architect's affidavit that such plans are so approved.

(5) A copy of the Department of Buildings "Plan Work Approval Application" (PW-1), with the "Schedule A-Occupancy/Use" (PW-1A), the "Work Permit Application" (PW-2), and the approved building permit or equivalent, as required by the Department of Buildings.

(6) A copy of the dated revised tax map approved by the Department of Finance if applicable. A complete application for a revised tax map for the Eligible Multiple Dwelling must be filed with the Department of Finance no later than December first of the year preceding the commencement of the Benefit Period.

(7) A computer printout from the Department of Finance and the Department of Environmental Protection (for water & sewer charges) listing outstanding charges on the Eligible Multiple Dwelling owed to the City. If outstanding charges on the Eligible Multiple Dwelling are owed to the City at time of application, the Applicant must provide proof of payment or evidence that the outstanding charges are being paid in timely installments pursuant to a written agreement with the Department of Finance or other appropriate agency.

(8) An affidavit, in the form approved by the Office, setting forth the following information:

(i) a statement that within seven years immediately preceding the date of application for a Certificate of Eligibility, neither the Applicant, nor any person owning a substantial interest in the property (as herein defined as ownership and control of an interest of ten per cent (10%) or more in property or any Person owning a property), nor any officer, director, or general partner of the applicant or such person was finally adjudicated by a court of competent jurisdiction to have violated §235 of the Real Property Law or any section of Article 150 of the Penal Law or any similar arson law of another jurisdiction with respect to any building, or was an officer, director, or general partner of a Person at the time such Person was finally adjudicated to have violated such law; and

(ii) a statement setting forth any pending charges alleging violation of §235 of the Real Property Law or any section of Article 150 of the Penal Law or any similar arson law of another jurisdiction with respect to any building by the applicant or any Person owning a substantial interest (as defined above) in the property, or any officer, director, or general partner of the Applicant or such Person, or any Person for whom the applicant or person owning a substantial interest in the property is an officer, director or general partner.

(9) A statement that the applicant agrees to comply with and be subject to the Rules promulgated by the Department of Finance and the Department to secure compliance with the Act and all applicable local, state, and federal laws.

(10) Such application shall also certify that all taxes, water charges and sewer rents currently due and owing on the property which is subject of the application have been paid or are currently being paid in timely installments pursuant to written agreement with the Department of Finance or other appropriate agency.

(b) **Qualified Applicants.** (1) In addition to any other qualifications for benefits pursuant to the Act, the Applicant must be:

(i) obligated to pay real property tax on the property for which benefits are sought, whether such obligation arises because of record ownership of such property or because the obligation to pay such tax has been assumed by contract; or

(ii) the record owner or lessee of property which is exempt from real property taxation who has entered into an agreement to sell or lease such property to another person. Such person shall be a co-applicant with such owner or lessee.

(2) A co-applicant with a public entity shall be eligible to receive benefits pursuant to the Act, provided that for such period as the property that is the subject of the Certificate of Eligibility is exempt from real property taxation because it is owned or controlled by a public entity no benefits shall be available to such Recipient pursuant to the Act.

Such Recipient shall receive benefits pursuant to the Act when such property ceases to be eligible for exemption pursuant to other provisions of law, as follows: the Recipient shall, commencing with the date such tax exemption ceases, and continuing until the expiration of the Benefit Period pursuant to the Act, receive the benefits to which such Recipient is entitled in the corresponding tax year pursuant to the Act.

(3) The burden of proof shall be on the applicant to show by clear and convincing evidence that the requirements for granting benefits under the Act have been satisfied. The Department shall have the authority to require that statements in connection with the application shall be made under oath.

(c) **Timing Requirements.** (1) Non-Residential Buildings of less than 100,000 square feet of Aggregate Floor Area

(i) In a non-residential building of less than 100,000 square feet of Aggregate Floor Area; Completion of Conversion to an Eligible Multiple Dwelling of at least seventy-five per cent (75%) of the Aggregate Floor Area of such Non-Residential Building, as evidenced by a Temporary or permanent Certificate of Occupancy, must take place within three years of Commencement of Construction.

(ii) Only the Aggregate Floor Area for which conversion is completed within such three year period shall be considered in calculating the exemption and abatement provided pursuant to the Act.

(2) Non-Residential Buildings of 100,000 square feet or more of Aggregate Floor Area

(i) In a Non-Residential Building of 100,000 square feet or more of Aggregate Floor Area, Completion of Conversion to an Eligible Multiple Dwelling of at least seventy-five per cent (75%) of the Aggregate Floor Area of such Non-Residential Building, as evidenced by a Temporary or permanent Certificate of Occupancy, must take place within five years of Commencement of Conversion, provided, however, that Completion of Conversion to an Eligible Multiple Dwelling of at least fifty per cent (50%) of the Aggregate Floor Area of such Non-Residential Building must take place within three years of Commencement of Conversion.

(ii) Proof of completion of partial conversion within three years shall be submitted with an application for a Certificate of Eligibility for full exemption and abatement benefits pursuant to the Act.

(iii) Only the Aggregate Floor Area for which conversion is completed within the five-year period specified in

§32-03(c)(2)(i) of these Rules or, in the case of partial exemption from or partial abatement of real property taxes, the three-year period specified in §32-04(b)(3) of these Rules, shall be considered in calculating the exemption and abatement provided pursuant to the Act, provided, however, that neither partial exemption from nor partial abatement of real property taxes shall be available for Commercial, Community Facility or Accessory Use Space.

(d) **Calculating Aggregate Floor Area.** (1) In a Non-Residential Building of less than 100,000 square feet of Aggregate Floor Area containing a separately assessed non-residential parcel, the Aggregate Floor Area of such separately assessed non-residential parcel shall not be considered in determining whether seventy-five per cent (75%) of the Aggregate Floor Area of such Non-Residential Building has been converted to an Eligible Multiple Dwelling.

(2) In a Non-Residential Building of 100,000 square feet or more of Aggregate Floor Area containing a separately assessed non-residential parcel, the Aggregate Floor Area of such separately assessed non-residential parcel shall not be considered in determining whether seventy-five per cent (75%) or, in the case of partial exemption from or partial abatement of real property taxes, fifty per cent (50%) of the Aggregate Floor Area of such Non-Residential building has been converted to an Eligible Multiple Dwelling.

(3) **Commercial Reduction of Benefits:** (i) If the Aggregate Floor Area of Commercial, Community Facility and Accessory Use Space exceeds twelve per cent (12%) of the Aggregate Floor Area of any building (Eligible Multiple Dwelling) receiving benefits pursuant to the Act, the benefits provided pursuant to the Act shall be equal to the amount provided by §32-04(b)(1) and §32-04(b)(2) of these Rules, reduced by a percentage equal to the difference between the per centum of the Aggregate Floor Area that is Commercial, Community Facility and Accessory Use Space and twelve per cent (12%).

(ii) If the Aggregate Floor Area of such building (Eligible Multiple Dwelling) contains more than twenty-five per cent (25%) of Commercial, Community Facility and Accessory Use Space no benefits shall be available pursuant to the Act.

(iii) If a building contains a separately assessed non-residential parcel, the Aggregate Floor Area of such parcel shall not be considered in calculating the Aggregate Floor Area of Commercial, Community Facility and Accessory Use Space relevant to determining eligibility for and amount of benefits pursuant to the Act.

(e) **Filing Fees.** (1) **Application Fee:** A non-refundable application fee of one thousand five hundred dollars ($1,500) plus two hundred and fifty dollars ($250) per dwelling unit, not to exceed twenty five thousand dollars ($25,000) per application shall be paid at the time of application. For applications received prior to the effective date of these Rules, the application fee shall be paid at the time of issuance of a Certificate of Eligibility. No applications received after the effective date of these Rules will be accepted by the Department without the application fee. For Eligible Multiple Dwellings of 100,000 square feet or more of Aggregate Floor Area applying for partial benefits, each subsequent submission after the initial application shall be accompanied by a non-refundable fee of two thousand five hundred ($2,500) dollars. Such fee shall be non-refundable under any circumstances, including but not limited to the subsequent revocation or revision of a Certificate of Eligibility.

(2) A declaratory ruling with respect to an analysis of a specific fact pattern, document or organizational structure or an interpretation of the applicability of a specific provision of the Act or Rules to an actual or hypothetical site, project, fact pattern, document or organizational structure or any other issue related to eligibility may be given by the Office upon payment of a non-refundable fee of one thousand five hundred ($1,500) dollars payable at the time such declaratory ruling is requested in writing. In no event shall a prior ruling bind the Office as to the overall eligibility of a project for benefits pursuant to the Act.

(3) Payment of the fees required by paragraphs (1) and (2) of this subdivision shall be made by a certified or cashier's check payable to the New York City Department of Finance.

(4) Paragraphs (1) and (3) of this subdivision shall take effect in accordance with subdivision e of §1043 of the

Charter and shall be retroactive to and deemed to have been in full force and effect on and after April 1, 1997.

HISTORICAL NOTE

Section added City Record July 2, 1997 eff. Aug. 1, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 2, 1997 eff. Aug. 1, 1997. Note further provisions: Section 421-g of the Real Property Tax Law authorizes the Department to promulgate Rules governing administration of the program. The proposed Rules deal with (i) application procedure, documentation, and filing fees, (ii) effective date, duration of exemption and abatement, implementation procedure with the Department of Finance, (iii) rent registration, and (iv) certifying continuing use, record keeping, revocation of taxd exemption and abatement; discrimination prohibited.

Rules of the City of New York

28 RCNY 32-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 32*1 TAX EXEMPTION AND TAX ABATEMENT UNDER §421-G OF THE REAL PROPERTY TAX LAW

§32-04 Effective Date, Duration of Exemption and Abatement, Implementation Procedure with the Department of Finance.

(a) **Effective Date of Abatement and Exemption.** Tax benefits issued pursuant to the Act shall begin the July 1 following the issuance of a Certificate of Eligibility by the Department, provided that:

(1) an application for tax benefits must be received by the Department by the close of business on the March 31 following the first taxable status date following Completion of Conversion. An application for partial tax exemption and abatement benefits for Non-Residential Buildings of 100,000 square feet or more of Aggregate Floor Area must be received by the close of business on the March 31 following the first taxable status date following the partial Completion of Conversion, and

(2) a Temporary Certificate of Occupancy or Certificate of Occupancy is issued by the Department of Buildings by the prior taxable status date, and

(3) for applications received after March 31, 1997, the applicant has submitted evidence that the Department of Finance has approved the final tax lots for those tax lots subject to the benefits pursuant to the Act by the prior taxable status date, if lot apportionment is required.

(b) **Duration and Extent of Benefits.** (1) **Duration of Exemption.**

(i) Eligible Multiple Dwellings not designated as a Landmark prior to Completion of Conversion: a tax lot

containing an Eligible Multiple Dwelling that is the subject of a Certificate of Eligibility issued pursuant to the Act shall be exempt from real property taxation for local purposes, other than assessments for local improvements, on the amount of the assessed value attributable exclusively to the physical improvement, for a period not to exceed twelve consecutive years beginning in the tax year immediately following the issuance of a Certificate of Eligibility, so long as such Eligible Multiple Dwelling is used or held out for use for dwelling purposes, except as otherwise provided herein.

During the first eight years, the exemption shall equal the amount of the assessed value attributable exclusively to the physical improvement. During the ninth year, the exemption shall equal eighty per cent (80%) of such amount; during the tenth year, the exemption shall equal sixty per cent (60%) of such amount; during the eleventh year, the exemption shall equal forty per cent (40%) of such amount; and during the twelfth year, the exemption shall equal twenty per cent (20%) of such amount.

(ii) Eligible Multiple Dwellings designated as a Landmark before Completion of Conversion: a tax lot containing an Eligible Multiple Dwelling that is the subject of a Certificate of Eligibility issued pursuant to the Act, and that is in a building that, in accordance with procedures set forth in local law, was designated as a Landmark before Completion of Conversion shall be exempt from real property taxation for local purposes, other than assessments for local improvements, on the amount of the assessed value attributable exclusively to the physical improvement, for a period not to exceed thirteen consecutive years beginning in the tax year immediately following the issuance of a Certificate of Eligibility, so long as such Eligible Multiple Dwelling is used or held out for use for dwelling purposes, except as otherwise provided herein.

During the first nine years, the exemption shall equal the amount of the assessed value attributable exclusively to the physical improvement. During the tenth year, the exemption shall equal eighty per cent (80%) of such amount; during the eleventh year, the exemption shall equal sixty per cent (60%) of such amount; during the twelfth year, the exemption shall equal forty per cent (40%) of such amount; and during the thirteenth year, the exemption shall equal twenty per cent (20%) of such amount.

(2) **Duration of Abatement.** (i) Eligible Multiple Dwellings not designated as a Landmark prior to Completion of Conversion: in addition to the benefits set forth in §32-04(b)(1)(i) of these Rules, a tax lot containing an Eligible Multiple Dwelling that is the subject of a Certificate of Eligibility issued pursuant to the Act shall receive an abatement of real property taxes for a period not to exceed fourteen consecutive years beginning in the tax year immediately following the issuance of a Certificate of Eligibility, so long as such Eligible Multiple Dwelling is used or held out for use for dwelling purposes, except as otherwise provided herein.

During the first year, the abatement shall be equal to the amount of the real property tax that would have been due but for such abatement, provided, however, that if the tax lot, during the first year of such abatement, was fully or partially exempt from real property taxes, other than pursuant to the exemption authorized by the Act, then the abatement shall equal the amount of real property tax that would have been due but for such full or partial exemption. During the second through tenth years, the abatement shall equal one hundred per cent (100%) of such amount; during the eleventh year, the abatement shall equal eighty per cent (80%) of such amount; during the twelfth year, the abatement shall equal sixty per cent (60%) of such amount; during the thirteenth year, the abatement shall equal forty per cent (40%) of such amount, and during the fourteenth year, the abatement shall equal twenty per cent (20%) of such amount.

(ii) Eligible Multiple Dwellings designated a Landmark prior to Completion of Conversion: in addition to the benefits set forth in §32-04(b)(1)(ii) of these Rules, a tax lot containing an Eligible Multiple Dwelling that is the subject of a Certificate of Eligibility issued pursuant to the Act and that is in a building that, in accordance with procedures set forth in local law, was designated as a Landmark before Completion of Conversion shall receive an abatement of real property taxes for a period not to exceed fifteen consecutive years beginning in the tax year immediately following the issuance of a Certificate of Eligibility, so long as such Eligible Multiple Dwelling is used or held out for use for dwelling purposes, except as otherwise provided herein.

During the first year, the abatement shall be equal to the amount of the real property tax that would have been due but for such abatement, provided, however, that if the tax lot, during the first year of such abatement, was fully or partially exempt from real property taxes, other than pursuant to the exemption authorized by the Act, then the abatement shall equal the amount of the real property tax that would have been due but for such full or partial exemption. During the second through eleventh years, the abatement shall equal one hundred per cent (100%) of such amount; during the twelfth year, the abatement shall equal eighty per cent (80%) of such amount; during the thirteenth year, the abatement shall equal sixty per cent (60%) of such amount; during the fourteenth year, the abatement shall equal forty per cent (40%) of such amount, and during the fifteenth year, the abatement shall equal twenty per cent (20%) of such amount.

The following table shall illustrate the computation of the exemption and abatement pursuant to this subsection:

Tax Year Following Date of Issuance of Certificate of Eligibility	Landmarked Eligible Multiple Dwellings		Non-Landmarked Eligible Multiple Dwellings	
	Exemption	Abatement	Exemption	Abatement
1	100%	100%	100%	100%
2	100%	100%	100%	100%
3	100%	100%	100%	100%
4	100%	100%	100%	100%
5	100%	100%	100%	100%
6	100%	100%	100%	100%
7	100%	100%	100%	100%
8	100%	100%	100%	100%
9	100%	100%	80%	100%
10	80%	100%	60%	100%
11	60%	100%	40%	80%
12	40%	80%	20%	60%
13	20%	60%	0%	40%
14	0%	40%	0%	20%
15	0%	20%	0%	0%

(3) **Partial Benefits for Buildings of 100,000 square feet or more**

(i) In a Non-Residential Building of 100,000 square feet or more of Aggregate Floor Area in which Completion of Conversion to an Eligible Multiple Dwelling of at least fifty per cent (50%) of the Aggregate Floor Area of such Non-Residential Building has taken place within three years of Commencement of Conversion, and which is the subject of a Certificate of Eligibility for partial exemption and partial abatement issued pursuant to the Act, partial exemption and partial abatement of real property taxes shall be available, as follows:

(A) partial exemption benefits shall equal the amount of the assessed value attributable exclusively to the physical improvement resulting from the conversion of at least fifty per cent (50%) of the Aggregate Floor Area of the Non-Residential Building that has received a Temporary Certificate of Occupancy and

(B) partial abatement benefits shall be equal to the amount of the real property tax that would have been due during the first year of such partial abatement but for such partial abatement upon the amount of square feet of Aggregate Floor Area of the Non-Residential Building that has received a Temporary Certificate of Occupancy for conversion of at least

fifty per cent (50%) of the Aggregate Floor Area of the Non-Residential Building, provided, however, that if the tax lot, during the first year of such partial abatement was fully or partially exempt from real property taxes, other than pursuant to the exemption authorized by the Act, then the partial abatement shall be equal to the amount of real property tax that would have been due upon such amount of square feet of Aggregate Floor Area of the Non-Residential Building but for such full or partial exemption. Nothing in this paragraph shall be deemed to require an Applicant to apply for partial exemption or abatement benefits pursuant to the Act, provided, however, that if an applicant applies for a Certificate of Eligibility for such benefits, he or she shall submit proof of completion of partial conversion with the application for such certificate.

(ii) The Benefit Period of the exemption and abatement benefits defined in §32-04(b) of these Rules shall begin upon receipt of any partial exemption from or partial abatement of real property taxes for a Non-Residential Building of 100,000 square feet or more of Aggregate Floor Area.

(4) **Benefit Reduction for Non-Residential Space.** If the Aggregate Floor Area of Commercial, Community Facility and Accessory Use Space exceeds twelve per cent (12%) of the Aggregate Floor Area of any building receiving benefits pursuant to the Act, the abatement and exemption benefit shall be reduced according to the procedure set forth in §32-03(d)(3) of these Rules.

(5) Benefits granted under the Act may not be combined with benefits under any other section of the Real Property Tax Law or any local law or any Rule promulgated thereunder for the same tax lot.

(c) **Implementation of Benefit.** Upon issuance of a 421-g Certificate of Eligibility, payment of outstanding fees, and verification that all charges owed to the City outstanding for more than one quarter have been paid, the Department will transmit the Certificate of Eligibility to the Department of Finance.

HISTORICAL NOTE

Section added City Record July 2, 1997 eff. Aug. 1, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 2, 1997 eff. Aug. 1, 1997. Note further provisions: Section 421-g of the Real Property Tax Law authorizes the Department to promulgate Rules governing administration of the program. The proposed Rules deal with (i) application procedure, documentation, and filing fees, (ii) effective date, duration of exemption and abatement, implementation procedure with the Department of Finance, (iii) rent registration, and (iv) certifying continuing use, record keeping, revocation of taxd exemption and abatement; discrimination prohibited.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 32-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 32*1 TAX EXEMPTION AND TAX ABATEMENT UNDER §421-G OF THE REAL PROPERTY TAX LAW

§32-05 Rent Regulation.

(a) **Applicability of Rent Regulation:** Notwithstanding the provisions of the City Rent and Rehabilitation Law (§26-401 et seq. of the Administrative Code), as amended; or the Rent Stabilization Law of 1969 (§26-501 et seq. of the Administrative Code), as amended; or the Emergency Tenant Protection Act of 1974, as amended, the rents of each dwelling unit in an Eligible Multiple Dwelling, except Exempt Dwelling Units, shall be fully subject to control under such local laws and act for the entire period for which the Eligible Multiple Dwelling is receiving benefits pursuant to the Act. An Eligible Multiple Dwelling receiving benefits pursuant to the Act whose benefits are suspended, terminated or revoked by the Department shall be deemed to be receiving benefits for the length of time such benefits would have been received if such benefits had not been suspended, terminated or revoked, or for the period such local law is in effect, whichever is shorter.

(b) **Deregulation of Units:** After the expiration of the Benefit Period, such rents shall continue to be subject to rent regulation, except that such rents that would not have been subject to such rent regulation but for this Section, shall be decontrolled if the landlord has included in each lease and renewal thereof for such unit for the tenant in residence at the time of such decontrol a notice in at least twelve point type informing such tenant that the unit shall become subject to such decontrol upon the expiration of benefits pursuant to the Act.

HISTORICAL NOTE

Section added City Record July 2, 1997 eff. Aug. 1, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 2, 1997 eff. Aug. 1, 1997. Note further provisions: Section 421-g of the Real Property Tax Law authorizes the Department to promulgate Rules governing administration of the program. The proposed Rules deal with (i) application procedure, documentation, and filing fees, (ii) effective date, duration of exemption and abatement, implementation procedure with the Department of Finance, (iii) rent registration, and (iv) certifying continuing use, record keeping, revocation of taxd exemption and abatement; discrimination prohibited.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 32-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 32*1 TAX EXEMPTION AND TAX ABATEMENT UNDER §421-G OF THE REAL PROPERTY TAX LAW

§32-06 Certifying Continuing Use, Record Keeping; Revocation of Tax Exemption and Abatement; Discrimination Prohibited.

(a) **Certifying Continuing Use.** (1) For the duration of the Benefit Period, the Recipient shall file annually with the Department, on or before the taxable status date, a certificate of continuing use. Such certificate shall be on a form prescribed by the Department. The Department shall have the authority to require such information as it deems necessary to determine whether the Recipient has established continuing eligibility for benefits.

(2) The Department shall have the authority to terminate benefits pursuant to the Act upon failure of the Recipient to file such certificate by the taxable status date. The burden of proof shall be on the Recipient to establish continuing eligibility for benefits and the Department may require that statements made in such certificate shall be made under oath.

(3) The Recipient shall, on the certificate of continuing use, state whether any charges alleging violation by the Recipient or any Person owning substantial interest (as herein defined as ownership and control of an interest of ten per cent (10%) or more in property or any Person owning a property) in the property, or any officer, director, or general partner of the Recipient or Person owning a substantial interest in the property, or any Person for whom the Recipient or Person owning a substantial interest in the property is an officer, director or general partner, of §235 of the Real Property Law or any section of Article 150 of the Penal Law or any similar arson law of another jurisdiction, are pending.

(b) **Collection of Data; subpoenas; testimony.** At any time subsequent to the filing of an application and during

the Benefit Period, the Department may:

(1) Examine any books, papers, records or other data which may be relevant or material to the tax exemption requested or granted;

(2) Administer oaths to and take the testimony of any Person, including, but not limited to the owner of property which is the subject of an application for a Certificate of Eligibility or a Certificate of Eligibility pursuant to the Act and issue subpoenas requiring the attendance of persons and the production of such bills, books, papers or other documents as it shall deem necessary.

(c) **Availability of books and records, revocation.** All books, records and documents required by §32-03(a) herein, or which relate to or support the application made pursuant to the Act, shall be kept by the owner and made available for inspection by the Department until the expiration of the tax benefit requested or granted. Failure to make books, records, or documents, including an annual schedule of rents for each unit in the building available upon request for the Benefit Period may result in the termination or revocation of tax benefits.

(d) **Preservation of Records.** The Department shall maintain a complete file of all records, documents, notice and correspondence relating to each application. Pursuant to the provisions of the Freedom of Information Law, these records shall be open to public inspection upon prior written request to the Department of Housing Preservation and Development, Records Access Officer, 100 Gold Street, New York, NY 10038.

(e) **False or misleading documents; revocation.** (1) The Department may deny, reduce, terminate or revoke any exemption from or abatement of tax payments pursuant to the Act whenever:

(i) a recipient fails to comply with the requirements of the Act or the Rules; or

(ii) an application, certificate, report or other document submitted by an applicant or Recipient pursuant to the Act or these rules contains a false or misleading statement as to a material fact or omits to state any material fact necessary in order to make the statements therein not false or misleading.

The Department may declare any applicant or recipient referred to in §32-06(e)(1)(a) or §32-06(e)(1)(b) of these Rules to be ineligible for future benefits pursuant to the Act for the same or other property.

(2) Notwithstanding any other law to the contrary, a recipient shall be personally liable for any taxes owned pursuant to the Act whenever such Recipient fails to comply with the Act or these rules, or makes such false or misleading statement or omission, and the Department determines that such act was due to the recipient's willful neglect, or that under the circumstances such act constituted a fraud on the Department or a buyer or prospective buyer of the property. The remedy herein for an action in personam shall be in addition to any other remedy or procedure for the enforcement of collection of delinquent taxes provided by any general, special or local law. Any lease provision which obligates a tenant to pay taxes which become due because of willful neglect or fraud by the recipient, or otherwise relieves or indemnifies the recipient from any personal liability arising hereunder, shall be void as against public policy except where the imposition of such taxes or liability is occasioned by actions of the tenant in violation of the lease.

(f) **Additional grounds for termination or revocation.** The Commissioner of Finance or the Commissioner of Housing Preservation and Development may terminate or revoke tax exemption and tax abatement granted to a building pursuant to the Act upon the happening of any of the following events:

(1) Any eligible multiple dwelling in which aggregate floor area is converted from the use authorized pursuant to the Act:

(i) where such conversion results in less than seventy-five per cent (75%) of the aggregate floor area of such

property being used or held out for use for dwelling purposes, or

(ii) where such conversion results in more than twenty-five per cent (25%) of such aggregate floor area being used or held out for use for commercial, community facility or accessory use space, or

(iii) where such conversion in a building of 100,000 square feet or more of aggregate floor area that has a certificate of eligibility for partial exemption or partial abatement pursuant to §32-04(b)(3) of these rules results in less than fifty per cent (50%) of such aggregate floor area being used or held out for use for dwelling purposes,

shall cease to be eligible for benefits as of the last date upon which the eligible multiple dwelling met the requirements of the Act and the recipient proves by clear and convincing evidence that at least seventy-five per cent (75%) of the aggregate floor area of the property was used or held out for use for dwelling purposes, or twenty-five per cent (25%) or less of the aggregate floor area of such property was used or held out for use for commercial, community facility or accessory use space, or at least fifty per cent (50%) of the aggregate floor area of such property in a building of 100,000 sqare feet or more which is receiving partial exemption or abatement benefits was used or held out for use for dwelling purposes, respectively.

Such recipient shall pay, with interest, any taxes for which benefits were claimed after such date, including the pro-rata share of tax for which any benefits were claimed during the tax year in which the property was converted to a use not eligible for benefits pursuant to the Act.

Notwithstanding the foregoing, an eligible multiple dwelling shall not be subject to termination or revocation of benefits pursuant to this paragraph (1) by reason of the conversion of the use of space therein if such conversion results from the actions of a third party unaffiliated with the recipient, the lease or occupancy agreement with such third party contains a provision prohibiting such conversion, and the recipient is actively prosecuting enforcement of such provision.

(2) If, during the benefit period, any real property tax or water or sewer charge due and payable with respect to property receiving an exemption or abatement pursuant to the Act shall remain unpaid for at least one year following the date upon which such tax or charge became due and payable, all exemptions and abatements granted pursuant to the Act with respect to such property shall be revoked, unless within thirty days from the mailing of a notice of revocation by the Department of Finance satisfactory proof is presented to the Department of Finance that any and all delinquent taxes and charges owing with respect to such property as of the date of such notice have been paid in full or are currently being paid in timely installments pursuant to a written agreement with the Department of Finance or other appropriate agency. Any revocation pursuant to this paragraph shall be effective with respect to real property tax which became due and payable following the date of such revocation.

(3) The eligible multiple dwelling ceases to be subject to the provisions of law set forth in §32-05 of these rules unless the eligible multiple dwelling is exempt from such provisions. Termination shall be effective on the date of such cessation;

(4) Any person subject to be summoned by virtue of §32-06(b) of these rules fails to appear and produce books, papers, records or other data as required by said section, after being duly summoned to appear. Revocation shall be retroactive to start of construction;

(5) The applicant fails to file the certificate of continuing use as described in §32-06(a) of these rules by the taxable status date of a given year. Termination of benefits shall take effect July 1 of the tax year relating to such taxable status date.

(6) Any partial exemption from or partial abatement of real property taxes granted pursuant to the Act for a non-residential building of 100,000 square feet or more of aggregate floor area shall be revoked if completion of conversion of at least seventy-five per cent (75%) of the aggregate floor area of such non-residential building has not

taken place within five years of commencement of conversion. Revocation shall be retroactive to the commencement of the benefit period.

(7) If any person described in the statement required by §32-03(a)(8) or §32-06(a)(3) of these rules is finally adjudicated by a court of competent jurisdiction to be guilty of any charge listed in such statement, the recipient shall cease to be eligible for benefits pursuant to the Act and shall pay, with interest, any taxes for which benefits were claimed pursuant to the Act.

(g) **Discrimination prohibited; revocation.** No owner of a multiple dwelling that is receiving the benefits of the Act, nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy thereto in violation of the anti-discrimination provision of §8-107 of the Administrative Code. The practice of any discrimination as described herein shall result in the revocation of benefits under the Act, retroactive to the date of such practice. Nothing contained in this subdivision (g) shall restrict such consideration in the development of housing accommodations for the lawful purpose of providing for the special needs of a particular group.

(h) **Notice and procedure upon reduction, suspension, termination or revocation.** Prior to any reduction, suspension, termination or revocation of benefits under the Act, the Department shall serve, by ordinary mail, a Notice of Reduction, Suspension, Termination, or Revocation on the Eligible Multiple Dwelling, Attn: Managing Agent (or on such other person as the Recipient may request in writing), stating that said recipient is in violation of one or more provisions of the Act or these rules. The notice will provide a brief description of the violation alleged. The recipient shall have ninety (90) days to cure the violation or, alternatively, may request an informal hearing within (30) days from the date of the notice to rebut the allegations therein. Upon the recipient's failure to cure or rebut within the time prescribed, the Department shall advise the Department of Finance that the recipient's certificate of eligibility has been suspended, terminated, or revoked or that the Recipient's exemption or abatement has been reduced. The Department of Finance shall take such action as is necessary to execute the penalty imposed by the Department. All taxes plus interest required to be paid retroactively pursuant to the Act or these rules shall constitute a tax lien as of the date that it is determined that such taxes would have been due but for the benefits claimed pursuant to the Act at three per cent (3%) above the applicable rate of interest imposed by such city generally for non-payment of real property tax with respect to such property for the period in question.

HISTORICAL NOTE

Section added City Record July 2, 1997 eff. Aug. 1, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 2, 1997 eff. Aug. 1, 1997. Note further provisions: Section 421-g of the Real Property Tax Law authorizes the Department to promulgate Rules governing administration of the program. The proposed Rules deal with (i) application procedure, documentation, and filing fees, (ii) effective date, duration of exemption and abatement, implementation procedure with the Department of Finance, (iii) rent registration, and (iv) certifying continuing use, record keeping, revocation of taxd exemption and abatement; discrimination prohibited.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 33-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-01 General Provisions.

(a) **Definitions.**

(1) "Agency Activity" shall mean the making of any Disposition, the provision of any Assistance, or the execution of any agreement regarding Disposition or Assistance by the Agency in connection with a Project.

(2) "Administrative Code" shall mean the Administrative Code of the City.

(3) "Agency" shall mean the City's Department of Housing Preservation and Development and any successor agency.

(4) "Applicant" shall mean any potential Sponsor of a Project, without regard to the method used by the Agency to select the Sponsor for such Project, including, but not limited to, any person or entity which has submitted or might potentially submit a qualification statement, proposal, bid, application, or other submission.

(5) "Assistance" shall mean funds or other items of value provided by the Agency to a Sponsor in order to enable such Sponsor to perform Project Activities. Assistance may be made available to Sponsors in any form permitted by applicable Law which is determined by the Agency to be necessary or desirable, including, but not limited to, Loans and Subsidies.

(6) "Authorization Letter" shall mean a letter authorizing an Applicant or Selected Applicant to apply for funding to a potential public or private financing institution for the development of one or more Project(s) on one or more

Site(s).

(7) "Binding Agreement" shall mean a legally binding written agreement between a Sponsor and the City which (i) requires such Sponsor to perform or be responsible for the performance of Project Activities in connection with a Project, (ii) has been approved by the Governing Body, if such approval is required by applicable Laws, (iii) has been approved as to form by the Law Department, and (iv) has been duly executed by all parties whose execution of such agreement is required to make such agreement legally enforceable; provided, however, that a net lease, lease, or license agreement between the City and an Applicant or Selected Applicant with regard to possession of or the right to enter all or part of a Site during the term of negotiations regarding a Project or prior to the Disposition of a Site shall not be deemed to be a Binding Agreement.

(8) "City" shall mean the City of New York.

(9) "City Housing Goals" shall mean the purposes set forth in §33-01(c).

(10) "Commissioner" shall mean the Commissioner of the Agency or his or her designee.

(11) "Disposition" shall mean the conveyance of fee title or any other real property interest in a Site from the City to a Sponsor. Such real property interests shall include, but shall not be limited to, ground leases, easements, future interests, and other conveyances of less than the entire fee title to a Site. Notwithstanding anything herein to the contrary, such real property interests shall not include any interests conveyed at mortgage foreclosure sales, utility easements, leases entered into by the Agency's Office of Housing Management and Sales, transfers of Jurisdiction over a Site from one City agency to another, or licenses.

(12) "EO Clearance" shall mean that (i) an Applicant, Selected Applicant, or Sponsor and its principals (and, where the Agency deems such additional review to be appropriate, the contractors retained by such Applicant, Selected Applicant, or Sponsor and all of their respective principals) have completed, executed, and submitted the required forms to and attended any required meetings with the Agency's Office of Equal Opportunity, and (ii) the Agency's Office of Equal Opportunity, after review of such information and any other available information, has made no finding of noncompliance with the applicable Laws regarding equal opportunity, labor compensation, locally based enterprises, and other matters monitored by the Agency's Office of Equal Opportunity.

(13) "Governing Body" shall mean the Mayor and/or the City Council, acting singly or in combination in accordance with the powers vested in them by the City Charter.

(14) "GML" shall mean the General Municipal Law of the State of New York.

(15) "Grant" shall mean a grant made by the City to a Sponsor for Project Activities pursuant to Article 16 of the GML.

(16) "IG Clearance" shall mean that (i) an Applicant, Selected Applicant, or Sponsor and its principals (and, where the Agency deems such additional review to be appropriate, the contractors retained by such Applicant, Selected Applicant, or Sponsor and all of their respective principals) have completed, executed, and submitted the required forms to and attended any required meetings with the Department of Investigation's Office of the Inspector General and/or the Agency's Sponsor Review Unit, as the case may be, and (ii) the Department of Investigation's Office of the Inspector General and/or the Agency's Sponsor Review Unit, as the case may be, after review of such information and any other available information, has made no finding of derogatory information which indicates that the City should not do business with such party.

(17) "Laws" shall mean any applicable laws, ordinances, orders, rules, and regulations promulgated by any local, state, or federal authority having jurisdiction over the subject matter thereof, as amended from time to time.

(18) "Law Department" shall mean the City's Law Department and any successor agency, or its designee.

(19) "Loan" shall mean a loan made by the City to a Sponsor for Project Activities.

(20) "Negotiation Letter" shall mean a letter informing a Selected Applicant that the Agency will commence negotiations with such Selected Applicant regarding a Project.

(21) "PHFL" shall mean the Private Housing Finance Law of the State of New York.

(22) "Program" shall mean two or more Projects which (i) share the same funding source, Sponsor, grantee, or borrower, or otherwise provide for similar treatment of multiple Sites, and (ii) are deemed by the Agency to constitute a Program.

(23) "Project" shall mean a project which involves Disposition and/or Assistance by the City to a Sponsor pursuant to these Rules for Project Activities to be performed at any Site.

(24) "Project Activity" shall mean any activity performed, caused to be performed, or required to be performed by the Sponsor in connection with a Project, including, but not limited to, the acquisition, design, rehabilitation, construction, improvement, and/or marketing of a Site.

(25) "RFP" shall mean a Request for Proposals.

(26) "RFQ" shall mean a Request for Qualifications.

(27) "RPTL" shall mean the Real Property Tax Law of the State of New York.

(28) "Rules" shall mean these rules.

(29) "Selected Applicant" shall mean an Applicant selected or approved by the Agency to enter into negotiations with the Agency regarding a Project.

(30) "Site" shall mean the real property and improvements, if any, located in New York City which are the subject of a Project performed pursuant to these Rules.

(31) "Sponsor" shall mean an Applicant or Selected Applicant, or an entity formed by an Applicant or Selected Applicant and approved by the Agency, which has executed one or more Binding Agreement(s) with the Agency. Unless the Agency elects to limit the types of entities which may serve as Sponsor for a Project, a Sponsor may be an individual, corporation, partnership, joint venture, or any other entity permitted by Law.

(32) "Subsidy" shall mean any Assistance by the Agency which is intended to reduce the cost of a Project to its Sponsor. Subsidy may be made available to Sponsors in any form permitted by applicable Law which is determined by the Agency to be necessary or desirable, including, but not limited to, (i) Grants, (ii) real property sale prices which are nominal or are otherwise below the fair market value of such Sites, (iii) Loans at no interest or nominal interest or at interest rates below the prevailing private sector interest rates for similar loans, (iv) Loans which provide for payment or other terms which are more favorable than the prevailing private sector terms for similar loans, (v) Loans which provide that principal and/or interest may be written down or otherwise forgiven, (vi) Tax Benefits, (vii) contractual agreements to provide funding, (viii) waiver or forgiveness of City deposits, fees, charges, taxes, liens, or rights to receive payment, (ix) construction or funding by the City of infrastructure or other improvements which are customarily paid for by real estate developers, (x) rental subsidy assistance administered by the City under the Section 8 Housing Voucher or Certificate Program or any other rental subsidy programs, and (xi) any other Assistance permitted by Law.

(33) "Tax Benefit" shall mean a tax abatement, exemption, or waiver granted by the City to a Sponsor in connection with a Project. For the purposes of the preceding sentence, "tax" shall mean City real property taxes and

assessments, City water and sewer charges, City and state taxes on the transfer of real property, recording taxes and fees, and any other tax or governmental imposition which a Sponsor may be required to pay in connection with a Project.

(b) **Purpose of Rules.** These Rules set forth the procedures for Site and Sponsor selection for Projects.

(c) **Purpose of Projects.** The Agency shall have the power and authority to initiate and undertake Projects for any public purpose, provided that all Agency Activities to be undertaken in connection with any Project are authorized by applicable Laws. Such public purposes shall include, but shall not be limited to, (i) increasing the supply of available rental and ownership housing which is affordable to persons of low, moderate, and/or middle income; (ii) increasing the supply of available rental and ownership housing which is suitable for and affordable to persons with special needs; (iii) encouraging the construction of new residential housing; (iv) facilitating the conversion of existing non-residential structures into residential housing; (v) promoting the preservation and rehabilitation of existing residential housing; (vi) eliminating conditions in existing residential housing which are unsafe or detrimental to health; (vii) facilitating both residential and non-residential uses in accordance with the provisions of the applicable urban renewal plans or urban development action area projects; (viii) facilitating non-residential uses; (ix) mitigating potential adverse environmental impacts of the development of residential housing and the redevelopment of urban renewal areas; (x) encouraging the investment of private capital for such purposes; (xi) maximizing City revenue; and (xii) minimizing City expenses.

(d) **General Authority.** (1) **General.** The Agency may make Dispositions and provide Assistance to Sponsors for the purposes and in accordance with the procedures described in these Rules.

(2) **Site Selection.** The Agency may from time to time select Sites for Projects. The provisions regarding the selection of Sites are contained in §33-02.

(3) **Sponsor Selection.** The Agency may from time to time select Sponsors for Projects through any competitive or non-competitive process authorized by applicable Law which the Agency deems to be in the best interest of the City, including, but not limited to, direct negotiation, RFQ, RFP, competitive bidding, public bidding, auction, and selection by entities other than the Agency. For Projects involving privately owned Sites, notwithstanding any provision of these Rules to the contrary, the Sponsor and Site may be selected together by any such process and the Agency may consider the characteristics of the Site in addition to any other selection criteria. The provisions regarding the selection of Sponsors are contained in §33-03.

(4) **Negotiations.** The Agency may commence, conduct, and/or terminate negotiations with Applicants and/or Selected Applicants. During such negotiations, subject to approval of the Governing Body, where such approval is required by Law, the City may lease or net lease Sites to Applicants and/or Selected Applicants which have complied with all terms of the applicable selection process, applicable Laws, these Rules, and any and all agreements pertaining thereto. The provisions regarding negotiations with Applicants and Selected Applicants are contained in §33-04.

(5) **Disposition.** Subject to approval of the Governing Body, the City may convey Sites to Sponsors which have complied with all terms of the applicable selection process, applicable Laws, these Rules, and any and all agreements pertaining thereto. The provisions regarding Disposition of Sites are contained in §33-05.

(6) **Assistance.** The City may provide Assistance to Sponsors in order to facilitate Project Activities in such amounts and types as are determined by the Agency to be necessary or desirable. The provisions regarding Assistance are contained in §33-06.

(7) **Project Operation.** The Agency may require Sponsors to operate Sites in accordance with regulatory agreements entered into with the Agency. The provisions regarding Project operation are contained in §33-07.

(e) **Programs.** Where two or more Projects share the same funding source, Sponsor, grantee, or borrower, or otherwise provide for similar treatment of multiple Sites pursuant to these Rules, the Agency may deem such Projects to

constitute a Program. The Agency may repeat a Project or create a Program where the Agency, for any reason, deems it necessary or desirable to do so. Such reasons may include, but shall not be limited to, the continued availability of a particular source of funding, the continued need for a particular type of housing, and the continued interest of any non-City persons or entities, whether private, quasi-public, or public, in performing such type of Projects. The Agency shall determine whether any Project is in a Program and whether any set of Projects constitutes a Program.

(f) **Additional Rules.** The Agency may from time to time promulgate additional rules for certain Programs, which rules shall preempt and supersede these Rules to the extent of any conflict, inconsistency, or ambiguity. Such rules shall be promulgated whenever the Agency determines, for any good and sufficient reason, that additional rules are necessary or desirable in order to facilitate the orderly progress of Agency initiatives to achieve the City Housing Goals. Such reasons may include, but shall not be limited to, the number of Projects in, or the type or number of programmatic requirements of, any Program for which the Agency determines that additional rules are necessary or desirable. The Agency shall determine which rules, if any, apply to any Program or Project.

(g) **Source of Funds.** The Agency may fund any Agency Activity deemed by the Agency to be necessary or desirable in connection with a Project with any available source of funds which is eligible for such purpose under applicable Law. Each Project must comply with all statutory and regulatory requirements with respect to the use of such funds, which requirements shall supersede Project requirements in the event of any conflict or inconsistency.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

The proposed rules set forth (i) how sites are selected for projects and programs; and (ii) how sponsors are selected for projects and programs.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 33-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-02 Site Selection.

(a) **General.** This Article sets forth procedures for the selection of Sites for Projects. Such determinations shall be made by the Agency, in accordance with the procedures set forth herein, for the purposes of ascertaining whether a Site meets the requirements of a Project and applicable Laws, achieving the City Housing Goals, and protecting and furthering the best interests of the City.

(b) **Determination of Appropriateness.** The Agency may determine to place any Site into any Project where the Agency determines, for any reason, that such Project is an appropriate treatment for such Site. Such reasons, may include, but shall not be limited to, the following:

(1) The physical conditions or economic characteristics of the Site make it appropriate for the treatment afforded by the Project.

(2) The Site requires more private investment and/or less Assistance than would be provided under any other appropriate Project or Program, and the Project permits the treatment of the Site with such level of private investment or Assistance.

(3) The Site requires less private investment and/or more Assistance than would be provided under any other appropriate Project or Program, and the Project permits the treatment of the Site with such level of private investment or Assistance.

(4) The Site possesses unique features which make the treatment afforded by the Project necessary or desirable.

(5) The Project addresses a housing need which has not been and is not likely to be fully alleviated by the operations of the private housing market, and the Site is appropriate for inclusion in the Project.

(6) The Project would return the Site to private ownership and/or private manage- ment.

(7) The interest of one or more private parties in the Site creates special opportunities to develop the Site in unique and beneficial ways, including, but not limited to, ways which provide housing for persons with special needs, maximize City revenue, permit development with less Assistance than would be required if the Site were in another Project or Program, permit production of a greater number of units or a greater proportion of lower income units than would be produced if the Site were in another Project or Program, and/or permit development of more ancillary open space or other public facilities.

(8) The Site is not City-owned and the owner, or an authorized representative of the owner, has applied to the Agency, pursuant to any process authorized by these Rules, other rules of the Agency, or applicable Law, to have the Site included in a Project which would serve the City Housing Goals.

(9) The inclusion of the Site in the Project would serve any of the City Housing Goals.

(c) **Selection.** Upon the selection of a Site for a Project, the Agency may, but shall not be required to, prepare a written statement identifying the Site and the Project. Such Site selection document may be in any form which the Agency deems appropriate, including, but not limited to, a letter or memorandum placed in the file for the Project, an Authorization Letter, entry into a book, file, database, or other record of Agency Site Selections, any document prepared in order to comply with applicable Laws (including, but not limited to, the Uniform Land Use Review Procedure, the Urban Renewal Law, and the Urban Development Action Area Act), a document issued as part of any process to select a Sponsor (including, but not limited to, any RFQ, RFP, or bid solicitation), or a Loan commitment letter. Failure to prepare a Site selection document shall not invalidate the selection of a Site for a Project.

(d) **Revocation.** The Agency may revoke a Site selection where the Agency deems such revocation to be necessary or desirable. Upon the revocation of a Site selection, the Agency may, but shall not be required to, prepare a written statement identifying the Site and the Project from which the Site has been removed. Such Site selection revocation document, if any, may be in any of the forms permitted for a Site selection document. Failure to prepare a Site selection revocation document writing shall not invalidate the revocation, and any subsequent selection of a Site for a different Project shall serve to automatically terminate the prior Site selection. After revocation of any Site selection, the Agency may select the Site for any other Project in accordance with these Rules.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

The proposed rules set forth (i) how sites are selected for projects and programs; and (ii) how sponsors are selected for projects and programs.

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28 RCNY 33-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-03 Sponsor Selection.

(a) **General.** This Article sets forth procedures for the selection of Sponsors for Projects. Such determinations shall be made by the Agency, in accordance with the procedures set forth herein, for the purposes of ascertaining whether a potential Sponsor meets the requirements of a Project and applicable Laws, achieving the City Housing Goals, and protecting the best interests of the City. The Agency may select a Sponsor for a Project by any method permitted by Law which it determines will best meet the Project's objectives and the City Housing Goals, including, but not limited to, direct negotiation, RFQ, RFP, competitive bidding, public bidding, auction, selection by entities other than the Agency, and application. For Projects involving privately owned Sites, notwithstanding any provision of these Rules to the contrary, the Sponsor and Site may be selected together by any such method and the Agency may consider the characteristics of the Site in addition to any other selection criteria.

(b) **Direct Negotiation.** Where the Agency deems it to be necessary or desirable, a Sponsor may be selected for a Project without any competitive process. In such event, the Agency may, prior to taking any Agency Activity with respect to such Project, prepare a written statement signed by the Commissioner setting forth the reasons why a more competitive process was not appropriate or desirable. Such statement, if any, shall thereafter be placed with the records concerning the Project which are retained by the Agency and shall be kept on file in accordance with the Agency's usual record retention policies.

(c) **RFQ.** Where the Agency deems it to be necessary or desirable, a Sponsor may be selected for a Project via an RFQ. The RFQ shall describe the Project and/or Program, the Site, the selection process, and such other matters as the Agency deems to be relevant.

(1) **Issuance.** The Agency may issue RFQs for Projects at any time it deems appropriate and desirable.

(2) **Distribution.** (i) **Notice.** At such time as the Agency issues an RFQ for a Project, the Agency may place advertisements in The City Record and/or such other publications as the Agency shall deem appropriate. The Agency may also mail copies of such advertisement to potential Applicants, including, but not limited to, Applicants who have done prior business with the Agency or who have requested to be on a mailing list for such purpose. The advertisement shall include, at a minimum, a short description of the Project or Program, the place a copy of the RFQ can be obtained and the fee, if any, therefor, and the deadline for submission of qualification statements and the fee, if any, therefor.

(ii) **Availability.** A copy of the RFQ shall be made available to all potential Applicants prior to the submission deadline. The Agency shall require all recipients of any RFQ to identify themselves and shall cause a list of recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process. The Agency may charge a fee, in an amount to be determined by the Agency, for a copy of the RFQ.

(iii) **Amendments.** The Agency may issue amendments to the RFQ at any time prior to the submission deadline. The Agency shall provide copies of such amendments to all recipients of the RFQ.

(3) **Public Information.** (i) **Conference.** Prior to the submission deadline, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about submission and Project requirements. The time and place for such conference, if any, shall be indicated in the RFQ and/or any advertisement.

(ii) **Agency Contacts.** Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the RFQ. The Agency may require that contact with agency personnel by prospective Applicants with respect to an RFQ be limited to one or more person(s) designated in the RFQ and/or that such contact be in writing.

(4) **Submissions.** (i) **Time Period.** The deadline for submissions shall be a reasonable period of time after the advertisement first appears and shall be stated in the RFQ.

(ii) **Fee.** The Agency may require an Applicant to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of a qualification state- ment.

(iii) **Completeness.** The Agency shall require qualification statements to be submitted in the format and number prescribed in the RFQ and to contain all information and forms required therein.

(5) **Selection.** (i) **Basic Requirements.** The Agency may reject a qualification statement if the Agency determines that either of the following basic requirements are not met:

(A) **Completeness.** The qualification statement must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission.

(B) **Compliance.** The qualification statement must comply in all respects with all material terms of the RFQ.

(ii) **Threshold Criteria.** The Agency may impose such additional threshold criteria in the RFQ as it deems necessary or desirable. Provided that a qualification statement has passed all basic requirements, the Agency shall consider such threshold criteria as are established in the RFQ. Such threshold criteria shall include, but shall not be limited to, those characteristics of Applicants which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload).

(iii) **Competitive Criteria.** The Agency may impose such additional competitive criteria in the RFQ as it deems necessary or desirable. Provided that a qualification statement has passed all threshold criteria, the Agency shall consider such competitive criteria as are established in the RFQ. Such criteria shall include, but shall not be limited to,

those characteristics of Applicants which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and expected workload).

(6) **Limitations.** (i) **No Obligation.** An RFQ shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any Applicant at any time, including, but not limited to, the cost of responding to the RFQ.

(ii) **No Warranty.** The Agency shall make no warranties, express or implied, with respect to any factual information contained in any RFQ.

(7) **Rights Retained by Agency.** Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may withdraw any RFQ in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all Applicants which submit qualification statements in response to an RFQ.

(iii) The Agency may at any time waive compliance with an RFQ, change any of the terms and conditions of an RFQ, allow certain Applicants to make modifications or additions to their respective qualification statements, require certain Applicants to submit additional information or documentation, or withdraw individual Sites from an RFQ.

(iv) The Agency may negotiate with one or more Applicants who have submitted qualification statements pursuant to an RFQ, and may negotiate with parties which have not responded to the RFQ.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the RFQ.

(d) **RFP.** Where the Agency deems it to be necessary or desirable, a Sponsor may be selected for a Project via an RFP. The RFP shall describe the Project and/or Program, the Site, the selection process, and such other matters as the Agency deems to be relevant. Where a potential Sponsor has previously submitted a proposal and the Agency has issued an RFP soliciting additional proposals to compete with such proposal, such RFP shall contain a copy or summary of such proposal and shall set forth in detail the standards by which the competition shall be judged.

(1) **Issuance.** The Agency may issue RFPs for Projects at any time it deems appropriate and desirable.

(2) **Distribution.** (i) **Notice.** At such time as the Agency issues an RFP for a Project, the Agency may place advertisements in the **City Record** and/or such other publications as the Agency shall deem appropriate. The Agency may also mail copies of such advertisement to potential Applicants, including, but not limited to, Applicants who have done prior business with the Agency or who have requested to be on a mailing list for such purpose. The advertisement shall include, at a minimum, a short description of the Project or Program, the place a copy of the RFP can be obtained and the fee, if any, therefor, and the deadline for submission of proposals and the fee, if any, therefor.

(ii) **Availability.** A copy of the RFP shall be made available to all potential Applicants prior to the submission deadline. The Agency shall require all recipients of any RFP to identify themselves and shall cause a list of recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process. The Agency may charge a fee, in an amount to be determined by the Agency, for a copy of the RFP.

(iii) **Amendments.** The Agency may issue amendments to the RFP at any time prior to the submission deadline. The Agency shall provide copies of such amendments to all recipients of the RFP.

(3) **Public Information.** (i) **Conference.** Prior to the submission deadline, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about submission and Project requirements.

The time and place for such conference, if any, shall be indicated in the RFP and/or any advertisement.

(ii) **Agency Contacts.** Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the RFP. The Agency may require that contact with Agency personnel by prospective Applicants with respect to an RFP be limited to one or more person(s) designated in the RFP.

(4) **Submissions.** (i) **Time Period.** The deadline for submissions shall be a reasonable period of time after the advertisement first appears and shall be stated in the RFP.

(ii) **Fee.** The Agency may require an Applicant to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of a proposal.

(iii) **Completeness.** The Agency shall require proposals to be submitted in the format and number prescribed in the RFP and to contain all information and forms required therein.

(5) **Selection.** (i) **Basic Requirements.** The Agency may reject a proposal if it determines that either of the following basic requirements are not met:

(A) **Completeness.** The proposal must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission.

(B) **Compliance.** The proposal must comply in all respects with all material terms of the RFP.

(ii) **Threshold Criteria.** The Agency may impose such additional threshold criteria in the RFP as it deems necessary or desirable. Provided that a proposal has passed all basic requirements, the Agency shall consider such threshold criteria as are established in the RFP. Such threshold criteria may include, but shall not be limited to, those characteristics of Applicants which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload), those characteristics of the Applicant's proposal which have a bearing on the performance of the Project (e.g., number and size of units produced, rental or sale prices, income levels or special needs of prospective residents, amount of Assistance required, amount of revenue to be received by the City, and design), and any other factors which the Agency deems appropriate.

(iii) **Competitive Criteria.** The Agency may impose such additional competitive criteria in the RFP as it deems necessary or desirable. Provided that a proposal has passed all threshold criteria, the Agency shall consider such competitive criteria as are established in the RFP. Such criteria may include, but shall not be limited to, those characteristics of Applicants which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and expected workload), those characteristics of the Applicant's proposal which have a bearing on the performance of the Project (e.g., number and size of units produced, rental or sale prices, income levels or special needs of prospective residents, amount of Assistance required, amount of revenue to be received by the City, and design), and any other factors which the Agency deems appropriate.

(6) **Limitations.** (i) **No Obligation.** An RFP shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any Applicant at any time, including, but not limited to, the cost of responding to the RFP.

(ii) **No Warranty.** The Agency shall make no warranties, express or implied, with respect to any factual information contained in any RFP.

(7) **Rights Retained by Agency.** Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may withdraw any RFP in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all Applicants which submit proposals in response to an RFP.

(iii) The Agency may at any time waive compliance with an RFP, change any of the terms and conditions of an RFP, allow certain Applicants to make modifications or additions to their respective proposals, require certain Applicants to submit additional information or documentation, or withdraw individual Sites from an RFP.

(iv) The Agency may negotiate with one or more Applicants who have submitted proposals pursuant to an RFP, and may negotiate with parties which have not responded to the RFP.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the RFP.

(e) **Competitive Bidding.** Where the Agency deems it to be feasible and desirable, a Sponsor may be selected for a Project via competitive bidding without public adver- tisement.

(1) **Solicitation.** The Agency may issue written bid solicitations for Projects at any time it deems appropriate and desirable. The bid solicitation shall describe the Project and/or Program, the Site, the competitive factor(s) upon which the bidding is based, the minimum thresholds, if any, for eligibility to bid, the reasons why public bidding is not feasible or desirable, the method by which bids are being solicited and the justification therefor, and such other matters as the Agency deems to be relevant.

(2) **Distribution.** (i) **Notice.** At such time as the Agency issues a bid solicitation for a Project, the Agency shall inform prospective bidders and solicit bids in such manner as the Agency shall deem appropriate.

(ii) **Availability.** The Agency shall cause a list of recipients of the bid solicitation to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process. The Agency may charge a fee, in an amount to be determined by the Agency, for a copy of the bid solicitation.

(iii) **Amendments.** The Agency may issue amendments to the bid solicitation at any time prior to the submission deadline. The Agency shall provide copies of such amendments to all recipients of the bid solicitation as set forth on the list of recipients.

(3) **Public Information.** (i) **Conference.** Prior to the submission deadline, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about submission and Project requirements. The time and place for such conference, if any, shall be indicated in the bid solicitation.

(ii) **Agency Contacts.** Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the bid solicitation. The Agency may require that contact with agency personnel by prospective bidders with respect to a bid solicitation be limited to one or more person(s) designated in the bid solicitation and/or that such contact be in writing.

(4) **Submissions.** (i) **Time Period.** The deadline for submissions shall be a reasonable period of time after the issuance of the bid solicitation and shall be stated in the bid solicitation.

(ii) **Fee.** The Agency may require a bidder to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of a bid.

(iii) **Completeness.** The Agency shall require bids to be submitted in the format and number prescribed in the bid solicitation and to contain all information and forms required therein.

(5) **Selection.** (i) **Basic Requirements.** The Agency may reject a bid if it determines that either of the following basic requirements are not met:

(A) **Responsiveness.** The bid must include all required forms, such forms must be fully and properly completed and executed, and the bid must comply in all respects with all material terms of the bid solicitation.

(B) **Responsibility.** The Agency may impose such eligibility criteria for bidders in the bid solicitation as the Agency deems necessary or desirable to ensure that only responsible bidders are selected. Each bidder shall be required to comply with all of the eligibility criteria established in the bid solicitation. Such eligibility criteria may include, but shall not be limited to, those characteristics of bidders which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload).

(ii) **Competitive Criteria.** The Agency may impose such competitive criteria for the comparative evaluation of bids in the bid solicitation as it deems necessary or desirable. Provided that a bidder has passed all basic requirements, the Agency shall evaluate such bids on the basis of such competitive criteria as are established in the bid solicitation. Such competitive criteria may include, but shall not be limited to, amount of revenue to be received by the City, amount or type of Assistance required, rental or sale prices, income levels of prospective residents, number and size of units produced, and any other factors which the Agency deems appropriate.

(6) **Limitations.** (i) **No Obligation.** A bid solicitation shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any bidder at any time, including, but not limited to, the cost of responding to the bid solicitation.

(ii) **No Warranty.** The Agency shall make no warranties, express or implied, with respect to any factual information contained in any bid solicitation.

(7) **Rights Retained by Agency.** Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may withdraw any bid solicitation in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all bidders.

(iii) The Agency may at any time waive compliance with a bid solicitation, change any of the terms and conditions of a bid solicitation, allow certain bidders to make modifications or additions to their respective bids, or withdraw individual Sites from a bid solicitation.

(iv) The Agency may negotiate with one or more bidders and may negotiate with non-bidders.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the bid solicitation.

(f) **Public Bidding.** Where the Agency deems it to be feasible and desirable, a Sponsor may be selected for a Project via public bidding.

(1) **Solicitation.** The Agency may issue written bid solicitations for Projects at any time it deems appropriate and desirable. The bid solicitation shall describe the Project and/or Program, the Site, the competitive factor(s) upon which the bidding is based, the minimum thresholds, if any, for eligibility to bid, and such other matters as the Agency deems to be relevant.

(2) **Distribution.** (i) **Notice.** At such time as the Agency issues a bid solicitation for a Project, the Agency shall place advertisements in The City Record and/or such other publications as the Agency shall deem appropriate. The advertisement shall include, at a minimum, a short description of the Project or Program, the place a copy of the bid

solicitation can be obtained and the fee, if any, therefor, and the deadline for submission of bids and the fee, if any, therefor.

(ii) **Availability.** A copy of the bid solicitation shall be made available to all potential bidders prior to the submission deadline. The Agency shall require all recipients of any bid solicitation to furnish identification and shall cause a list of recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process. The Agency may charge a fee, in an amount to be determined by the Agency, for a copy of the bid solicitation.

(iii) **Amendments.** The Agency may issue amendments to the bid solicitation at any time prior to the submission deadline. The Agency shall provide copies of such amendments to all recipients of the bid solicitation.

(3) **Public Information.** (i) **Conference.** Prior to the submission deadline, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about submission and Project requirements. The time and place for such conference, if any, shall be indicated in the bid solicitation and/or any advertisement.

(ii) **Agency Contacts.** Agency staff shall be available during the submission period by telephone and/or in person to answer general questions about the bid solicitation. The Agency may require that contact with agency personnel by prospective bidders with respect to a bid solicitation be limited to one or more person(s) designated in the bid solicitation and/or that such contact be in writing.

(4) **Submissions.** (i) **Time Period.** The deadline for submissions shall be a reasonable period of time after the advertisement first appears and shall be stated in the bid solicitation.

(ii) **Fee.** The Agency may require a bidder to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of a bid.

(iii) **Completeness.** The Agency shall require bids to be submitted in the format and number prescribed in the bid solicitation and to contain all information and forms required therein.

(5) **Selection.** (i) **Basic Requirements.** The Agency may reject a bid if it determines that either of the following basic requirements are not met:

(A) **Responsiveness.** The bid must include all required forms, such forms must be fully and properly completed and executed, and the bid must comply in all respects with all material terms of the bid solicitation.

(B) **Responsibility.** The Agency may impose such eligibility criteria for bidders in the bid solicitation as the Agency deems necessary or desirable to ensure that only responsible bidders are selected. Each bidder shall be required to comply with all of the eligibility criteria established in the bid solicitation. Such eligibility criteria may include, but shall not be limited to, those characteristics of bidders which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload).

(ii) **Competitive Criteria.** The Agency may impose such competitive criteria for the comparative evaluation of bids in the bid solicitation as it deems necessary and desirable. Provided that a bidder has passed all basic requirements, the Agency shall evaluate such bids on the basis of such competitive criteria as are established in the bid solicitation. Such competitive criteria may include, but shall not be limited to, amount of revenue to be received by the City, amount or type of Assistance required, rental or sale prices, income levels of prospective residents, number and size of units produced, and any other factors which the Agency deems appropriate.

(6) **Limitations.** (i) **No Obligation.** A bid solicitation shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency

shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any bidder at any time, including, but not limited to, the cost of responding to the bid solicitation.

(ii) **No Warranty.** The Agency shall make no warranties, express or implied, with respect to any factual information contained in any bid solicitation.

(7) **Rights Retained by Agency.** Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may withdraw any bid solicitation in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all bidders.

(iii) The Agency may at any time waive compliance with a bid solicitation, change any of the terms and conditions of a bid solicitation, allow certain bidders to make modifications or additions to their respective bids, or withdraw individual Sites from a bid solicitation.

(iv) The Agency may negotiate with one or more bidders and may negotiate with non-bidders.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the bid solicitation.

(g) **Auctions.** Where the Agency deems it to be feasible and desirable, a Sponsor may be selected for a Project via auction.

(1) **Information.** The Agency may prepare an auction brochure containing written descriptions of the Project, the Site, the eligibility criteria for bidders, the terms and conditions of the auction, and such other matters as the Agency deems to be relevant.

(2) **Distribution of Notice.** (i) **Notice.** At such time as the Agency elects to select a Sponsor via auction, the Agency shall place advertisements in The City Record and/or such other publications as the Agency shall deem appropriate. The advertisement shall include, at a minimum, a short description of the Project or Program, the place and time where the auction brochure may be obtained, the place and time where the auction will be held, and such other matters as the Agency deems to be relevant.

(ii) **Availability.** The Agency shall require all recipients of the auction brochure to identify themselves and shall cause a list of such recipients to be maintained, which list shall in no event be furnished to any non-governmental party prior to the conclusion of the selection process.

(iii) **Amendments.** The Agency may issue amendments to the auction brochure at any time prior to the auction. The Agency shall send copies of such amendments to all recipients of the auction brochure.

(3) **Public Information.** (i) **Conference.** Prior to the auction, the Agency may, but shall not be required to, hold an open conference where Agency staff answer questions about the Project and the auction. The time and place for such conference, if any, shall be indicated in the public advertisement for the auction.

(ii) **Agency Contacts.** Agency staff shall be available prior to the auction by telephone and/or in person to answer general questions about the auction. The Agency may require that contact with agency personnel by prospective participants with respect to an auction be limited to one or more person(s) and/or that such contact be in writing.

(4) **Fee.** The Agency may require an auction participant to pay such non-refundable fee as is determined by the Agency to be appropriate upon admission to the auction.

(5) **Eligibility Criteria.** The Agency may impose such eligibility criteria for bidders in the auction as the Agency deems necessary or desirable to ensure that only responsible bidders are selected. Each bidder shall be required to

comply with all of the eligibility criteria established in the terms and conditions of the auction. Such eligibility criteria may include, but shall not be limited to, those characteristics of bidders which have a bearing on their ability to successfully complete the Project (e.g., organizational capacity, comparable experience, financial capacity, and current and projected workload). The Agency may reject any bidder at an auction if the eligibility requirements are not met.

(6) **Limitations.** (i) **No Obligation.** An auction shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any bidder at any time, including, but not limited to, the cost of attending the auction.

(ii) **No Warranty.** The Agency shall make no warranties, express or implied, with respect to any factual information contained in any written description of the auction.

(7) **Rights Retained by Agency.** Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may cancel any auction at any time.

(ii) The Agency may decline to enter into negotiations with any and all bidders.

(iii) The Agency may at any time waive compliance with the eligibility requirements for the auction, change any of the terms and conditions of the auction, allow certain bidders to make modifications or additions to their respective bids, or withdraw individual Sites from an auction.

(iv) The Agency may negotiate with one or more bidders and may negotiate with non-bidders.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the written description of the auction.

(h) **Non-Agency Selection.** The Agency may select an Applicant to be the Sponsor of a Project without any Agency selection process where such Applicant has already been selected or designated by (i) the Agency in connection with any Project or Program, (ii) another agency or instrumentality of the City, (iii) any agency or instrumentality of the state or federal government, (iv) any public authority, public benefit corporation, or other quasi-governmental entity, or (v) any other entity designated by the Agency to perform such selection. Notwithstanding anything to the contrary in the preceding sentence or elsewhere in these Rules, the Agency shall only select a Sponsor pursuant to this §33-03(h) where the Agency deems such method of selection to be necessary or desirable, and the Agency shall not be required to select any Applicant solely because such Applicant has been selected by any other entity.

(i) **Non-Agency Process.** The Agency may select an Applicant to be the Sponsor of a Project by a process not set forth in these Rules where funding for such Project is provided by, and the alternative selection process is mandated by, either (i) another agency or instrumentality of the City, (ii) any agency or instrumentality of the state or federal government, (iii) any public authority, public benefit corporation, or other quasi-governmental entity, or (iv) any other entity providing funding. Notwithstanding anything to the contrary in the preceding sentence or elsewhere in these Rules, the Agency shall only select a Sponsor pursuant to this §33-03(i) where the Agency deems such method of selection to be necessary or desirable, and the Agency shall not be required to utilize any selection process solely because such selection process has been mandated by any other entity.

(j) **Application.** Where and at such time as the Agency deems it to be necessary or desirable, a Sponsor may be selected for a Project via an application process.

(1) **Distribution.** (i) **Advertisement.** At such time as the Agency commences an application process for a Project, the Agency or its designee may prepare or cause to be prepared an advertisement describing (i) such aspects of the

Project and the selection process as the Agency deems to be relevant, and (ii) the place where application forms can be obtained. The Agency may place such advertisement in The City Record and/or such other publications as the Agency shall deem appropriate. The Agency may also mail copies of such advertisement to potential Applicants, including, but not limited to, Applicants who have done prior business with the Agency or who have requested to be on a mailing list for such purpose.

(ii) **Application Forms.** The Agency or its designee shall prepare or cause to be prepared the forms upon which applications are to be submitted, which forms may require such information as the Agency deems to be necessary or desirable to effectuate the purposes of the Project. Application forms shall be made available by the Agency or its designee to all potential Applicants. The Agency or its designee may charge a fee, in an amount to be determined by the Agency, for application forms.

(iii) **Amendments.** The Agency may change any aspect of the information set forth in the advertisement at any time. The Agency shall amend the advertisement accordingly and shall place such amended advertisement in The City Record, the publications in which the original advertisement appeared, and such other publications as the Agency shall deem appropriate. If it is infeasible for the Agency to publish the amended advertisement in the publications in which the original advertisement appeared, the Agency shall endeavor to provide substantially the same type of notice as was provided with respect to the original advertisement. The Agency may also mail copies of such amended advertisement to potential Applicants who have done prior business with the Agency or who have requested to be on a mailing list for such purpose. Notwithstanding the foregoing, an application process may be terminated by the Agency at any time without advertisement.

(2) **Submissions.** (i) **Time Period.** The Agency may impose a deadline for submission of applications, which shall be a reasonable period of time after the advertisement first appears. The Agency may, in the alternative, impose no deadline, in which case the Agency shall receive, review, and approve or reject applications on a rolling basis as and when such applications are received.

(ii) **Fee.** The Agency or its designee may require an Applicant to pay such non-refundable fee as is determined by the Agency to be appropriate upon submission of an application or thereafter.

(iii) **Completeness.** The Agency shall require applications to be submitted on the required forms and to be completed and executed in the manner set forth therein.

(3) **Selection.** (i) **Completeness.** The application must include all required forms, and such forms must be fully and properly completed and executed, at the time of submission. The Agency may reject an application if it determines that such requirements are not met.

(ii) **Selection.** The Agency may review and judge applications and select Sponsors by any method and upon any criteria permitted by Law or these Rules, including, but not limited to, the methods set forth in §33-03(b), §33-03(c)(5), §33-03(d)(5), §33-03(e)(5), §33-03(f)(5), §33-03(g), §33-03(h), and §33-03(i).

(4) **Limitations.** (i) **No Obligation.** The publication of an advertisement and the provision and acceptance of application forms shall not represent any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any Applicant at any time, including, but not limited to, the cost of preparing an application.

(ii) **No Warranty.** The Agency shall make no warranties, express or implied, with respect to any factual information contained in any advertisement.

(5) **Rights Retained by Agency.** Where it is deemed by the Agency to be in the best interests of the City:

(i) The Agency may terminate any application process in whole or in part at any time.

(ii) The Agency may decline to enter into negotiations with any and all Applicants which submit applications.

(iii) The Agency may at any time allow Applicants to make modifications or additions to their applications and/or require certain Applicants to submit additional information or documentation.

(iv) The Agency may negotiate with Applicants and may negotiate with parties which have not submitted applications.

(v) The Agency may negotiate and dispose of any Site on terms other than those set forth in the advertisement.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

The proposed rules set forth (i) how sites are selected for projects and programs; and (ii) how sponsors are selected for projects and programs.

Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 33-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-04 Negotiations.

(a) **Notification.** Upon the completion of any selection process, the Agency shall notify each respondent Applicant of the Agency's determination with respect to such Applicant. Such notification may be in such form and delivered in such manner as the Agency deems to be appropriate. With respect to any Selected Applicant, the form of such notification may include, but shall not be limited to, a Negotiation Letter, Authorization Letter, or Loan commitment letter.

(b) **Negotiations.** Negotiations with any Selected Applicant shall be subject to satisfaction of all conditions established in these Rules or imposed by the Agency, Governing Body, or applicable Law.

(1) **Deadlines.** The Agency may require the Selected Applicant to commence or complete negotiations and/or commence or complete other specified actions within a specified time period.

(2) **Deposits.** The Agency may require the Selected Applicant to pay deposits of such types, in such amounts, and at such times as the Agency deems appropriate. The Agency shall notify the Selected Applicant in writing of (i) the types and amounts of the deposits, if any, which the Selected Applicant is or shall be required to pay, (ii) the date upon which each such deposit shall become due, (iii) whether such deposits are refundable or non-refundable, and (iv) if such deposits are refundable, the conditions under which a refund will be issued.

(3) **Project Requirements.** The Agency may establish Program and Project requirements and conditions for the commencement and continuation of negotiations.

(4) **Schedule.** The Agency may establish a schedule of activities which must be completed as pre-conditions for the Agency Activities to be taken in connection with the Project.

(c) **No Liability.** An Authorization Letter or Negotiation Letter, or any written or oral communication with respect to the selection of a Selected Applicant or the ensuing negotiations, is not a contract or agreement and shall not create any rights on the Selected Applicant's part, including, without limitation, rights of enforcement, equity or reimbursement. No such contract or agreement shall exist, and no such rights shall be created, until the City and the Selected Applicant enter into one or more Binding Agreement(s) requiring such Selected Applicant to perform or be responsible for the performance of Project Activities in connection with a Project.

(d) **Termination.** The Agency may terminate negotiations with a Selected Applicant at any time with or without cause. If the Agency elects to terminate negotiations with a Selected Applicant, the Agency shall notify the Selected Applicant of such termination. Such notification may be in such form and delivered in such manner as the Agency deems to be appropriate.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

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***** Current through December 2009 ****

28 RCNY 33-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-05 Site Disposition.

(a) **Approvals.** The Agency shall not make any Disposition until and unless the following approvals have been granted:

(1) **Governing Body Approval.** All Dispositions shall require prior approval by the Governing Body and shall be subject to any further terms and conditions imposed by the Governing Body as a condition for its approval.

(2) **Law Department Approval.** All legal documents relating the transfer of title or otherwise relating to the Project shall require prior approval by the Law Department.

(3) **Agency Approval.** Notwithstanding the prior approval of the Governing Body and the Law Department, all Dispositions shall require prior approval by the Agency, which approval may be withdrawn by the Agency, for any reason deemed by the Agency to be in the best interests of the City, at any time prior to Disposition. As a condition precedent to its approval of any Disposition, the Agency may require a potential Sponsor to have satisfied all terms and conditions determined by the Agency to be necessary or desirable, including, but not limited to, the terms and conditions set forth in any selection process, Authorization Letter, Negotiation Letter, or Loan commitment letter.

(b) **Legal Documents.** The Agency may require a Sponsor to execute such legal documents, including, but not limited to, a deed, land disposition agreement, and regulatory agreement, as the Agency deems necessary or desirable to transfer title to the Site, enforce the obligations of the Sponsor, effectuate the purposes of the Project, and otherwise protect the best interests of the City. Such documents may contain such terms and conditions, consistent with these Rules, as are required by the City on a city-wide basis or as the Agency determines are necessary or desirable to transfer

fee title or any other real property interest in the Site, enforce the obligations of the Sponsor, effectuate the purposes of the Project, and otherwise protect the best interests of the City.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

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28 RCNY 33-06

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-06 Assistance.

(a) **General.** The Agency shall have the power and authority to provide, in connection with any Project, such Assistance, including, but not limited to, Loans and Subsidies, as are authorized to be provided by applicable Law.

(b) **Loans.** The Agency shall have the power and authority to provide, in connection with any Project, such Loans as are authorized to be provided by applicable Law.

(1) **General Considerations.** If the Agency Activities to be undertaken in connection with a Project include a Loan, then the Agency, in making determinations concerning Loan terms, shall act to protect the City's interests as a prudent mortgage lender, provide for a reasonable return (where such return is intended in accordance with the Project and applicable Laws) to the Sponsor, and meet the standards of other lenders, if any.

(2) **Eligible Costs.** Subject to the limitations set forth in these Rules and applicable Laws, a Loan may be made in such amounts as may be required for all Project Activities.

(3) **Commitment Letter.** The Agency may state Loan terms in a commitment letter signed by the Commissioner. Such commitment letter, if any, may contain such terms as the Agency may deem necessary or desirable in order to effectuate the purposes of these Rules and to protect the City's interests as a lender. The closing of the Loan shall be made subject to satisfaction of all the terms and conditions contained in such commitment. The commitment letter may require, among other things, that the Sponsor and its contractors and all of their respective principals obtain necessary City approvals and clearances as a condition precedent to the closing of the Loan.

(4) **Financing.** If a Project includes acquisition, purchase money, construction, or permanent financing to be provided by the City, the Loan for such purpose shall be evidenced by a note and may be secured by such security or collateral documents and by such collateral as the Agency may deem necessary or desirable in accordance with applicable Law. The Loan documents may contain such terms, consistent with these Rules, as the Agency may deem necessary or desirable in order to effectuate the purposes of these Rules and applicable Laws and to protect the City's interests as lender. The Loan documents may provide that the indebtedness evidenced or secured thereby shall evaporate in any manner permitted by applicable Law.

(c) **Subsidies.** The Agency shall have the power and authority to provide, in connection with any Project, such Subsidies as are authorized to be provided by applicable Law.

(d) **Federal Benefits.** Notwithstanding any provision of these Rules to the contrary, any allocation of federal benefits, including, but not limited to, rental subsidies and low income housing tax credits, shall be made in accordance with the federal laws and regulations concerning such benefits. Nothing in these Rules shall be deemed to impose any additional requirements regarding such allocation. The Agency may utilize such administrative procedures, consistent with such laws and regulations, as it deems appropriate to effectuate the purposes of the federal benefits and the City Housing Goals.

(e) **Tax Benefits.** Notwithstanding any provision of these Rules to the contrary, any exemption from or abatement of real property taxes pursuant to the PHFL, GML, RPTL, or Administrative Code, including, but not limited to, exemptions or abatements pursuant to Articles 2, 5, and 11 of the PHFL, Article 16 of the GML, Sections 420-a, 420-b, 420-c, 421-a, 421-b, 422, 488-a, and 489 of the RPTL, and Sections 11-243 and 11-244 of the Administrative Code and any successors thereto, shall be made in accordance with the Laws concerning such benefits. Nothing in these Rules shall be deemed to impose any additional requirements regarding such allocation. The Agency may utilize such administrative procedures, consistent with such Laws, as it deems appropriate to effectuate the purposes of such Laws and the City Housing Goals.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

The proposed rules set forth (i) how sites are selected for projects and programs; and (ii) how sponsors are selected for projects and programs.

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28 RCNY 33-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-07 Project Operation.

(a) **Regulatory Agreement.** A Sponsor may be required to execute a Regulatory Agreement with the Agency as a condition for the Agency Activities taken by the Agency in connection with the Project. The Regulatory Agreement shall be recorded against the Site and shall run with the land for the period set forth therein. The Regulatory Agreement shall require the Sponsor and all of Sponsor's successors and assigns to comply with Project requirements.

(b) **Marketing.** The Agency may require a Sponsor to market vacant dwelling units in accordance with the requirements of a marketing plan prepared by the Agency. Such marketing plan may include such requirements with respect to the marketing as the Agency deems necessary and desirable, including, but not limited to, (i) requirements to ensure outreach to make eligible City residents aware of the availability for rental or sale of such dwelling units, and (ii) requirements to ensure that applications for the rental or sale of dwelling unit are opened and considered in a random order. A marketing plan may, but shall not be required to, contain provisions providing a preference to certain applicants where the Agency deems such preference to be appropriate. Factors for the granting of such preference may include, but shall not be limited to, special needs, residence in the community in which the Site is located, or referral by the Agency to the Sponsor for relocation.

(c) **Use Restrictions.** The Agency may impose restrictions upon the use of a Site and may require a Sponsor to agree to comply with such restrictions as a condition for receiving any Disposition or Assistance. Such use restrictions may be enforced by any means which the Agency determines to be necessary or appropriate, including, but not limited to, provisions in any deed, land disposition agreement, regulatory agreement, note, mortgage, security agreement, lien, restrictive declaration, or other legal document. The Agency may require a Sponsor to provide security for its compliance with use restrictions in such types and amounts as are determined by the Agency to be necessary or

desirable. Such types of security may include, but shall not be limited to, surety bonds, letters of credit, or cash.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

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28 RCNY 33-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 33*1 HOUSING AND URBAN RENEWAL PROJECTS AND PROGRAMS

§33-08 Miscellaneous Provisions.

(a) **Termination.** Notwithstanding any provision to the contrary in these Rules or in any document concerning any selection process, Project, or Program, the Agency may reject any Applicant or Selected Applicant and/or terminate any negotiations, selection process, Project, and/or Program at any time and for any reason, including, but not limited to, the reasons set forth in §33-08(a)(1), §33-08(a)(2), §33-08(a)(3), and §33-08(a)(4), or without cause.

(1) **Adverse Findings.** The Agency determines at any time that good and sufficient reasons exist why the City should not do business with an Applicant or Selected Applicant or should not allow such Applicant or Selected Applicant to act as Sponsor for a Project. Such reasons shall include, but shall not be limited to, evidence with respect to the Applicant or Selected Applicant or any member of its development team of (i) arson conviction or pending cases; (ii) harassment conviction or pending cases; (iii) arrears or default upon any debt, lease, contract, tax, lien, fee, charge, or obligation to the City; (iv) City mortgage or tax foreclosure proceedings or arrears; (v) unsuccessful record with comparable projects, including, but not limited to, poor workmanship, failure to complete a project expeditiously, substantial and significant building violations or litigation history against other properties, or unsuccessful record of managing residential real property; (vi) inability, due to lack of organizational capacity, competing demands from other projects, or any other factor, to perform all required Project Activities; (vii) bankruptcy or insolvency; (viii) violation of the conflict of interest provisions of the New York City Charter or any other applicable Laws; or (ix) failure to obtain IG Clearance, EO Clearance, or other necessary City clearances.

(2) **Unable to Recommend Sale.** The Agency is unable to recommend to the Governing Body that it grant the approvals required for a Project for any reason, including, but not limited to, a determination by the Agency that (i) the Applicant or Selected Applicant has failed to clear one or more of the required City reviews, (ii) there has been a

transfer of ownership interests in the Applicant or Selected Applicant after commencement of negotiations without the approval of the Agency, (iii) adequate City funding for the Assistance to be included in the Project is not available, or (iv) funding to be provided by entities other than the City is not available or is not provided in a timely manner.

(3) **Noncompliance.** An Applicant or Selected Applicant has failed to comply with any term or condition established by the City or the Agency, including, but not limited to, any Program or Project requirement, deposit requirement, deadline, or schedule.

(4) **Best Interests of City.** The Agency or the City has not approved the Agency Activities required for a Project for any reason determined by the Agency or the City to be in the best interests of the City.

(b) **Agency Discretion.** All determinations to be made by the Agency and/or the Commissioner in accordance with these Rules shall be in the sole discretion of the Agency and/or the Commissioner; provided, however, that the Agency and/or the Commissioner shall comply in all respects with applicable Laws.

(c) **Statutory Authority Not Limited.** Nothing in these Rules shall be deemed to prevent the Agency from exercising such greater or additional rights, remedies, privileges, powers, and authority as shall be provided by Law.

(d) **Rights Not Conferred.** These Rules are not intended to confer rights or benefits upon the general public or upon any individual or entity. Nothing in these Rules shall be deemed to confer any rights or benefits whatsoever upon any party which are in addition to any rights deriving from applicable Laws or written contracts with the Agency.

(e) **No Legal Obligation.** At any time prior to the execution of a Binding Agreement, the Agency may withdraw all or any portion of a Site from a Project, change the Agency Activities and Project Activities contemplated in connection with a Project, change the Sponsor selection process for a Project, terminate negotiations with an Applicant or Selected Applicant, commence negotiations with one or more other Applicant(s) or Selected Applicant(s), or take any other action deemed by the Agency to be necessary or appropriate. No selection process, or part thereof or actions in connection therewith, shall represent or result in any obligation or agreement whatsoever on the part of the City or the Agency, which may only be incurred or entered into by written agreement approved by the Governing Body, if applicable, and the Law Department and duly executed by both parties. The City and the Agency shall not be obligated to pay, nor shall they in fact pay, any costs or losses incurred by any Applicant or Selected Applicant at any time, including, but not limited to, the cost of responding to a selection process. An Authorization Letter or Negotiation Letter, or any written or oral communication with respect to the selection of a potential Sponsor or the ensuing negotiations, is not a contract or agreement and shall not create any rights on the part of the Applicant or Selected Applicant, including, without limitation, rights of enforcement, equity or reimbursement. No such contract or agreement shall exist, and no such rights shall be created, until the City and the Sponsor enter into a Binding Agreement. Approval of a Project and any agreements in connection with such Project by the Governing Body, if applicable, and the Law Department shall not obligate the Agency to proceed with the Project or with the execution of such agreements.

(f) **Technical Violations.** Technical violations of these Rules shall not invalidate the selection of any Site, the selection of any Sponsor, or any other Agency Activity taken pursuant to these Rules, nor shall such technical violations give rise to any rights, claims, or causes of action in favor of members of the general public or potential sponsors.

(g) **Compliance With Laws.** All Agency Activities by the Agency pursuant to these Rules shall be made in accordance with applicable Laws. Each Site and Sponsor selected for any Project pursuant to these Rules shall meet the eligibility criteria of the Laws which authorize the Agency to undertake the Agency Activities necessary or incident to the performance of such Project.

(h) **Fees.** The Agency shall promulgate by rule the amount of any fee provided for in these Rules.

(i) **Waivers.** Where literal application of one or more of the provisions of these Rules would result in unnecessary hardship, would involve practical difficulties, or would constitute an unreasonable limitation beyond the intent and

purpose of these Rules, the Commissioner may at any time waive in writing such provision or provisions of these Rules with respect to any Project. Such writing shall state the reasons for such waiver.

(j) **Singular and Plural.** With respect to any of the terms used in these Rules, the singular shall be deemed to include the plural and the plural shall be deemed to include the singular, unless the context requires otherwise.

(k) **Effective Date.** These Rules shall be deemed effective as of June 29, 1997.

HISTORICAL NOTE

Section added City Record May 28, 1997 eff. June 29, 1997. [See Chapter 33 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record May 28, 1997 eff. June 29, 1997. Note further provisions: These rules are made pursuant to the City Administrative Procedure Act, which requires the promulgation of rules governing housing and urban renewal projects and programs of the City. The Department of Housing Preservation and Development may from time to time create and administer certain projects and programs to create affordable housing for persons and families of low, moderate, and middle incomes and to improve communities through elimination of blight.

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28 RCNY 34-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-01 Definitions.

Building. "Building" shall mean any City-owned multiple dwelling, other than a single room occupancy dwelling, which is occupied by Tenants.

City. "City" shall mean the City of New York.

Disposition. "Disposition" shall mean the sale of a Building to an HDFC.

Disposition Rent Increase. "Disposition Rent Increase" shall mean the last rent set by HPD prior to Disposition.

HDFC. "HDFC" shall mean a housing development fund company formed pursuant to Article XI of the Private Housing Finance Law in order to purchase a Building pursuant to these Rules.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City.

Intake Rent Increase. "Intake Rent Increase" shall mean the initial rent set by HPD upon Selection of a Building.

Interim Payment Agreement. "Interim Payment Agreement" shall mean an agreement entered into between HPD, the Tenant Association and/or HDFC, and a Tenant eligible for rental assistance to temporarily accept less than the full rent from the Tenant prior to the provision of rental assistance.

Interim Rent Increase. "Interim Rent Increase" shall mean any rent, other than an Intake Rent Increase or a Disposition Rent Increase, set by HPD from time to time after Selection and before Disposition of a Building.

Laws. "Laws" shall mean any and all applicable laws, orders, rules and regulations.

Occupied Units. "Occupied Units" shall mean any lawfully occupied dwelling units leased and occupied by a Tenant in a Building.

Program. "Program" shall mean the Tenant Interim Lease Program.

Rehabilitation. "Rehabilitation" shall mean the installation, replacement, or repair of one or more systems or the correction of inadequate, unsafe, or unsanitary conditions in a Building.

Selection. "Selection" shall mean notification to a Tenant Association, pursuant to §34-03(c) of these Rules, that HPD has approved a Building for the Program.

Rules. "Rules" shall mean the Rules set forth in this chapter.

Tenant. "Tenant" shall mean a residential tenant of record occupying a dwelling unit in a Building pursuant to a lease with the City or with a Tenant Association that has entered into a Tenant Interim Lease. Other residential occupants, such as squatters and licensees, are not Tenants. Non-residential tenants or occupants, such as those who occupy space in a Building for retail, commercial, manufacturing, or community facility purposes, are not Tenants.

Tenant Association. "Tenant Association" shall mean an unincorporated association with elected officers that has been formed by and continues to include as members the Tenants of at least sixty percent (60%) of the Occupied Units in a Building. If there is more than one such unincorporated association, "Tenant Association" shall mean the one from which HPD accepts an application for the Program and, if applicable, the one with which HPD executes a Tenant Interim Lease.

Tenant Interim Lease. "Tenant Interim Lease" shall mean the written month-to-month net lease of an entire Building executed by the City, as lessor, and by the Tenant Association, as lessee, following Selection of a Building.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

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***** Current through December 2009 ****

28 RCNY 34-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-02 General.

(a) **Coverage.** These Rules will govern the procedures for: selecting Buildings for the Program, leasing Buildings to Tenant Associations, determining and establishing rent, providing notice to Tenants and terminating Buildings from the Program. Buildings in the Program will be subject to these Rules and chapter 21 of this title. Notwithstanding any provision of chapter 14 of this title to the contrary, Buildings in the Program will not be subject to chapter 14 of this title.

(b) **Program Description.** Under the Program, Buildings are net leased to Tenant Associations and subsequently sold to HDFCs that will thereafter be solely responsible for the operation of such Buildings.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which

certain City-owned buildings may become tenant-owned low income cooperatives.

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28 RCNY 34-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-03 Entering the Program.

(a) **Eligible buildings.** A Building may be eligible for selection for the Program if HPD makes all of the following discretionary determinations:

(1) the Building requires Rehabilitation such that it is not marketable to the private sector in its "as is" condition, and HPD funding is necessary to return the Building to the private sector; and

(2) the performance of Rehabilitation is technically feasible; and

(3) the cost of Rehabilitation is economically reasonable; and

(4) the cost of Rehabilitation is within available HPD resources; and

(5) the Building is a Class A multiple dwelling containing at least three dwelling units; and

(6) at least two of the dwelling units in the Building are Occupied Units; and

(7) the Building has not been designated by HPD for disposition through another program, except to the extent that rules promulgated by HPD for such other program explicitly authorize a withdrawal to participate in the Program; and

(8) the Building has not previously participated in the Program, unless such participation was terminated more than five years prior to the current application.

(b) **Application procedure; selection requirements.** If HPD has determined that a Building is eligible for the Program and its assignment to the Program is in the best interests of the City, a Tenant Association may apply for selection for the Program by complying with the following standards:

(1) the Tenant Association must submit an application on a form supplied by HPD signed by

(i) the Tenants of all of the Occupied Units in a Building containing up to five dwelling units, or

(ii) the Tenants of at least sixty percent (60%) of the Occupied Units in a Building containing six or more dwelling units; and

(2) the Tenants of at least fifty percent (50%) of the Occupied Units must pay one hundred percent (100%) of the billable rent for their respective dwelling units for the three months immediately prior to the filing of the application and continuously until HPD makes a determination of Selection; and

(3) officers and members of the Tenant Association must attend training classes as directed by HPD; and

(4) the Tenant Association must notify the Tenants of a meeting at which HPD will discuss the Program. Tenants of at least fifty percent (50%) of the Occupied Units must attend the meeting. If Tenants of less than fifty percent (50%) of the Occupied Units attend the meeting, the Tenant Association must notify the Tenants of a second meeting. If Tenants of less than fifty percent (50%) of the Occupied Units attend the second meeting, the Building will not be considered for the Program; and

(5) HPD must determine that the Building can be managed by the Tenant Asso- ciation.

(c) **Notice of approval.** If the application has been approved, HPD will notify the Tenant Association of such approval in a written notice by regular mail to the president of the Tenant Association. The notice of approval shall include any notice of an Intake Rent Increase, which shall be implemented thirty (30) days thereafter in accordance with subdivision (f) of this section, and HPD shall send a copy to the Tenants by regular mail. If the application has been rejected, HPD will notify the president of the Tenant Association of such rejection and the reason therefor by regular mail.

(d) **Post-acceptance activities.** Upon acceptance of the application and prior to execution of the Tenant Interim Lease, the Tenant Association must:

(1) adopt by-laws and articles of association in a form specified by HPD; and

(2) elect officers; and

(3) set up a restricted bank account as required by HPD.

(e) **Execution of the Tenant Interim Lease.** After HPD determines that the Tenant Association has complied with all of the requirements set forth in §34-03(d) of these Rules, the Tenant Association must sign the Tenant Interim Lease and implement the Intake Rent Increase set by HPD.

(f) **Intake Rent Increases.** (1) HPD will from time to time establish intake rent levels, expressed as a minimum dollar amount per zoning room, for all dwelling units in Buildings entering the Program. Such intake rent levels will be based upon maintenance and operating expenses in similar buildings. Such intake rent levels and the rationale therefore will be kept on file by HPD and will be available for public inspection.

(2) HPD will issue an intake rent roll to the Tenant Association and will notify the Tenants of the Intake Rent Increase at least thirty (30) days prior to the effective date of the Intake Rent Increase.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

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***** Current through December 2009 ****

28 RCNY 34-04

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-04 Program Activities.

(a) **Lease.** Upon acceptance of a Building into the Program, HPD will temporarily lease the Building to the Tenant Association pursuant to the terms of a Tenant Interim Lease. The Tenant Interim Lease shall require the Tenant Association to follow these Rules and all HPD directives. Furthermore, officers and members of the Tenant Association must attend training classes as directed by HPD during the term of the Tenant Interim Lease.

(b) **Residential vacancies.** If any dwelling unit in the Building is or becomes vacant, the Tenant Association will not sign a lease for such vacant dwelling unit, or allow such vacant dwelling unit to become occupied, without the prior written approval of HPD.

(c) **Tenant Association.** The Tenant Association will comply with the terms of these Rules, the Tenant Interim Lease, and all HPD directives with regard to the leasing or occupancy of vacant dwelling units. Such HPD directives may include, without limitation,

(i) procedures and criteria for the selection of new Tenants,

(ii) rents to be charged,

(iii) priority for persons that HPD has determined are in need of housing, and

(iv) the use of specified lists of eligible persons.

(d) **Non-residential vacancies.** If any non-residential unit in the Building is or becomes vacant, the Tenant

Association will not sign a lease for such vacant non-residential unit, or allow such vacant non-residential unit to become occupied, without the prior written approval of HPD. The Tenant Association will comply with the terms of these Rules, the Tenant Interim Lease, and all HPD directives with regard to the leasing or occupancy of vacant non-residential units. Such HPD directives may include, without limitation,

(i) procedures and criteria for the selection of new non-residential tenants, and

(ii) rents to be charged.

(e) **Collection of arrears.** At such time as a Tenant is two months or more in arrears on the payment of rent to the Tenant Association, the Tenant Association may commence a proceeding for such rent arrears and/or for possession of the dwelling unit.

(f) **Legal proceedings.** The Tenant Association may not commence legal proceedings against Tenants without the prior written approval of HPD, except as specified in §34-04(e) of these Rules or in the Tenant Interim Lease. For non-residential tenants, legal proceedings may be commenced by the Tenant Association without prior written approval of HPD upon any default in the lease.

(g) **Tenant complaints.** The Tenant Association will respond in a timely manner to all Tenant complaints.

(h) **Interim rent increases.** During the term of the Tenant Interim Lease, one or more rent increases may be necessary to reflect the actual costs of operating a Building. HPD will from time to time establish an interim rent roll for a Building in the Program reflecting expenses of maintaining and operating the Building.

(1) HPD will prepare a statement of the projected cost of maintaining and operating the Building in the period following the Interim Rent Increase, which statement will reflect actual expenditures, adjusted for inflation on an individual or on a compounded yearly basis, for the maintenance and operation of the Building (including, but not limited to, the cost of fuel, common space utilities, repair and maintenance, supplies, insurance, custodial services, and fees for management and professional services) and any other costs anticipated to be associated with the maintenance and operation of the Building.

(2) HPD will calculate the rent levels necessary to cover the projected cost of maintaining and operating the Building in the period following the Interim Rent Increase, as reflected in such statement, and shall implement an Interim Rent Increase based upon such calculation.

(3) HPD will issue an interim rent roll to the Tenant Association and will notify the Tenants of such Interim Rent Increase at least thirty (30) days prior to the effective date of the new rent.

(4) From the date that Tenants receive notice of the Interim Rent Increase until the effective date of the Interim Rent Increase,

(i) HPD will make such statement of maintenance and operating expenses available for public inspection,

(ii) any Tenant may comment in writing to HPD regarding the Interim Rent Increase, and

(iii) HPD will consider any timely comments received from Tenants.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

28 RCNY 34-05

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-05 Disposition.

(a) **Disposition rent increase.** (1) Prior to disposition, HPD will prepare a statement of the projected cost of maintaining and operating the Building in the first year following Disposition, which statement will reflect,

(i) actual expenditures, adjusted for inflation on an individual or compounded yearly basis, for the maintenance and operation of the Building prior to Disposition (including, but not limited to, the cost of fuel, common space utilities, repair and maintenance, supplies, insurance, custodial services, and fees for management and professional services),

(ii) real estate taxes,

(iii) water and sewer charges,

(iv) contingency reserves,

(v) reserves for vacancies and uncollectible debts, and

(vi) any other costs anticipated to be associated with the maintenance and operation of the Building.

(2) HPD will calculate the rent levels necessary to cover the projected cost of maintaining and operating the Building in the first year following disposition, as reflected in such statement, and shall implement a Disposition Rent Increase based upon such calculation.

(3) HPD will issue a disposition rent roll to the Tenant Association and will notify the Tenants of such Disposition

Rent Increase at least thirty (30) days prior to the effective date of the new rent.

(4) From the date that Tenants receive notice of the Disposition Rent Increase until the effective date of the Disposition Rent Increase,

(i) HPD will make such statement of maintenance and operating expenses available for public inspection,

(ii) any Tenant may comment in writing to HPD regarding the Disposition Rent Increase, and

(iii) HPD will consider any timely comments received from Tenants.

(b) **Disposition.** HPD will not convey a Building to an HDFC unless:

(1) the Tenant Association has, in the judgment of HPD, satisfactorily managed the Building during the term of the Tenant Interim Lease; and

(2) Tenants of at least eighty percent (80%) of the Occupied Units have signed subscription agreements to purchase the shares in the HDFC attributable to their dwelling units; and

(3) HPD has notified the Tenants of the Disposition Rent Increase.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

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28 RCNY 34-06

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CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-06 Rental Assistance.

(a) HPD will assist eligible Tenants in applying for existing rental assistance programs during the period of the Building's participation in the Program. HPD will provide Tenants with applications for §8 of the United States Housing Act of 1973, as amended, and senior citizen rent increase exemptions, advise Tenants which rental assistance program is most suitable for their individual needs, assist Tenants in completing rental assistance applications, and forward all necessary documentation to the appropriate authority for final review and processing.

(b) Each Tenant who applies for rental assistance is solely responsible for supplying all required documentation and materials necessary to process an application: i.e., attending required interviews with the authority responsible for determining a Tenant's eligibility for rental assistance, providing the necessary income certification and complying with all procedures to process an application.

(c) HPD shall review all applications for rental assistance and make a preliminary determination of a Tenant's eligibility within sixty (60) days of receipt of a completed application. HPD shall promptly notify the Tenant Association and/or HDFC of all applicants for rental assistance and shall forward to the Tenant Association and/or HDFC copies of the applications, letters granting or denying rental assistance, Interim Payment Agreements entered into, and letters extending or terminating Interim Payment Agreements. Upon a finding of preliminary eligibility, HPD will provide the Tenant with an Interim Payment Agreement, which shall be signed by the Tenant, the Tenant Association and/or HDFC, and HPD, before it becomes effective. This Interim Payment Agreement shall include:

(1) the amount of the increased rent for the apartment;

(2) the amount of rent that the Tenant must pay pending the final determination of the rental assistance application;

(3) a statement of the grounds for termination pursuant to subdivision (e) of this section; and

(4) notice to the Tenant that s(he) remains liable for the full amount of the rent retroactive to the effective date of the increase if, at any time, the rental assistance application is denied by HPD or the Interim Payment Agreement is terminated pursuant to paragraphs one, three or four of subdivision (e) of this section, provided, however, that if the Interim Payment Agreement is terminated pursuant to paragraph one of subdivision (e) of this section, the Tenant shall not be liable for the full amount of the rent increase retroactive to its effective date if s(he) notifies HPD within thirty (30) days of any change in household income which renders the Tenant ineligible for rental assistance.

(d) A Tenant who receives an Interim Payment Agreement will be required to pay the amount which s(he) would pay on a monthly basis if the rental assistance application is approved, or the rent charged prior to implementation of the rent increase, whichever is greater.

(e) The Interim Payment Agreement will terminate one year after the date of issuance or upon the earlier occurrence of any of the following:

(1) any change in the Tenant's household income which renders the Tenant ineligible for rental assistance; or

(2) any change in the rent charged by the City; or

(3) failure by the Tenant to comply with any of the requirements necessary to process the application for rental assistance; or

(4) failure by the Tenant to pay, within thirty (30) days of the date due, the rent payable under the Interim Payment Agreement pursuant to subdivision (d) of this section, unless payment of such rent is being withheld for lack of services which the Tenant has given written notice of to the Tenant Association and/or HDFC; or

(5) receipt by Tenant of rental assistance pursuant to a rental assistance application filed in accordance with this section.

(f) HPD will permit any Tenant who has applied for rental assistance in accordance with subdivision (b) of this section and who has not been provided with an Interim Payment Agreement pursuant to subdivision (c) of this section, to pay a rent increase in stages of $10.00 per room per quarter.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

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28 RCNY 34-07

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CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-07 Removal from the Program.

HPD may remove a Building from the program and terminate the Tenant Interim Lease with respect to such Building if HPD determines that:

(a) there is a default under the Tenant Interim Lease; or

(b) the management of the Building has failed to comply with generally accepted standards of management; or

(c) the Tenant Association has an inadequate record in regard to rent collections; or

(d) the Tenant Association has an inadequate record in regard to timely payment of bills; or

(e) the Tenant Association has failed to comply with HPD reporting requirements as set forth in the Tenant Interim Lease; or

(f) the Tenant Association has failed to comply with HPD directives; or

(g) HPD determines that the Building no longer meets the eligibility requirements of the program.

(h) for any other reason, it is no longer in the best interests of the City to keep the Building in the program.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note internal relettering by Law Department per Charter §1045(b). [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

28 RCNY 34-08

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CHAPTER 34*1 TENANT INTERIM LEASE PROGRAM

§34-08 Miscellaneous Provisions.

(a) **HPD discretion.** All determinations to be made by HPD in accordance with these Rules will be in the sole discretion of HPD.

(b) **Statutory authority not limited.** Nothing in these Rules will be deemed to limit HPD's authority to act pursuant to applicable laws.

(c) **Method of notification.** Unless otherwise provided herein, notices to Tenants will be in English and Spanish, and will either be posted in a common area of the Building and affixed to or placed under each dwelling unit door of the Building, or mailed to every occupied dwelling unit in the Building, as determined by HPD.

(d) **Technical violations.** Provided that there has been a good faith effort to comply with these Rules, technical violations of these Rules will not invalidate any action taken pursuant to these Rules, nor will such technical violations give rise to any rights, claims, or causes of action. HPD, upon good cause shown, may alter the timing or sequence of the actions described in these Rules, provided all affected parties are given reasonable notice.

HISTORICAL NOTE

Section added City Record Nov. 7, 2001 eff. Dec. 7, 2001. [See Chapter 34 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 7, 2001 eff. Dec. 7, 2001. Note provisions of City Record Nov. 7, 2001 Statement of Basis and Purpose. The purpose of the rules is to set forth the process by which certain City-owned buildings may become tenant-owned low income cooperatives.

28 RCNY 35-01

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Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-01 Definitions.

Administrative Code. "Administrative Code" shall mean the Administrative Code of the City.

Building. "Building" shall mean any multiple dwelling that is occupied by Tenants and (prior to sale to the NPC) owned by the City, including any vacant land adjacent thereto, which is or may be the subject of a Project.

City. "City" shall mean the City of New York.

Commissioner. "Commissioner" shall mean the Commissioner of HPD or his or her designee.

DHCR. "DHCR" shall mean the State of New York Division of Housing and Community Renewal.

Disposition. "Disposition" shall mean the date of title transfer of a Building from the NPC to a Sponsor.

Final Selection. "Final Selection" shall mean a decision by HPD to select a Building for the Program.

FMR. "FMR" shall mean the fair market rent set by the Section 8 program or any other successor program of the United States Department of Housing and Urban Development.

Housing Maintenance Code. "Housing Maintenance Code" shall mean Chapter 2 of Title 27 of the Administrative Code.

HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City, or its designee.

Intake Rent. "Intake Rent" shall mean the rent set by HPD that takes effect after Project Commencement.

Interim Payment Agreement. "Interim Payment Agreement" shall mean an agreement entered into between HPD, a Tenant eligible for rental assistance and the NPC or the Sponsor, as applicable, to temporarily accept less than the full rent from the Tenant prior to the provision of rental assistance.

Laws. "Laws" shall mean any and all applicable laws, ordinances, orders, rules and regulations.

NPC. "NPC" shall mean a not-for-profit corporation selected by HPD to participate in the Program and to which the City net leases and thereafter conveys title to a Building in the Program prior to Disposition.

Post-Rehabilitation Rent. "Post-Rehabilitation Rent" shall mean the rent set by HPD that takes effect after substantial completion.

Preliminary Selection. "Preliminary Selection" shall mean a preliminary determination by HPD to select a Building for the Program.

Program. "Program" shall mean the Neighborhood Entrepreneurs Program.

Project. "Project" shall mean a project in the Program.

Project Activity. "Project Activity" shall mean any activity performed or required to be performed by the Sponsor in connection with a Project.

Project Commencement. "Project Commencement" shall mean the date the Project has commenced, as set forth in the notice described in §35-04(f).

Rehabilitation. "Rehabilitation" shall mean the installation, replacement, or repair of one or more Building systems or the correction of inadequate, unsafe, or insanitary conditions.

Rules. "Rules" shall mean the rules set forth in this chapter.

SDMA. "SDMA" shall mean a site development and management agreement entered into by the NPC and the Sponsor that determines the Sponsor's responsibilities regarding the day-to-day operation of the Building prior to Disposition.

Sponsor. "Sponsor" shall mean the entity selected to manage, own and/or develop the Project, and any entity substantially controlled by such Sponsor.

Subsidy. "Subsidy" shall mean a loan or a grant made by HPD to the NPC or to a Sponsor for Project Activities.

Substantial Completion. "Substantial Completion" shall mean the date on which HPD certifies that (a) construction work comprising at least 95 percent of the approved Rehabilitation cost has been satisfactorily completed, and (b) all work required to remove Housing Maintenance Code violations which were of record before the Rehabilitation of the Building and were then classified as "B" and "C" has been completed.

Tenants. "Tenants" shall mean residential tenants of record occupying a dwelling unit in a Building. Other residential occupants, such as squatters and licensees, are not Tenants. Non-residential tenants or occupants, such as those who occupy space in a Building for retail, commercial, manufacturing, or community facility purposes, are not Tenants.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-02 General.

(a) **Coverage.** These Rules govern the procedures for: selecting Buildings for the Program, net leasing and sale of Buildings to the NPC, selecting Sponsors for the Program, the SDMA between the NPC and the Sponsor. Disposition of Buildings to Sponsors, providing subsidies for projects, project operation, determining and establishing rents, and providing notices to Tenants. Buildings in the Program shall be subject to these Rules.

(b) **Program Description.** Under the Program, Buildings will be net leased and thereafter conveyed to the NPC. Sale of the Buildings to the NPC will be pursuant to applicable Laws and each such sale will require approval of the Mayor and the City Council, acting in their respective capacities pursuant to such Laws. Upon net lease, the NPC will enter into an SDMA with the Sponsor. After the Rehabilitation of the Building is completed, the Building will be sold by the NPC to the Sponsor.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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§35-03 Selection of Sponsors.

HPD may select a Sponsor for a Project by any method which HPD determines will best further the purposes of the Program, including, without limitation, pursuant to a request for qualifications process, pursuant to a request for proposals process, selection from a pre-qualified list or, in the discretion of HPD, by a direct designation of an entity judged by HPD to be suitable for the task. In selecting a Sponsor, any relevant factors may be considered, including, but not limited to:

(i) the Sponsor's prior record in other City housing programs;

(ii) the Sponsor's prior selection by the City as a developer in another program;

(iii) the Sponsor's record as a property owner, developer or manager;

(iv) the Sponsor's relevant experience in and knowledge of the neighborhood where the project is located, and

(v) any relevant written comments by Tenants.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-04 Selection of Buildings, Tenant Notification.

(a) **Eligible Buildings.** HPD may select Buildings for the Program if:

(1) Rehabilitation of the Building is technically and financially feasible;

(2) The Building has not been accepted into another HPD disposition program.

(b) **Notice of Preliminary Selection.** After HPD has found a Building to be eligible pursuant to subdivision (a) of this section and has preliminarily selected the Building for the Program, HPD shall provide all Tenants of the Building with a document containing the following:

(1) A statement that HPD is considering placing the Building in the Program; (2) A description of the Program;

(3) A statement that an Intake Rent will be set;

(4) A statement that the Building may be eligible for other HPD programs and the name, address and phone number of an HPD employee who may provide information on how to apply for such other programs;

(5) The name of the Sponsor selected by HPD to develop the Project; and

(6) A statement that the Building will remain in the Program unless accepted into another HPD program.

(c) **Tenant Meeting.** HPD shall hold a Tenant meeting prior to making a Final Selection, giving notice to Tenants

at least two business days prior to such meeting.

(d) **Interim Reminder Notice.** No later than thirty (30) days after the notice of Preliminary Selection, HPD shall notify the Tenants of a Building selected for the Program that they have ninety (90) days left to apply for any other HPD disposition program that accepts applications from Tenants.

(e) **Notice of Final Selection.** No sooner than sixty (60) days after the notice of Preliminary Selection, HPD shall notify the Tenants of a Building of the Final Selection of the Building for the Program.

(f) **Notice of Project Commencement.** No sooner than sixty (60) days after the Notice of Final Selection, HPD shall notify the Tenants of a Building that the Project has commenced, unless Tenants have applied for another HPD disposition program that accepts applications from Tenants within such time period. If the Tenants have applied for another HPD disposition program that accepts applications from Tenants within such time period and have been rejected from such program, then, immediately after the later of such rejection or sixty (60) days after the notice of Final Selection, HPD shall notify Tenants that the Project has commenced.

(g) **Notice of Intake Rent.** Either at the time of the notice of Project Commencement or thereafter, HPD shall notify each Tenant of the Intake Rent and the date it becomes effective, which effective date shall be not less than thirty (30) days after the date of the notice of Intake Rent, and shall, in accordance with §35-10 of these Rules, provide information on rental assistance which may be available to Tenants and the procedures to apply for such assistance.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

28 RCNY 35-05

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CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-05 Subsidy.

(a) **Eligible Costs.** Subject to the limitations set forth in applicable Laws, a Subsidy may be made in such amounts as may be required for Project Activities.

(b) **Commitment Letter.** HPD may state Subsidy terms in a commitment letter signed by the Commissioner. Such commitment letter, if any, may contain such terms as HPD may deem necessary or desirable in order to effectuate the purposes of these Rules and to protect the City's interests. The provision of the Subsidy shall be made subject to satisfaction of all the terms and conditions contained in such commitment letter.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs

Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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§35-06 Rent Setting.

(a) **Establishment of Intake Rents.** HPD shall from time to time on a program-wide basis establish Intake Rents for all dwelling units in Buildings selected for the Program based upon a minimum rent level per zoning room based on operating costs in similar Buildings. The Intake Rent and the rationale therefore shall be kept on file by HPD and be available for public inspection. HPD shall provide notice of Intake Rent pursuant to §35-04(g).

(b) **Pre-commitment meeting.** After the notice of Project Commencement pursuant to §35-04(f), and prior to the issuance of a commitment letter containing the terms and conditions for a Subsidy, HPD shall send a notice informing the Tenants of the time and place of a meeting to discuss the Program at least two business days prior to such meeting. A representative of HPD shall attend such meeting.

(c) **Projection of Post-Rehabilitation Rents.** HPD shall determine a rent for each dwelling unit in the Building to take effect upon Substantial Completion. The Post-Rehabilitation Rent per occupied dwelling unit may be based upon the Tenants' income or may reflect the expenses for the Building as projected by HPD less the effective annual net commercial income, if any. If the Post-Rehabilitation Rent reflects the Building's expenses, HPD shall project the annual maintenance and operating expenses for the Building after Substantial Completion, including allowances for vacancies and debt service coverage. The expenses shall be projected by HPD based on its experience and knowledge of the operation of similar buildings. For those apartments which are vacant at the time of the sending of the notice of Substantial Completion pursuant to subdivision (h) of this section, HPD shall set Post-Rehabilitation Rents at no greater than one hundred and ten percent (110%) of the FMR for the area in which the Building is located.

(d) **Pre-Disposition Notice.** Following the pre-commitment meeting held pursuant to subdivision (b) of this

section, and not less than thirty (30) days prior to sale of a Building to the NPC, NPD shall send a notice that shall:

(1) inform each Tenant of the contemplated Rehabilitation which will be performed in the Project;

(2) advise each Tenant of the expected rental increase to result from the Rehabilitation that will take effect after Substantial Completion (i.e., the Post-Rehabilitation Rent); (3) provide information on rental assistance which assistance that may be available to the Tenant and the procedures to apply for such assistance in accordance with §35-10 of these Rules;

(4) apprise each Tenant of such Tenant's right to submit written comments; and

(5) advise each Tenant that where relocation during Rehabilitation is necessary, HPD will use its best efforts to minimize inconvenience to affected Tenants.

(e) **Implementation of Intake Rent.** Commencing no earlier than the date set forth in the notice of Intake Rent sent pursuant to §35-04(g), HPD shall charge the Intake Rent, except that rents for Tenants whose rents at such time are greater than the Intake Rent shall not be decreased.

(f) **Registration of Rent.** Not less than thirty (30) days after sale of a Building to the, NPC, the Sponsor shall register with DHCR the rent charged to each Tenant in the Building at the time of such sale. Leases shall contain a provision satisfactory to HPD requiring notice to the Tenant of the subsequent establishment of the Post-Rehabilitation Rent.

(g) **Increase in Projected Post-Rehabilitation Rents.** If the Post-Rehabilitation Rents established by HPD pursuant to subdivision (c) of this section reflect the Building's expenses, and HPD determines that its projection of maintenance and operating costs must be increased based on unforeseen changes in the circumstances and factors which formed the basis of the original projection, including, but not limited to, unexpected increases in fuel or utility costs, HPD shall notify Tenants of the amount of the expected rent increase over and above the Post-Rehabilitation Rent set forth in the pre-Disposition notice sent pursuant to subdivision (d) of this section.

(h) **Notice of Substantial Completion.** Following Substantial Completion, HPD shall send a notice to each Tenant that the Rehabilitation is substantially complete and that the Tenant's rent will be increased to the Post-Rehabilitation Rent in not less than sixty (60) days. Such notice shall state that the Tenant has an opportunity to comment regarding the quality of Rehabilitation. Such notice shall also include the amount of the Post-Rehabilitation Rent, its effective date, and provide information on rental assistance which may be available to the Tenant and the procedures to apply for such assistance in accordance with §35-10 of these Rules. Prior to the establishment of Post-Rehabilitation Rent, HPD shall give due consideration to Tenant comments regarding the quality of the Rehabilitation.

(i) **Implementation and Registration of Post-Rehabilitation Rents.** Not less than sixty (60) days after the sending of the notice of Substantial Completion pursuant to subdivision (h) of this section, HPD shall complete and sign a rent order, and shall mail such order to the Tenant with a copy to the Sponsor. The rent set forth on each rent order shall be the Post-Rehabilitation Rent for such apartment as was determined in accordance with subdivision (c) of this section and as set forth in the pre-Disposition notice or as adjusted pursuant to subdivision (g) of this section. If an apartment is vacant at the time of establishment of rents, the rent order shall be mailed to the Sponsor. Immediately upon receipt of the rent order or a copy thereof, the Sponsor shall register the Post-Rehabilitation Rent for each Tenant in the Building with DHCR.

(j) **Two year leases.** The Sponsor must offer two year leases to all Tenants upon Substantial Completion.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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28 RCNY 35-07

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-07 Project Operation by Sponsor under the SDMA Prior to Disposition.

(a) **SDMA.** Prior to Disposition to the Sponsor, the NPC shall enter into a SDMA with the Sponsor.

(b) **Tenant Selection Policy.** Sponsor shall rent vacant apartments only to low and/or moderate income Tenants as defined by HPD and in accordance with HPD guidelines. HPD may also, in the public interest, require that other persons, determined by HPD to be in need of housing, receive priority in the renting of apartments. HPD may require that rentals be pre-approved by HPD, that specified lists of eligible persons be used, or may direct any other Tenant selection method be used.

(c) **Successor Tenants.** Persons claiming to be successor Tenants, if any, prior to a unit entering rent stabilization, are subject to the rules set forth in Chapter 24 of Title 28 of the Rules of the City of New York.

(d) **Interim Payment Agreement.** HPD may require the Sponsor to enter into one or more Interim Payment Agreements in accordance with §35-10 of these Rules.

(e) **Limitation on Collection of Arrears.** At such time as a Tenant is one month or more in arrears on the payment of rent to Sponsor, Sponsor may commence a proceeding for such rent arrears and/or for possession of the apartment. Sponsor may not sue for arrears that accrued more than three (3) months prior to the commencement of the lease for the Building.

(f) **Vacancy Rents.** Rents for vacant apartments shall be set by Sponsor, subject to HPD approval.

(g) **Commencement of Legal Proceedings.** Sponsor may commence legal proceedings, including eviction proceedings for failure to pay rent in accordance with §21-23(c) of chapter 21 of this title, with the prior approval of HPD and the NPC.

(h) **Tenant Complaints.** (1) Complaints shall, in the first instance, be directed to Sponsor.

(2) Tenants shall have the right to file written complaints with HPD staff or the NPC if a Tenant deems Sponsor's response to be inadequate or unsatisfactory.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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28 RCNY 35-08

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-08 Disposition to Sponsor.

Under satisfactory completion of the Rehabilitation, title for the Building shall be sold and transferred to the Sponsor by the NPC.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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28 RCNY 35-09

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-09 Project Operation After Disposition to Sponsor.

(a) **Regulatory Agreement.** A Sponsor may be required to execute a regulatory agreement with HPD as a condition for the Project. The regulatory agreement shall be recorded and shall run with the land for the period set forth therein. The regulatory agreement shall require the Sponsor and all of Sponsor's successors and assigns to comply with Project requirements.

(b) **Use Restrictions.** HPD may impose restrictions upon the use of a Building and may require Sponsor to agree to comply with such restrictions as a condition for Disposition or Subsidy. Such use restrictions may be enforced by any means which HPD determines to be necessary or appropriate, including, but not limited to, provisions in any deed, land disposition agreement, regulatory agreement, note, mortgage, security agreement, lien, restrictive declaration, or other legal document. HPD may require a Sponsor to provide security for its compliance with use restrictions in such types and amounts as are determined by HPD to be necessary or desirable. Such types of security may include, but shall not be limited to, surety bonds, letters of credit, or cash.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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28 RCNY 35-10

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-10 Rental Assistance.

(a) HPD will assist eligible Tenants in applying for existing rental assistance programs during the period of the Building's participation in the Program. HPD will provide Tenants with applications for §8 of the United States Housing Act of 1973, as amended, and senior citizen rent increase exemptions, advise Tenants which rental assistance program is most suitable for their individual needs, and assist Tenants in completing rental assistance applications.

(b) Each Tenant who applies for rental assistance is solely responsible for supplying all required documentation and materials necessary to process an application: i.e., attending required interviews providing the necessary income certification and complying with all procedures to process an application.

(c) HPD shall review all applications for rental assistance and make a preliminary determination of a Tenant's eligibility within sixty (60) days of receipt of a completed application. HPD shall promptly notify the NPC or the Sponsor, as applicable, of all applicants for rental assistance and shall forward to the NPC or the Sponsor, as applicable, copies of the applications, letters granting or denying rental assistance, Interim Payment Agreements entered into, and letters extending or terminating Interim Payment Agreements. Upon a finding of preliminary eligibility, HPD will provide the Tenant with an Interim Payment Agreement, which shall be signed by the Tenant, HPD and the NPC or the Sponsor, as applicable, before it becomes effective. This Interim Payment Agreement shall include:

(1) the amount of the increased rent for the apartment;

(2) the amount of rent that the Tenant must pay pending the final eligibility determination of the rental assistance application (as such amount is determined in accordance with subdivision (d) of this section);

(3) a statement of the grounds for termination pursuant to subdivision (e) of this section; and

(4) notice to the Tenant that s(he) remains liable for the full amount of the rent retroactive to the effective date of the increase if, at any time, the rental assistance application is denied by HPD or the Interim Payment Agreement is terminated pursuant to paragraphs one, three or four of subdivision (e) of this section, provided, however, that if the Interim Payment Agreement is terminated pursuant to paragraph one of subdivision (e) of this section, the Tenant shall not be liable for the full amount of the rent increase retroactive to its effective date if s(he) notifies HPD within thirty (30) days of any change in household income which renders the Tenant ineligible for rental assistance.

(d) A Tenant who receives an Interim Payment Agreement will be required to pay the greater of (1) the amount set forth in the Interim Payment Agreement, which is the amount that s(he) would pay on a monthly basis if the rental assistance application is approved, or (2) the rent charged prior to implementation of the rent increase.

(e) The Interim Payment Agreement will terminate one year after the date of issuance or upon the earlier occurrence of any of the following:

(1) any change in the Tenant's household income which renders the Tenant ineligible for rental assistance; or

(2) any change in the rent charged by the City; or

(3) failure by the Tenant to comply with any of the requirements necessary to process the application for rental assistance; or

(4) failure by the Tenant to pay, within thirty (30) days of the date due, the rent payable under the Interim Payment Agreement pursuant to subdivision (d) of this section, unless payment of such rent is being withheld for lack of services which the Tenant has given written notice of to the Sponsor; or

(5) receipt by Tenant of rental assistance pursuant to a rental assistance application filed in accordance with this section.

(f) HPD will permit any Tenant who has applied for rental assistance in accordance with subdivision (b) of this section and who has not been provided with an Interim Payment Agreement pursuant to subdivision (c) of this section, to pay a rent increase in stages of $10.00 per room per quarter.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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28 RCNY 35-11

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 35 NEIGHBORHOOD ENTREPRENEURS PROGRAM*1

§35-11 Miscellaneous Provisions.

(a) **HPD Discretion.** All determinations to be made by HPD in accordance with these Rules shall be in the sole discretion of HPD.

(b) **Statutory Authority not Limited.** Nothing in these Rules shall be deemed to limit HPD's authority pursuant to applicable Laws.

(c) **Method of Notification.** Unless otherwise provided herein, notification shall be in English and Spanish, and shall either be posted in a common area of the Building and affixed to or placed under each apartment door of the Building, or mailed to every apartment in the Building, as determined by HPD.

(d) **Technical Violations.** Provided that there has been a good faith effort to comply with these Rules, technical violations of these Rules shall not invalidate any action taken pursuant to these Rules, nor shall such technical violations give rise to any rights, claims, or causes of action. The Commissioner, upon good cause shown, may alter the timing or sequence of the actions described in these Rules, provided all affected parties are given reasonable notice.

(e) **Funding Source Requirements.** Notwithstanding any provision of these Rules to the contrary, if the requirements of any funding source for a Project conflict with the requirements of these Rules, the requirements of the funding source shall govern.

HISTORICAL NOTE

Section added City Record Jan. 7, 2002 eff. Feb. 6, 2002. [See Chapter 35 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 7, 2002 eff. Feb. 6, 2002. Note Provisions of City Record Jan. 7, 2002:

The proposed rules set forth the procedures for (a) selecting buildings for the Neighborhood Entrepreneurs Program, (b) notifying tenants of such selection and of the rental adjustments made in conjunction with the program, and (c) carrying out rehabilitation and disposition of buildings in the program. The proposed rules also establish that conflicting requirements of any funding sources (e.g., federal low income housing tax credit program, federal §8 program or federal HOME Investments Partnership Act program) will supersede the rules.

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28 RCNY 36-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 36 ALTERNATIVE ENFORCEMENT PROGRAM*1

§36-01 Definitions.

For purposes of this chapter:

(a) Alternative Enforcement Program. "Alternative Enforcement Program" shall mean the program established by Local Law 29 of 2007.

(b) Department. "Department" shall mean the New York City Department of Housing Preservation and Development or its successor.

(c) Housing Maintenance Code. "Housing Maintenance Code" shall mean chapter two of title 27 of the administrative code of the city of New York.

(d) Multiple Dwelling Law. "Multiple Dwelling Law" shall mean the New York State Multiple Dwelling Law.

HISTORICAL NOTE

Section added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. [See Chapter 36 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 36 added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. Note: Statement of Basis and Purpose.

The rules are intended to implement Local Law 29 of 2007. The law establishes an Alternative Enforcement Program under which the Department of Housing Preservation and Development will identify distressed buildings for participation in the Program, monitor progress toward correction of Housing Maintenance Code violations, or undertake correction of the violations itself. The rules set forth the process for owners to request reinspection by the Department for the purpose of dismissing corrected violations from the records of the Department, so that a building that has been repaired in accordance with the standards established in the law may be discharged from the Program. The rules also establish fees for the various actions to be undertaken by the Department under the Program, as authorized by the law.

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28 RCNY 36-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 36 ALTERNATIVE ENFORCEMENT PROGRAM*1

§36-02 Request for Reinspection and Dismissal of Violations.

(a)(1) An owner or managing agent of a building that has been identified for participation in the Alternative Enforcement Program may submit an application for reinspection of such building for the purpose of dismissing corrected violations of the Housing Maintenance Code or Multiple Dwelling Law from the Department's records in order for the building to be discharged from such Program.

(2) Such application shall be submitted to the Department on the form approved by the Department for such purpose, and shall be accompanied by a certified check or money order, made payable to the New York City Commissioner of Finance in the amount specified in §36-03 of these rules. Such application shall be submitted either in person or by mail to the Alternative Enforcement Program Office.

(3) Such application shall be submitted to the Department within four months of notification to the owner that such building has been identified for participation in the Alternative Enforcement Program, provided, however, that the Department may deny such application if it has altready implemented the provisions of subdivision k of §27-2153 of the Housing Maintenance Code within such four-month period.

(4) Such application will not be processed by the Department unless such building is registered with the Department in accordance with the provisions of §§27-2097 through 27-2099 of the Housing Maintenance Code.

HISTORICAL NOTE

Section added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. [See Chapter 36 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 36 added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. Note: Statement of Basis and Purpose.

The rules are intended to implement Local Law 29 of 2007. The law establishes an Alternative Enforcement Program under which the Department of Housing Preservation and Development will identify distressed buildings for participation in the Program, monitor progress toward correction of Housing Maintenance Code violations, or undertake correction of the violations itself. The rules set forth the process for owners to request reinspection by the Department for the purpose of dismissing corrected violations from the records of the Department, so that a building that has been repaired in accordance with the standards established in the law may be discharged from the Program. The rules also establish fees for the various actions to be undertaken by the Department under the Program, as authorized by the law.

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28 RCNY 36-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 36 ALTERNATIVE ENFORCEMENT PROGRAM*1

§36-03 Alternative Enforcement Program Fees.

(a) An owner of a building who has been notified of participation in the Alternative Enforcement Program shall be subject to fees for any inspection, reinspection or any other action undertaken by the Department during the time period that such building is in such Program. The schedule of fees is as follows:

(1) For each reinspection performed upon application by an owner for dismissal of violations within the first four months after notification of participation in the Alternative Enforcement Program: $1,000 per building.

(2) For a building-wide inspection, monitoring of repair work and reassessment of a building pursuant to subdivisions k and m of §27-2153 of the Housing Maintenance Code: $500 per dwelling unit every six months, beginning on the date of the building-wide inspection, with a maximum total fee of $1,000 per dwelling unit during participation in the Alternative Enforcement Program.

(3) For each inspection based upon a complaint that results in issuance of a class B or class C violation: $200 per inspection.

(4) For each reinspection pursuant to a certification of correction of violation(s) submitted to the Department, where the Department finds that one or more violations have not been corrected: $100 per reinspection per building.

(b) All fees imposed pursuant to this section that remain unpaid by the owner shall constitute a debt recoverable from the owner and a lien upon the building and lot, and upon the rents and other income thereof. The provisions of article eight of subchapter five of the Housing Maintenance Code shall govern the effect and enforcement of such debt

and lien.

HISTORICAL NOTE

Section added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. [See Chapter 36 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 36 added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. Note: Statement of Basis and Purpose.

The rules are intended to implement Local Law 29 of 2007. The law establishes an Alternative Enforcement Program under which the Department of Housing Preservation and Development will identify distressed buildings for participation in the Program, monitor progress toward correction of Housing Maintenance Code violations, or undertake correction of the violations itself. The rules set forth the process for owners to request reinspection by the Department for the purpose of dismissing corrected violations from the records of the Department, so that a building that has been repaired in accordance with the standards established in the law may be discharged from the Program. The rules also establish fees for the various actions to be undertaken by the Department under the Program, as authorized by the law.

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28 RCNY 36-04

RULES OF THE CITY OF NEW YORK

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CHAPTER 36 ALTERNATIVE ENFORCEMENT PROGRAM*1

§36-04 Education Course.

An owner or managing agent or other designated representative of a building which is the subject of an order by the Department pursuant to subdivision k of §27-2153 of the Housing Maintenance Code, shall be required to complete a course of training relating to building operation and maintenance, approved by the Department, prior to discharge of the building from the Alternative Enforcement Program. The charge for participation in such course shall be $300 for each participant. Such charge shall be paid prior to commencement of participation in such course.

HISTORICAL NOTE

Section added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. [See Chapter 36 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 36 added City Record Sept. 25, 2007 §1, eff. Oct. 25, 2007. Note: Statement of Basis and Purpose.

The rules are intended to implement Local Law 29 of 2007. The law establishes an Alternative Enforcement Program under which the Department of Housing Preservation and Development will identify

distressed buildings for participation in the Program, monitor progress toward correction of Housing Maintenance Code violations, or undertake correction of the violations itself. The rules set forth the process for owners to request reinspection by the Department for the purpose of dismissing corrected violations from the records of the Department, so that a building that has been repaired in accordance with the standards established in the law may be discharged from the Program. The rules also establish fees for the various actions to be undertaken by the Department under the Program, as authorized by the law.

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28 RCNY 37-01 [Fees

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 37 FEES FOR ADMINISTRATION OF LOAN PROGRAMS AND CERTAIN OTHER MUNICIPALITY-AIDED PROJECTS*1

§37-01 [Fees Authorized.]

HPD shall be authorized to charge and collect the fees set forth in this chapter.

HISTORICAL NOTE

Section added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See Chapter 37 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. Note: Statement of Basis and Purpose.

Pursuant to New York City Charter §1802 and various federal and state statutes, the Department of Housing Preservation and Development (HPD), is empowered to perform a broad range of functions relating to both private and City-owned real property. The proposed rules set forth fees that may be charged and collected by HPD for its administrative costs in connection with performing such functions. The rules provide for fees for review by HPD of certificates of incorporation, for appraisals, for preparing or renewing license agreements for

short-term leases of City-owned property, and for refinancing mortgages.

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28 RCNY 37-02

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 37 FEES FOR ADMINISTRATION OF LOAN PROGRAMS AND CERTAIN OTHER MUNICIPALITY-AIDED PROJECTS*1

§37-02 Definitions.

For purposes of this chapter:

(a) Appraisal Fee. "Appraisal Fee" shall mean the amount charged to a grantee, borrower, or recipient for HPD's administrative costs in connection with a Simple Appraisal or a Complex Appraisal.

(b) Certificate of Incorporation Fee. "Certificate of Incorporation Fee" shall mean the amount charged to an applicant for HPD's administrative costs in connection with the review of the formation or dissolution of a housing development fund corporation pursuant to Article XI of the Private Housing Finance Law or any amendment to the certificate of incorporation of a housing development fund corporation.

(c) City-owned Property. "City-owned Property" shall mean real property title to which is held by the City of New York.

(d) Complex Appraisal. "Complex Appraisal" shall mean an investigation by an appraiser to estimate the value of a property that is the basis of underwriting of a loan or grant or that will be conveyed from City to private ownership where such property consists of:

(1) six or more tax lots consisting entirely of vacant land, for which the valuation can be made solely based upon available comparable sales data; or

(2) any improved residential property consisting of four or more class A units; or

(3) any improved property consisting of a combination of commercial and residential uses; or

(4) any property consisting of a combination of vacant and improved land; or

(5) any other complex development project consisting of a combination of uses.

(e) HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.

(f) License Agreement Fee. "License Agreement Fee" shall mean the amount charged to an applicant for HPD's administrative costs in connection with preparing each license agreement or renewal thereof for short-term use of City-owned property. Such fee shall not be deemed to be a rental or use and occupancy charge.

(g) Mortgage Refinance Fee. "Mortgage Refinance Fee" shall mean the amount charged to a grantee, borrower, or recipient for HPD's administrative costs in connection with processing requests to subordinate, satisfy or otherwise modify HPD debt.

(h) Simple Appraisal. "Simple Appraisal" shall mean an investigation by an appraiser to estimate the value of a property that is the basis of underwriting of a loan or grant or that will be conveyed from City to private ownership where such property consists of:

(1) five or fewer tax lots consisting entirely of vacant land, for which the valuation can be made solely based upon available comparable sales data; or

(2) any improved residential property consisting of not more than three class A residential units for which the valuation can be made solely based upon available comparable sales data.

HISTORICAL NOTE

Section added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See Chapter 37 footnote]

Subd. (b) amended City Record May 11, 2009 §1, eff. June 10, 2009. [See Note 1]

Subd. (g) amended City Record May 11, 2009 §1, eff. June 10, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 11, 2009:

Pursuant to New York City Charter §1802 and various federal and state statutes, the Department of Housing Preservation and Development (HPD), is empowered to perform a broad range of functions relating to both private and City-owned real property. HPD is authorized to charge and collect fees in relation to such functions. The rule clarifies definitions for two of the fees. It amends the definition of the mortgage refinancing fee to clarify the intent to also charge for processing requests to satisfy or otherwise modify HPD debt. The rule also amends the definition of the certificate of incorporation fee to clarify the intent to also charge for reviewing dissolutions of housing development fund corporations and amendments to certificates of incorporation.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. Note: Statement of Basis and Purpose.

Pursuant to New York City Charter §1802 and various federal and state statutes, the Department of Housing Preservation and Development (HPD), is empowered to perform a broad range of functions relating to both private and City-owned real property. The proposed rules set forth fees that may be charged and collected by HPD for its administrative costs in connection with performing such functions. The rules provide for fees for review by HPD of certificates of incorporation, for appraisals, for preparing or renewing license agreements for short-term leases of City-owned property, and for refinancing mortgages.

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28 RCNY 37-03

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 37 FEES FOR ADMINISTRATION OF LOAN PROGRAMS AND CERTAIN OTHER MUNICIPALITY-AIDED PROJECTS*1

§37-03 Amount of Fee.

The amount of each fee authorized under this chapter shall be as follows:

(a) Appraisal Fee. HPD may charge an Appraisal Fee in the amount of two thousand five hundred dollars ($2,500) for each Simple Appraisal, and in the amount of three thousand dollars ($3,000) for each Complex Appraisal.

(b) Certificate of Incorporation Fee. HPD may charge a Certificate of Incorporation fee in the amount of two hundred and fifty dollars ($250).

(c) License Agreement Fee. HPD may charge a License Agreement Fee in the amount of one hundred dollars ($100).

(d) Mortgage Refinance Fee. HPD may charge a Mortgage Refinance Fee in the amount of two hundred dollars ($200).

HISTORICAL NOTE

Section added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See Chapter 37 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. Note: Statement of Basis and Purpose.

Pursuant to New York City Charter §1802 and various federal and state statutes, the Department of Housing Preservation and Development (HPD), is empowered to perform a broad range of functions relating to both private and City-owned real property. The proposed rules set forth fees that may be charged and collected by HPD for its administrative costs in connection with performing such functions. The rules provide for fees for review by HPD of certificates of incorporation, for appraisals, for preparing or renewing license agreements for short-term leases of City-owned property, and for refinancing mortgages.

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28 RCNY 37-04 [Fees

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 37 FEES FOR ADMINISTRATION OF LOAN PROGRAMS AND CERTAIN OTHER MUNICIPALITY-AIDED PROJECTS*1

§37-04 [Fees Due and Payable.]

All Fees Authorized Pursuant to this Chapter Shall be Due and Payable as Directed by HPD. The fees set forth in this chapter shall be in addition to any other fees authorized under any other law or rules.

HISTORICAL NOTE

Section added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. [See Chapter 37 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Jan. 14, 2009 §1, eff. Feb. 13, 2009. Note: Statement of Basis and Purpose.

Pursuant to New York City Charter §1802 and various federal and state statutes, the Department of Housing Preservation and Development (HPD), is empowered to perform a broad range of functions relating to both private and City-owned real property. The proposed rules set forth fees that may be charged and collected by HPD for its administrative costs in connection with performing such functions. The rules provide for fees for

review by HPD of certificates of incorporation, for appraisals, for preparing or renewing license agreements for short-term leases of City-owned property, and for refinancing mortgages.

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28 RCNY 38-01

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 38 CAMPAIGN FINANCE ACT IMPLEMENTATION*1

§38-01 Definitions.

As used in this chapter, the following terms shall have the following meaning:

(a) Act. "Act" shall mean the New York City Campaign Finance Act, §§3-701 through 3-720 of the New York City Administrative Code.

(b) BCL. "BCL" shall mean the Business Corporation Law.

(c) City. "City" shall mean the City of New York.

(d) Discretionary Tax Benefit. "Discretionary Tax Benefit" shall mean an exemption from or abatement of real property taxation approved by the City Council, including, but not limited to, any such exemption or abatement pursuant to PHFL Articles II, V, and XI, GML Article 16, or RPTL §422.

(e) EDC. "EDC" shall mean the New York City Economic Development Corporation.

(f) GML. "GML" shall mean the General Municipal Law.

(g) HDC. "HDC" shall mean the New York City Housing Development Corporation.

(h) HPD. "HPD" shall mean the City's Department of Housing Preservation and Development.

(i) PHFL. "PHFL" shall mean the Private Housing Finance Law.

(j) RPTL. "RPTL" shall mean the Real Property Tax Law.

(k) UDAAP. "UDAAP" shall mean Article 16 of the General Municipal Law.

(l) ULURP. "ULURP" shall mean the Uniform Land Use Review Procedure set forth in §§197-c and 197-d of the New York City Charter.

(m) Urban Renewal Law. "Urban Renewal Law" shall mean Article 15 of the General Municipal Law.

(n) Zoning Resolution. "Zoning Resolution" shall mean the New York City Zoning Resolution.

HISTORICAL NOTE

Section added City Record Sept. 22, 2008 §1, eff. Oct. 22, 2008. [See Chapter 38 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 2008. Note Statement of Basis and Purpose:

The Campaign Finance Act ("Act") authorizes the Department of Housing Preservation and Development to promulgate rules setting forth which categories of actions, transactions and agreements providing affordable housing do, and do not, constitute business dealings with the City of New York for purposes of the Act. Entities engaging in actions, transactions and agreements that do not constitute business dealings with the City would not be subject to disclosure requirements and the campaign contribution limitations set forth in the Act.

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Rules of the City of New York

***** Current through December 2009 ****

28 RCNY 38-02 [Actions,

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 38 CAMPAIGN FINANCE ACT IMPLEMENTATION*1

§38-02 [Actions, Transactions and Agreements for Providing Affordable Housing Which Constitute "Business Dealings with the City".]**2

(a) Except as otherwise provided in the Act and §38-03 of these rules, actions, transactions and agreements for providing affordable housing shall constitute "business dealings with the city" for purposes of the Act where any such action, transaction or agreement involves:

(1) the disposition of City-owned real property; or

(2) a loan or grant by HPD or HDC, except as otherwise provided in §38-03 of these rules; or

(3) any Discretionary Tax Benefit; or

(4) any discretionary approval following a public hearing by either the City Council or the Office of the Mayor, including, but not limited to, any approval pursuant to ULURP, UDAAP, the Urban Renewal Law, the PHFL or the Zoning Resolution; or

(5) the allocation of federal low income housing tax credits by HPD pursuant to Internal Revenue Code §42; or

(6) the execution of an agreement with HPD regarding the creation of inclusionary housing in accordance with any applicable provision of the Zoning Resolution.

(b) The actions, transactions or agreements set forth in subdivision a of this section shall only constitute business dealings with the City during the following periods:

(1) For an action, transaction or agreement that involves the disposition of City-owned real property, the period commencing on the date that the proposed sponsor submits or makes a proposal to HPD, HDC or EDC to acquire such property and ending as provided in paragraph b of subdivision 18 of §3-702 of the Act.

(2) For an action, transaction or agreement that involves a loan or grant by HPD or HDC, the period commencing on the date that the proposed sponsor makes or submits an application or proposal to HPD or HDC for such loan or grant and ending one year after the date of construction completion or the final advance or disbursement of funds pursuant to such loan or grant.

(3) For an action, transaction or agreement that involves a Discretionary Tax Benefit, the period commencing with the submission of an application for such exemption or abatement and ending one year after the date of approval of such exemption or abatement by the City Council.

(4) For an action, transaction or agreement that requires any discretionary approval following a public hearing by either the City Council or the Office of the Mayor, including, but not limited to, any approval pursuant to ULURP, UDAAP, the Urban Renewal Law, the PHFL or the Zoning Resolution, but not including the approval of a Discretionary Tax Benefit by the City Council, the period commencing with negotiations and ending as provided in paragraph b of subdivision 18 of §3-702 of the Act, where applicable, or 120 days after approval by the City Council or the Office of the Mayor.

(5) For an action, transaction or agreement that involves the allocation of federal low income housing tax credits by HPD, the period commencing with the submission of an application for such tax credits to HPD and ending one year after the date of issuance by HPD of the Low Income Housing Credit Allocation and Certification form to the applicant.

(6) For an action, transaction or agreement that involves the execution of an agreement with HPD regarding the creation of inclusionary housing in accordance with any applicable provision of the Zoning Resolution, the period commencing with the submission of an application to HPD for such agreement, and ending one year after the date of execution by HPD of a certificate of completion for the inclusionary housing dwelling units.

(7) For an action, transaction or agreement that involves more than one of the actions, transactions and agreements set forth in subparagraphs one through six of this subdivision, the period commencing on the earliest date provided in such subparagraphs and ending on the latest date provided in such subparagraphs.

(8) Notwithstanding anything to the contrary contained herein, for any proposed action or transaction that HPD determines will not be consummated or for any proposed agreement that HPD determines will not be executed, the end date shall be one year after the date upon which HPD notifies the Office of the Mayor of such determination.

HISTORICAL NOTE

Section added City Record Sept. 22, 2008 §1, eff. Oct. 22, 2008. [See Chapter 38 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 2008. Note Statement of Basis and Purpose:

The Campaign Finance Act ("Act") authorizes the Department of Housing Preservation and Development to promulgate rules setting forth which categories of actions, transactions and agreements providing affordable housing do, and do not, constitute business dealings with the City of New York for purposes of the Act. Entities

engaging in actions, transactions and agreements that do not constitute business dealings with the City would not be subject to disclosure requirements and the campaign contribution limitations set forth in the Act.
2

[Footnote 2]: ** Section heading provided by editor.

28 RCNY 38-03 [Actions,

RULES OF THE CITY OF NEW YORK

Title 28 Housing Preservation and Development

CHAPTER 38 CAMPAIGN FINANCE ACT IMPLEMENTATION*1

§38-03 [Actions, Transactions and Agreements for Providing Affordable Housing Which Do Not Constitute "Business Dealings with the City".]*3

(a) Notwithstanding any other provision of these rules to the contrary, actions, transactions and agreements for providing affordable housing shall not constitute "business dealings with the city" as defined in subdivision 18 of §3-702 of the Act where any such action, transaction or agreement:

(1) is entered into with a housing development fund company that is formed as a cooperative corporation pursuant to PHFL Article XI and the Business Corporation Law, including any discretionary tax benefit granted to such company; or

(2) is entered into with a limited profit housing company formed pursuant to PHFL Article II that is organized and operated as a mutual company; or

(3) involves solely a mortgage modification; or

(4) involves solely the subordination, satisfaction, or assignment of a mortgage; or

(5) relates to approval of a certificate of incorporation for a housing development fund company; or

(6) involves solely a license agreement or lease for use of City-owned property for nominal consideration or no consideration; or

(7) is entered into by an individual or family in connection with the purchase of a one- to four-unit home, a

condominium dwelling unit, or the shares attributable to a cooperative dwelling unit under a housing program administered by HPD; or

(8) involves a loan pursuant to PHFL §8-b; or

(9) involves a loan or grant the sole purpose of which is the remediation of lead-based paint hazards; or

(10) involves exemption or abatement of real property taxes pursuant to RPTL §§420-a, 420-c, 421-a, 421-b, 488-a, or 489; or

(11) involves a change in ownership of property that is the subject of an action, transaction or agreement for providing affordable housing and that constituted "business dealings with the city" pursuant to subdivision a of §38-02 of these rules; or

(12) involves an approval or consent granted pursuant to the provisions of an agreement with HPD, EDC or HDC providing for such approval or consent; or

(13) involves the conveyance of property pursuant to New York City Administrative Code §11-412.1; or

(14) involves provision of relocation services pursuant to Administrative Code §26-301 or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC §§4601 et seq.); or

(15) is entered into for the purpose of settlement of litigation to which the City of New York, HDC, or EDC is a party; or

(16) is not listed in §38-02 of these rules.

HISTORICAL NOTE

Section added City Record Sept. 22, 2008 §1, eff. Oct. 22, 2008. [See Chapter 38 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Sept. 22, 2008. Note Statement of Basis and Purpose:

The Campaign Finance Act ("Act") authorizes the Department of Housing Preservation and Development to promulgate rules setting forth which categories of actions, transactions and agreements providing affordable housing do, and do not, constitute business dealings with the City of New York for purposes of the Act. Entities engaging in actions, transactions and agreements that do not constitute business dealings with the City would not be subject to disclosure requirements and the campaign contribution limitations set forth in the Act.

3

[Footnote 3]: * Section heading provided by editor.

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-01 Organization and Voting.

(a) **Organization.** The Loft Board (hereinafter referred to as "the Board") shall consist of no fewer than 5 and no more than 9 members, including an impartial Chair and one representative of loft manufacturing interests, one representative of the real estate industry and one representative of loft residential tenants, respectively. The other members, representing the public, shall include the Commissioner of the Department of Buildings, serving **ex officio** and may include one other member serving **ex officio.** The Board may conduct business with fewer than the full complement of its appointed members when one or more vacancies are created by the death, resignation, or inability of a member or members to continue serving on the Board for any reason, until the appointment of replacement(s) by the Mayor.

(b) **Voting.** Each member of the Board shall have one vote. No members, except those serving **ex officio,** may vote by proxy or have another person serve on the Board in their absence. Representatives of the special interest groups, specified in §1-01(a), **supra,** may in their absence, designate substitutes to participate in discussions at the Board meetings, when the Board, by vote requests such participation. Such designated substitutes may participate only to the extent permitted by the Board and shall not have the right to vote.

(c) **Quorum.** A majority of the members of the Board constitutes a quorum for the transaction of business. Board action may be taken by affirmative vote of the majority of the members of the Board when a quorum is present. No action may be taken without at least 4 affirmative votes.

HISTORICAL NOTE

Section amended City Record Apr. 10, 1991 eff. May 10, 1991.

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-02 Rules and Regulations, Method of Adoption.

The Board shall issue rules and regulations governing its procedures and the exercise of its powers under Article 7-C of the New York State Multiple Dwelling Law and Executive Order No. 66 of Mayor Edward I. Koch. Loft Board staff shall be responsible for drafting rules, regulations, guidelines and procedures at the direction of the Chair or by vote of the Board. In addition, draft rules, regulations, guidelines and procedures may be presented to the Board for consideration by Board members or other interested parties. Loft Board staff shall comply with §1043 of the New York City Charter in the promulgation of all rules and regulations. All draft rules and regulations proposed shall be submitted to the Board for comment and review before they are published for comment. Draft rules and regulations may be modified at the direction of the Chair or by vote of the Board. In case of disagreement between the Chair and at least four (4) members of the Board, alternative versions may be published. Upon vote of the Board, rules and regulations shall be adopted and ordered into effect following periods for public notification and comment, mandated by §1043 of the New York City Charter, and hearings when required by §282(d) of Article 7-C of the New York State Multiple Dwelling Law, except that emergency regulations or guidelines may be adopted without prior public notification and comment.

Following consideration of comments received and public testimony, the Board may modify or amend the proposed rules or regulations in response thereto.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-03 Meetings.

(a) The Board shall meet in regularly scheduled sessions. It may also meet in special sessions at the request of the Chair or by affirmative vote of 5 members.

(b) The order of business at all meetings shall be determined by the Chairman, but such order may be changed by vote of the Board. The Chairman will place on the agenda any matter at the request of at least three (3) members, with the Chair determining when such matter is to be placed on the agenda.

(c) All meetings and hearings will be conducted in accordance with Robert's Rules of Order unless such rules are in conflict with anything stated herein, in which case these Regulations shall control.

(d) The Board may conduct public hearings on any matter within its purview under Article 7-C of the New York State Multiple Dwelling Law, at the direction of the Chair or by vote of the Board.

(e) All regular and special sessions shall be open to the public. Loft Board staff shall notify the public of such sessions, in accordance with §95 **et seq.** of the New York State Public Officers Law. Members of the public are invited to observe the Board's deliberations at all regular and special sessions, but shall be permitted to speak or otherwise participate only in those sessions designated as public hearings. At such hearings, any member of the public shall be permitted to speak for 3 minutes on the subject before the Board. The time limit on any speaker may be modified or waived at the request of any Board member.

(f) The Board may meet in Executive Session by majority vote of its entire membership. This vote shall be taken at

a public session, on a motion describing in general terms the subject matter to be considered at the Executive Session proposed. Executive Sessions may be called for discussions of proposed, pending, or current litigation, including requests for intervention by the Board in particular cases, for deliberation in quasi-judicial proceedings and for any other purposes allowed by law. Such sessions shall be closed to the public and convened and conducted in accordance with §100 of the New York State Public Officers Law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-04 Minutes and Transcripts.

(a) Minutes shall be taken at every regular session of the Board and shall be made available to Board members and the public no later than two weeks from the date of a session.

(b) Minutes shall be taken of every Executive Session of the Board and shall be made available to Board members and the public no later than one week from the date of a session, provided, however, that the summaries of actions reported in such minutes need not include any matter which is not required to be made public by the Freedom of Information Law, Article 6 of the New York State Public Officers Law.

(c) All public hearings shall be electronically recorded by the Board or by a recording service under the Board's direction. Copies of such recordings or transcripts thereof shall be available at the prevailing rate to the public or to Board members, except that such recordings or transcripts may be made available without charge to Board members at the direction of the Chair or by vote of the Board.

(d) An electronic recording of any open session of the Board will be made only if ordered in advance of such session at the direction of the Chair or by vote of the Board. Copies of such recordings or transcripts thereof shall be available under the same conditions set forth in §1-04(c), supra.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-05 Public Access to Minutes and Records/Procedures.

Minutes of open and Executive sessions and all records of the Board available under Article 6 of the New York State Public Officers Law (The Freedom of Information Law) shall be available for public inspection, by mail or by appointment upon prior written request, at the offices of the New York City Loft Board, weekdays, between the hours of 10 a.m. and 4 p.m. and during other business hours of the office. Copies of all such minutes and records may be obtained by the public at a charge of 25 per page no bigger than 9 x 14 inches. Requests for inspection or for copies of materials available under the Freedom of Information Law should be addressed to: Records Access Officer, New York City Loft Board.

When the Records Access Officer denies access to records in whole or in part, such determination may be appealed within 30 days by written application to: Records Access Officer, New York City Loft Board.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-06 Applications to the Board.

(a) All applications to the Board concerning coverage, hardship claims, rent adjustments, fixture fee disputes, exemption, and any other matters within the purview of the Board under Article 7C of the Multiple Dwelling Law, shall be submitted at the Office of the Loft Board, on such forms as may be prescribed by the Loft Board together with such additional information as may be required. The applicant shall submit 12 copies of the application, plus one for each affected party, and shall be required to list, to the best of his or her knowledge, all affected parties when filing his or her application. Affected parties for coverage and hardship claims shall include: owners; all tenants of record, including residential, commercial and manufacturing tenants; and all occupants of the building in question, if different from tenants of record. Affected parties for harassment claims shall include the owner and all residential tenants or occupants of the building in question. For all other categories of applications, affected parties shall include the owner and such occupants as are necessary for a final resolution of the claims asserted in the application.

(b) The staff of the Loft Board shall serve all affected parties with a copy of the application by regular mail, retaining records attesting to such services. Instructions on the procedures for filing an answer shall be enclosed in each mailing. Service shall be deemed to be completed five days after the date of mailing.

(c) A party who has been served with a copy of an application shall have 30 days from the date on which service of the application was completed to file an answer with the Board, with proof of service upon the applicant. The answer shall contain facts and arguments relevant to the issues raised in the application.

(d) Service of the answer upon the applicant may be done in person or by mail at the address of the applicant specified in the application or by facsimile transmission to the applicant at a fax number designated by the applicant or

the applicant's attorney. If service of the answer upon the applicant is accomplished by facsimile transmission, service of the answer will be deemed complete on the day of the facsimile transmission when the respondent mails a second copy of the answer to the applicant or his or her attorney within 3 days of date of the facsimile transmission.

(e) The original answer and any accompanying documents may be submitted to the board on the date that the answer is due either personally, by mail or by facsimile transmission at the fax number designated for the Board.

(f) The answering party shall also submit to the Board 12 additional copies of the answer and any accompanying documents with proof of service of the answer upon the applicant. If the answer and any accompanying documentation is submitted to the Board by facsimile transmission, service of the answer will be deemed complete as of the date of facsimile transmission if the original answer, accompanying documents and proof of service required herein are submitted to the Board personally within 3 days of the date of the facsimile transmission or by mail, postmarked within 3 days of the date of the facsimile transmission. Failure to submit the original answer, any accompanying documents and proof of service to the Board as required herein following facsimile transmission of such documents will constitute a default and the respondent will then be subject to the procedures outlined in §21 of these rules.

(g) All applications, answers and other proofs requested by the staff or the Board shall be verified or affirmed. Whenever the Board Rules Relating to Loft Board Procedures for Conducting Business and Considering Applications or its subject matter rules require that a document be filed with the Board, it is required that the document be received by the Board. If the Board's Rules of Internal Board Procedures or its subject matter rules require that a document be filed with the Board within a prescribed time period, that document must be received by the Board within the specified time period.

(h) Any affected party may submit amended pleadings as of right up to and including the date of the first scheduled conference in the case. The hearing examiner will afford the applicant or respondent the opportunity to respond to amended pleadings submitted on the date of the first scheduled conference. Thereafter, amended pleadings may be submitted only if permitted by the hearing examiner assigned to the case.

(i) (1) If a respondent fails to file an answer to any application within 30 days after the date on which service of the application is completed, the respondent will be in default and will be barred from filing an answer at a later date or offering any evidence in its defense. The respondent's defensive case will not be heard as a result of its failure to file an answer. The hearing examiner assigned to the case will advise the respondent in writing of the default and that an inquest will be held unless the respondent moves for relief from the default as specified in paragraph 2 below. This provision will not apply where an extension to file an answer has been granted before the expiration of the 30-day period.

(2) A party who is barred from filing an answer will have 30 days after the date of mailing of the default determination, to move for relief from the default determination and establish before the hearing examiner that good cause existed for the failure to file an answer. Any motion for relief from a default determination must be received by the hearing examiner, with proof of service to all affected parties, within the specified time period. Good cause can be established by proof of a reasonable explanation for failure to file an answer and a summary of the defense to be presented, which establishes it not to be frivolous. Where the respondent fails to file an answer and no timely motion to open the default determination has been received by the hearing examiner, the case will proceed and respondent will not be permitted to file an answer or present its defensive case.

(3) Following the issuance of a final Board determination, a respondent who has not moved for relief from a default judgment as set forth in paragraph 2 above and is aggrieved by the default determination may move to reopen the proceeding by filing an application for reconsideration with the Board within 30 days of the date of mailing of the final determination. Such application will be granted only if the Board, in its discretion, finds that the respondent has established (i) extraordinary circumstances for the failure to file the answer and (ii) substantial likelihood of success on the merits.

(4) In a case in which the respondent is barred from filing an answer, the applicant must present a **prima facie** case before the hearing examiner demonstrating entitlement to the relief sought in the application.

(j) (1) The staff of the Board shall investigate applications and may conduct informal conferences, upon 15 days notice to the applicant and all parties who have filed an answer, to settle disputes or clarify issues. As part of its investigation, the staff may request that the parties furnish additional evidence or memoranda relevant to the application and request appropriate books and records relevant to the issues in dispute.

(2) (i) All parties shall be afforded an opportunity for a hearing within a reasonable time, upon 15 days notice to the applicant and all parties who have filed an answer. The notice of hearing shall include a statement of the nature of the proceeding and time and place it will be held; the legal authority and jurisdiction under which the hearing is to be held, and a reference to the particular sections of law and rules involved; and a short and plain statement of the matters to be adjudicated.

(ii) The Executive Director shall determine whether the hearing shall be conducted before a staff hearing examiner or before an Administrative Law Judge at the Office of Administrative Trials and Hearings (OATH). All such hearings shall be conducted in accordance with procedures set forth in this section. Where a hearing is conducted at OATH, the Administrative Law Judge shall submit recommended findings of fact and a recommended decision to the Loft Board, which shall make the final findings of fact and decision. Where a hearing is conducted by a staff hearing examiner, such hearing will be conducted by a staff hearing examiner assigned solely to adjudicative duties, who may take testimony under oath and consider affidavits and other proofs. Formal rules of evidence shall not apply to such hearings, except that effect shall be given to the rules of privilege recognized by law. All such hearings shall be electronically recorded, and a duplication of the tape recording or transcript of the proceedings shall be available to any party upon application and agreement to pay the fee assessed for the duplication. At the hearing the parties shall be afforded the opportunity to be represented by counsel, to issue subpoenas or to request that a subpoena be issued, to call witnesses, to cross-examine opposing witnesses and to present oral and written arguments on the law and facts.

(3) Parties shall be advised of their right to representation by counsel at all stages of the administrative proceedings and of their right to cross-examine witnesses at hearings.

(4) When a party fails to furnish documents requested by the staff or the Loft Board or fails to submit to examination or cross-examination, inferences adverse to his or her position may be drawn by the fact-finder from such refusal.

(5) Where informal conferences conducted by the staff with the affected parties result in the resolution of disputes to the mutual satisfaction of the parties, a stipulation of agreement shall be entered into by the parties and reviewed by the Executive Director. A summary report of such matters including the type of application, the issues presented and the resolution reached shall be made to the Board which may direct that a particular matter be reopened and remanded for further investigation. Upon approval by the Board of matters on summary calendar, such cases shall be deemed closed.

(k) (1) Parties may consent to adjourn conferences or hearings with the approval of the hearing examiner or Administrative Law Judge assigned to the case. No more than 2 consecutive consent adjournments will be permitted, except as noted below.

(2) Additional requests for adjournments must be made in writing to the hearing examiner or Administrative Law Judge assigned to the case, with notice to all affected parties, at least 2 days before the date of the scheduled conference or hearing. Such adjournment will be granted at the sole discretion of the hearing examiner or Administrative Law Judge.

(3) When any party adjourns more than two consecutive schedule conferences or hearings, the hearing examiner or Administrative Law Judge may direct that the next scheduled hearing or conference be marked final. This notice shall be sent to the parties in writing.

(4) If an applicant does not appear for a conference or hearing which has been marked final against him/her, the application will be dismissed for failure to prosecute unless the hearing examiner or Administrative Law Judge approves a written request for its reinstatement which must be made within 30 days upon a showing of extraordinary circumstances which prevented the applicant's attendance at the hearing or conference.

(5) If a respondent does not appear for a conference or hearing marked final against him/her, the answer will be stricken and the respondent will be barred from presenting its defensive case unless the hearing examiner or Administrative Law Judge approves a written request for its reinstatement which must be made within 30 days upon a showing of extraordinary circumstances which prevented the respondent's attendance at the hearing or conference.

(6) In a case in which the respondent is barred from filing an answer and presenting its defensive case, the applicant must then present a **prima facie** case at an inquest before a hearing examiner or Administrative Law Judge, demonstrating entitlement to the relief sought in the application.

(l) If an applicant fails to appear at a hearing on due notice which has not been marked final against the applicant, his or her application shall be dismissed without prejudice. If a respondent fails to appear for a hearing on due notice which has not been marked final against the respondent, the staff shall conduct, through one of its hearing examiners, an inquest on the application. All such inquests shall be electronically recorded. Where a respondent fails to appear for a hearing and an inquest is held the conclusions of which are adverse to his or her contentions, the respondent may move to re-instate the matter within 30 days of the date of the mailing of the final determination, upon good cause shown. Good cause can be established by proof of a reasonable explanation for failure to appear on the date of the hearing and a summary of the defense to be presented, which establishes it not to be frivolous. After 30 days, any motion to reopen will be denied as untimely, except that the Executive Director may grant such motion, in his discretion, if extraordinary circumstances for the non-appearance and further delay can be shown, and a substantial likelihood of success on the merits can be shown.

(m) The staff of the Board shall prepare written reports of all hearings and inquests conducted by staff hearing examiners and shall submit such reports to the Board. These reports shall be based exclusively on the administrative record of the case. They shall include:

(1) a description of the application, and the names of the parties, their counsel and other persons affected by the application;

(2) a summary of the facts disputed and the facts found during any investigation and of testimony and other proofs taken at the hearing or inquest;

(3) copies of the application and of all affidavits, memoranda, and briefs submitted by the parties;

(4) a staff recommendation to the Board regarding disposition of the application, with a summary of the factual and legal bases for such recommendation. A copy of all written recommended decisions shall be mailed forthwith to each party.

(n) All final determinations regarding the disposition of any application brought to a hearing or inquest shall be made by the Board. The Board may adopt, reject, remand, defer or modify the disposition recommended by the staff or Administrative Law Judge employed by OATH. Pending its final determination, the Board or the Chair may direct the staff to provide it with additional information regarding the application, with copies of any relevant documents not included in the staff report, and with a transcript of the hearing or inquest. When a final decision is entered, it shall be mailed forthwith to each party.

(o) The Board may, by a vote of a majority of the Board as specified in paragraph 3 of these rules, conduct a **de novo** hearing or inquest on an application. The provisions on the taking of evidence, set forth in §1-06(e), **supra,** shall apply to hearings conducted by the Board. All such proceedings shall be electronically recorded.

(p) The report and recommendation of the staff or administrative law judge on each application shall be promptly referred to the Loft Board. A copy of the Board's determination, including an order and any supporting opinion shall be mailed to the applicant and all parties who filed an answer. A determination of the Board shall constitute a final agency determination for purposes of commencement of the running of the statute of limitations for the filing of an Article 78 C.P.L.R. petition challenging the Board's determination, unless a timely application for reconsideration has been filed (see §1-07 of these rules).

HISTORICAL NOTE

Section amended City Record Dec. 23, 1994 eff. Jan. 22, 1995.

Section amended City Record Apr. 10, 1991 eff. May 10, 1991.

Section in original publication July 1, 1991.

Subd. (p) amended City Record July 15, 1998 eff. Aug. 14, 1998.

CASE AND ADMINISTRATIVE NOTES

¶ 1. In 1995, IMD owner filed an application for an extension of legalization deadlines then in effect. Upon enactment of 1996 amendments to Loft Law, new deadlines were adopted, but Loft Board continued to process the application as one for a "retroactive extension" of the pre-1996 deadlines. Pursuant to section 1-06(h), amendment of the application was permitted to add a request for an extension of the 1996 deadline to obtain a building permit. **Matter of Ken-Zen Institute, Ltd.,** OATH Index No. 897/98 (Feb. 24, 1998), **aff'd in part,** Loft Bd. Order No. 2235 (Mar. 24, 1998).

¶ 2. Loft Board rules, not OATH rules or the CPLR, govern an application to vacate a default in a Loft Board proceeding. **Matter of Slavis,** OATH Index No. 993/97 (Jan. 27, 1998), **aff'd,** Loft Bd. Order No. 2233 (Mar. 24, 1998).

¶ 3. Under this section, OATH lacks discretion to grant an untimely application to vacate a default. The defaulting party's remedy, if aggrieved by any subsequent final determination issued by the Loft Board, is to make an application for reconsideration to the Board pursuant to section 1-06(i)(3) of the Board's rules. **Matter of Slavis,** OATH Index No. 993/97 (Jan. 27, 1998), **aff'd,** Loft Bd. Order No. 2233 (Mar. 24, 1998).

¶ 4. Where owner failed to answer tenant's application, was provided with notice and opportunity to make a motion to vacate this default and missed the deadline set forth in the notice by three weeks, the application to vacate was denied as untimely. **Matter of Slavis,** OATH Index No. 993/97 (Jan. 27, 1998), **aff'd,** Loft Bd. Order No. 2233 (Mar. 24, 1998).

¶ 5. Defaulting owner, who was represented by counsel and given notice and opportunities to move to be relieved from default and did not do so prior to rescheduled hearing date, was required to make a motion to be relieved from default. Mere appearance will not relieve a default. **Matter of Barth,** OATH Index Nos. 990-91/98 (June 5, 1998), **aff'd,** Loft Bd. Order No. 2283 (Sept. 24, 1998).

¶ 6. Application may be dismissed for failure to prosecute pursuant to subparagraph (k)(4) of this section where the applicant did not respond to two letters from the Loft Board asking for further information to support application. **Matter of Meltzer,** OATH Index No. 895/98 (Mar. 11, 1998), **aff'd,** Loft Bd. Order No. 2254 (May 28, 1998).

¶ 7. Pursuant to subparagraph (j)(2)(ii) of this section, the strict or formal rules of evidence do not apply to Loft Board hearings. Administrative law judge issued preliminary ruling from the bench that the Dead Man's Statute, CPLR section 4519, is inapplicable in a Loft Board hearing. Party's objection to receipt of testimony on that basis was deemed

waived where party did not avail himself of the opportunity to submit authority to the contrary. **Matter of Sultan,** OATH Index Nos. 1314-15/98, at 14, n. 1 (Aug. 18, 1998), **aff'd,** Loft Bd. Order No. 2323 (Oct. 27, 1998).

¶ 8. Pursuant to paragraph (l) of this section, non-compliance application is dismissed without prejudice upon the failure of all three applicants to appear for duly scheduled trial. **Matter of Puryear,** OATH Index No. 1645/98 (June 26, 1998), **aff'd,** Loft Bd. Order No. 2285 (Sept. 24, 1998).

¶ 9. Owner's default for failing to file a timely answer excused because the Loft Law had expired during the thirty-day period to answer. **Matter of Kasolapov**, OATH Index No. 271/00, mem. dec. (Sept. 17, 1999).

¶ 10. Motion to vacate default granted where movant's explanation for failing to answer-mail delivery failure-was unopposed and movant's defense to the applicant's overcharge claim was not frivolous. The movant challenged the applicant's right to claim damages by arguing that the applicant was not a subtenant but was merely a roommate of the subtenant. **Matter of Shannon**, OATH Index No. 1757/99, mem. dec. (Apr. 15, 1999).

¶ 11. Owner's motion to vacate default because its attorney was out of the country denied where it failed to set forth a summary of a non-frivolous defense to the application, as required by subparagraph (i)(2) of this section. **Matter of Bills**, OATH Index No. 921/99 (Apr. 12, 1998), **modified on penalty after supplemental report and recommendation**, Loft Bd. Order No. 2421 (June 25, 1999).

¶ 12. Tenants sought to include in their coverage proceeding a further hearing on the issue of whether the building was a single entity, or horizontal multiple dwelling under Loft Law. Owner moved to preclude relitigation of that issue in light of a prior ruling by a Loft Board hearing officer, based on written submissions and an inspection of the premises, that the premises constituted two distinct buildings for coverage purposes. Administrative law judge granted owner's motion to preclude further litigation of the horizontal multiple dwelling issue, finding that the parties had had a full and fair opportunity to "litigate" the issue previously before the Loft Board hearing officer, even though no evidentiary hearing was held since the right to an evidentiary hearing under Loft Board rule 1-06(j) is not absolute. No hearing is required in the absence of disputed material issues of fact. **Matter of South 11th Street Tenants' Association**, OATH Index Nos. 1242-44/96 (Mar. 30, 1999), **aff'd,** Loft Bd. Order No. 2397 (Apr. 29, 1999).

¶ 13. Administrative law judge denied owner's motion to vacate default in non-compliance proceeding where owner had not demonstrated a reasonable excuse for failing to answer. **Matter of Chapin,** OATH Index No. 275/00, mem. dec. (Apr. 27, 2000).

¶ 14. Owner's excuse for not answering petition rests on technical deficiency in service, "office failure," and assumption dispute had been resolved between the two tenants. Administrative law judge granted motion to vacate default in light of public policy favoring a party's participation in litigation and petitioner's consent. Loft Board reversed, holding that under rule 1-06(i), sole remedy was to make an application for reconsideration after the Loft Board issues its order. **Matter of Latin,** OATH Index No. 1110/00, mem. dec. (Feb. 15, 2000), **rev'd,** Loft Bd. Order No. 2555 (July 20, 2000).

¶ 15. Administrative law judge granted owner's application to vacate default. The Loft Board reversed that portion of the administrative law judge's report, holding that under 29 RCNY 1-06(i) the owner's application was untimely and must be denied; the owner's remedy is to apply for reconsideration after the Loft Board issues its order pursuant to 1-06(i)(3). **Matter of Schwartz,** OATH Index No. 272/00 (June 19, 2000), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2544 (July 20, 2000).

¶ 16. Loft Board rule 1-06(l) mandates dismissal of an application without prejudice where an applicant fails to appear at a hearing on due notice, which has not been marked final against the applicant. **Kamen v. Suraci,** OATH Index No. 2364/00 (Aug. 16, 2000), **aff'd,** Loft Bd. Order No. 2557 (Sept. 26, 2000).

¶ 17. Where ALJ was provided with Stipulation of Settlement of holdover proceeding between the same parties to a

coverage proceeding, in which applicant had sold his rights and agreed to move out, ALJ, after giving notice, dismissed the coverage petition with prejudice. **Matter of Abramson,** OATH Index No. 1197/01 (Jan. 16, 2001).

¶ 18. Where two tenants who filed answers failed to appear at a scheduled hearing, their rights to participate were foreclosed and requests dismissed pursuant to subsection (k)(4) of this section. **Matter of Lipton,** OATH Index Nos. 278-79/00 (Feb. 26, 2001).

¶ 19. Mailing of new notice of hearing and default, following the reopening of OATH's offices after temporary dislocation due to the September 11th attack at the World Trade Center, served to commence a new 30-day period in which respondent could move to vacate default pursuant to 29 RCNY § 1-06(i)(2). Further, it is the public policy of New York State that a party should not be prejudiced by the running of a statute of limitations in the period following the disaster at the World Trade Center. Executive Order Nos. 113.7 and 113.18; **see Ishay v. City of New York,** 178 F.Supp.2d 314 (E.D.N.Y. 2001). **Matter of Haley,** OATH Index No. 355/02, mem. dec. (Dec. 6, 2001).

¶ 20. Motion to vacate default pursuant to 29 RCNY § 1-06(i)(2) granted where substituted party defaulted because it never received copies of the notice and statement of charges and no showing has been made that allowing party to represent its interests in this matter would cause prejudice to any other party. **Loft Bd. v. 53 Downing Street, LLC,** OATH Index No. 2102/01, mem. dec. (Aug. 30, 2001).

¶ 21. Motion to vacate default deemed timely where copy of motion papers faxed to the trial judge were received within the extended deadline to file, even though original motion papers sent by mail were not received until the first business day after the extended deadline. **Loft Bd. v. 53 Downing Street, LLC,** OATH Index No. 2102/01, mem. dec. (Aug. 30, 2001).

¶ 22. Mailing of new notice of hearing and default, following the reopening of OATH's offices after temporary dislocation due to the September 11th attack at the World Trade Center, served to commence a new 30-day period in which respondent could move to vacate default pursuant to 29 RCNY § 1-06(i)(2). Further, it is the public policy of New York State that a party should not be prejudiced by the running of a statute of limitations in the period following the disaster at the World Trade Center. Executive Order Nos. 113.7 and 113.18; **see Ishay v. City of New York,** 178 F.Supp.2d 314 (E.D.N.Y. 2001). **Matter of Haley,** OATH Index No. 355/02, mem. dec. (Dec. 6, 2001).

¶ 23. Owner's request for an adjournment at time of trial to obtain a building permit was denied. Adjournment of trial may be granted only upon a showing of good cause by the party seeking the adjournment. **Matter of Buchen,** OATH Index Nos. 1132/98 & 105/99 (Mar. 21, 2002), **aff'd,** Loft Bd. Order No. 2725 (Apr. 18, 2002).

¶ 24. Pursuant to subsection (k)(4) of this section, tenant application for Loft Law coverage dismissed with prejudice for failure to prosecute when applicant failed to appear at the scheduled hearing, which had been adjourned several times and marked final. **Matter of Munzer,** OATH Index Nos. 2109-10/01 (May 13, 2002), **aff'd,** Loft Bd. Order No. 2743 (June 25, 2002).

¶ 25. Tenants' failure to appear at hearing on unreasonable interference application requires that application be dismissed for failure to prosecute under this rule. **Matter of Tsuji,** OATH Index No. 1351/03 (Sept. 3, 2003), **aff'd,** Loft Bd. Order No. 2832 (Nov. 13, 2003).

¶ 26. Administrative law judge determined that petition for protected occupancy had been abandoned where tenant did not appear for the proceeding, a money judgment for non-payment and a warrant of eviction had been issued against him by civil court, and tenant had surrendered possession of the subject premises. **Matter of Ehlich**, OATH Index No. 1698/03, mem. dec. (Feb. 5, 2004), **aff'd**, Loft Bd. Order No. 2850 (Mar. 18, 2004).

¶ 27. The Loft Board denied an abandonment application, finding that not all of the affected parties were served with the application. For an abandonment application, affected parties include the owner and such applicants as are necessary for a final resolution of the claims asserted in the application. The application indicated that the owner listed

only the window period occupants on the application as affected parties. Loft Board records indicated that the two allegedly abandoned units were subsequently occupied by three other persons who were not listed on the application. Failure to name those three other persons was fatal to the application. **Matter of 43 Crosby Street, LLC**, Loft Bd. Order No. 3124 (Nov. 16, 2006), **rejecting**, OATH Index No. 1937/06 (Aug. 2, 2006).

¶ 28. Pursuant to subsection (i)(4) of this section, respondent-owner's default did not entitle applicant-tenant to a default judgment or the granting of her application. Applicant still had to prove the allegations of her application. Overcharge application denied when tenant failed to make out a **prima facie case. Matter of Maugenest**, Loft Bd. Order No. 3118 (Nov. 16, 2006).

¶ 29. The provision in subsection (h) of this section, allowing amended pleadings up to the date of the conference, does not apply to an inquest where all adverse parties have defaulted because there cannot be a conference with only one party. **Matter of Maugenest**, Loft Bd. Order No. 3118 (Nov. 16, 2006).

¶ 30. Building owner's default vacated on a showing of good cause. Answer had been timely filed but lacked proof of service and was not attached to the Loft Board's answer form, as required by subsection (c) of this section. Irregular filing was deemed to be a mere technical defect and defenses of insufficient funds and reliance on outside management to perform the legalization process seen as not frivolous. Vacating respondent's default did not prejudice tenant. **Matter of Thornley**, OATH Index No. 2180/07 (Sept. 28, 2007).

¶ 31. Pursuant to subsection (i)(2) of this section, a party who has been declared in default may apply to vacate the default upon a showing of a reasonable excuse for the failure to file a timely answer and a non-frivolous defense to the application. A building owner faxed her answer to the Loft Board after business hours but before midnight on the due date. The answer was date-stamped as received the following day. The Loft Board interprets subsection (f) of this section to require faxing by close of business on the due date. The owner's timely application to vacate the default was granted. The ALJ found the owner's interpretation of the rule was reasonable because the rule does not specify that the answer must be faxed by close of business of the due date. **Matter of Weadick,** OATH Index No. 1555/08, mem. dec. (Feb. 22, 2008).

¶ 32. Pursuant to subsection (i)(2) of this section, a party has thirty days from the date of the mailing of the default application to make an application to vacate his or her default, or he or she will be barred from participation in the proceeding. Application to vacate default, made more than thirty days after the mailing of the default determination was denied as untimely; defaulting building owner was precluded from presenting a defense at the hearing. **Matter of Schwartz**, OATH Index No. 966/08 (Feb. 15, 2008), **adopted**, Loft Bd. Order No. 3430 (Apr. 17, 2008).

¶ 33. Former owner was a proper party to tenants' overcharge application. Omission of the term "former owner" from the definition of "affected parties" in subsection (a) of this section, does not provide a basis to dismiss claim against former owner. Subsection (a) is a procedural rule identifying the essential participants an applicant must notify when filing an overcharge claim. The rule does not limit the Loft Board's jurisdiction, derived from Article 7-C of the Multiple Dwelling Law, which does not preclude overcharge claims against former owners. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

¶ 34. Summary judgment is appropriate where there is no triable issue of fact and the movant has established entitlement to relief as a matter of law. There is no need for an evidentiary hearing where there is no material factual dispute. Held: tenant was entitled to summary judgment in an overcharge case. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

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29 RCNY 1-06.1

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-06.1 Limitations on Applications.

(a) [Reserved]

(b) [Reserved]

(c) **Rent overcharges.** An application for rent overcharges shall be filed within four years of such overcharge. Overcharges shall not be awarded for the period prior to the date of filing of a coverage or registration application, nor for more than four years before the date on which the application for overcharge was filed.

(d) **Code compliance rent adjustment applications.** An application pursuant to §2-01(i)(2) for code compliance rent adjustments shall be filed by the time set forth therein.

HISTORICAL NOTE

Section amended City Record Oct. 15, 2001 eff. Nov. 14, 2001. [See Note 1]

Section added City Record Nov. 4, 1993 eff. Dec. 4, 1993.

Subd. (d) added (as Subd. (e)) City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected copy supersedes the Mar. 30, 1999 version). [See T29 §2-01 Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 15, 2001:

Subdivisions (a) and (b) of §1-06.1 were promulgated on December 4, 1993 (and became effective six months later, on June 4, 1994). The Loft Board stated at the time that evidence to prove coverage was growing stale with the passage of time and therefore no new building-wide coverage cases or building registrations should be accepted at the Loft Board.

However, as a result of the decision in **180 Varick Street Corp. v. Center for Entrepreneurial Management, Inc.** (NY Law Journal, Sept. 16, 1998), the Board repealed these provisions, since there was no purpose in maintaining the rule given the holding in that decision, which permits people to obtain coverage through judicial action.

CASE AND ADMINISTRATIVE NOTES

¶ 1. This section provides no limitation period applicable to building owners' applications for extensions of legalization deadlines pursuant to §2-01(b) of this chapter, and therefore an extension application filed after expiration of the deadline at issue relates back to that deadline. Matter of Drewvin Building Corporation, OATH Index No. 748/96 (July 12, 1996), aff'd, Loft Bd. Order No. 2004 (Sept. 26, 1996); Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996), aff'd, Loft Bd. Order No. 1935 (Mar. 28, 1996).

¶ 2. Paragraph (c) of this section limits an award for overcharges to four years prior to the filing of the application, but it does not bar the Loft Board from examining rental history pre-dating the four-year period for the purpose of determining the legal rent. The Rent Regulation Reform Act, CPLR section 213, which bars examination of rental records outside the four-year period, makes no reference to the Loft Law and is held not to apply here. Tenant's documentation, consisting of canceled checks and rent and utility bills, were found sufficient to establish current legal rent and to establish that the tenant was overcharged. **Matter of Arcaya**, OATH Index No. 919/99 (June 17, 1999), **aff'd**, Loft Bd. Order No. 2454 (Dec. 13, 1999), **aff'd sub nom. Sori-Goalya Realty, LLC v. NYC Loft Bd.**, NYLJ, Feb. 28, 2001, at 19, col. 6 (Sup. Ct. N.Y. Co.), **aff'd**, 284 A.D.2d 137, 726 N.Y.S.2d 93 (1st Dep't 2001).

¶ 3. Pursuant to subsection c of this section calculation of overcharge is limited to the four years prior to the date of the application. **Matter of McIntosh,** OATH Index No. 604/02 (Oct. 15, 2002), **aff'd,** Loft Bd. Order No. 2763 (Nov. 19, 2002).

¶ 4. Tenants are entitled only to overcharges accruing after the date that the coverage application was filed. **Matter of Tenants of 323-325 W. 37**th Street, OATH Index No. 692/06 (May 18, 2007).

¶ 5. CPLR section 213-a requires that an action on a residential overcharge be brought within four years of the first overcharge alleged. Overcharge application brought in 2006 was time barred where first overcharge allegedly occurred in 1990. ALJ had applied limitation provision set forth in Loft Board rule 1-06.1. Supreme Court held that, while the wording of the Loft Board regulation is slightly different from CPLR 213-a, "clearly a City regulation cannot alter a limitation period set forth in a state statute." **Thornley v. Al-Farah**, OATH Index Nos. 1819/06 & 1935/06 (Aug. 11, 2006), **adopted**, Loft Bd. Order No. 3405 (Feb. 21, 2008), **rev'd sub nom. Nur Ashki Jerrahi Community v. NYC Loft Bd.**, 868 N.Y.S.2d 494, 2008 N.Y. Misc. LEXIS 6746 (Sup. Ct. N.Y. County Nov. 19, 2008); **but see Matter of Arcaya**, OATH Index No. 919/99 (June 17, 1999), **aff'd**, Loft Bd. Order No. 2454 (Dec. 13, 1999), **aff'd sub nom. Sori-Goalya Realty, LLC v. New York City Loft Bd.**, NYLJ, Feb. 28, 2001, at 19, col. 6 (Sup. Ct. N.Y. County), **aff'd, 284 A.D.2d 137**, 726 N.Y.S.2d 93 (1st Dep't 2001) (holding that the CPLR is limited to civil judicial proceedings and does not apply to Loft Board proceedings).

¶ 6. Subsection [c] of this section precludes an award for overcharges for the period prior to the date of filing of a coverage or registration application. Owner, who challenged tenant's claim of protected occupant status, moved for summary judgment arguing tenant's overcharge application was a "de facto coverage" application precluded by subsection [c]. ALJ denied motion, finding subsection [c] was inapplicable, where the owner had registered the building and the unit 18 years earlier. The tenant was seeking a finding that he is a protected occupant, not a finding of coverage.

Matter of Fogel, OATH Index Nos. 2025/08 & 2026/08, mem dec (Oct. 14, 2008).

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RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-07 Reconsideration of Determination.

(a) The Loft Board, upon the application of a party aggrieved by a determination of the Board, may, in its sole discretion, reconsider such determination. An application for reconsideration will be granted only under the following extraordinary circumstances: allegations of denial of due process or material fraud in the prior proceedings, an error of law, an erroneous determination based on a ground that was not argued by the parties at the time of the prior proceeding and that the parties could not have reasonably anticipated would be the basis for a determination, and discovery of probative, relevant evidence which could not have been discovered at the time of the hearing despite the exercise of due diligence.

(b) An aggrieved party must file with the Board 12 copies of his or her reconsideration application, along with proof that the reconsideration application has been served on the affected parties to the prior proceeding and the application fee required by section 2-11(b)(15). Service of the application shall be made in accordance with the provisions of section 2-01(d)(1)(i). To be considered timely, a reconsideration application must be received by the Loft Board within 30 days of the date of mailing by the Loft Board of the determination sought to be reconsidered. The application must specify the questions presented for reconsideration and the facts and points of law relied upon as a basis for seeking reconsideration.

(c) Within 20 days of service of the reconsideration application, any party supporting or opposing the application shall file 12 copies of an answering brief or memorandum with the Board, with proof of service upon the applicant for reconsideration. Such brief or memorandum must contain the facts and argument on which such party is relying. Upon determination of the reconsideration application, the decision of the Board will be mailed to all parties who filed an application or answer in the reconsideration pro- ceeding.

(d) A Loft Board determination pursuant to section 1-06 of these rules shall be the final agency determination for the purpose of judicial review, unless a timely application for reconsideration of the determination has been filed. In such case, (i) if the Loft Board modifies or revokes the underlying order, such revocation or modification shall be deemed the final agency determination from which judicial review may be sought; (ii) if the Loft Board denies the reconsideration application, the underlying order shall be deemed the final agency determination from which judicial review may be sought, and the date of the denial of the reconsideration application shall be deemed the date of the final agency determination; and (iii) if the Loft Board decides the reconsideration application by remanding the matter to the hearing officer for further proceedings, neither the underlying order nor the remand order shall constitute a final agency determination, and no judicial review may be sought until such time as the Loft Board issues a final agency determination following the remand.

HISTORICAL NOTE

Section amended City Record July 15, 1998 eff. Aug. 14, 1998. [See T29 §1-07.1 Note 1]

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-07.1 Appeal from Determination of the Director, or Determination of a Hearing Officer Under Section 2-04.

(a) A person aggrieved by a written determination of the Director with respect to any matter that is not required by these rules to be determined by the full Board, or by a determination of a hearing officer with respect to housing maintenance standard violations under section 2-04 of these rules, may appeal from such determination to the full Board. The determination of the Loft Board deciding such appeal shall constitute the final agency determination from which judicial review may be sought. For the purposes of this section, a "person aggrieved by a written determination of the Director" shall be the owner or any residential tenant of the building in question whose rights may be affected by the determination. For the purposes of this section, a "person aggrieved by a determination of a hearing officer with respect to housing maintenance standard violations under section 2-04 of these rules" shall be the owner of the building in question or the Director of Enforcement of the Loft Board, in his or her capacity as prosecutor of housing maintenance standard violations.

(b) A person aggrieved by a determination as set forth in subdivision (a) of this section must file with the Loft Board 12 copies of an appeal application, along with proof of service of the appeal application upon the affected parties to the prior proceeding and, except where the Director of Enforcement of the Loft Board is the appellant, the application fee required by section 2-11(b)(14). Service of the application shall be made in accordance with the provisions of section 2-01(d)(1)(i). To be considered timely, an appeal application must be received by the Loft Board within 45 days of the date of mailing of the determination sought to be appealed. The application must specify the questions presented for appeal and the facts and points of law relied upon as a basis for seeking appeal. For the purposes of this section, an "affected party" in an appeal from a determination of the Director shall be the owner or any residential tenant of the building in question whose rights may be affected by the determination. For the purposes of this section, an "affected

party" in an appeal from a determination of a hearing officer with respect to housing maintenance standard violations under section 2-04 of these rules shall be the owner of the building in question or the Director of Enforcement of the Loft Board, in his or her capacity as prosecutor of housing maintenance standard violations.

(c) Within 20 days of service of the appeal application, any party supporting or opposing the application shall file 12 copies of an answering brief or memorandum with the Board, with proof of service, in accordance with the provisions of section 2-01(d)(1)(i) of these rules, upon the applicant. Such brief or memorandum must contain the facts and argument on which such party is relying. Upon determination of the appeal application, the decision of the Loft Board will be mailed to all parties who filed an application or answer in the appeal proceeding.

(d) In determining an appeal from a determination of a hearing officer with respect to housing maintenance standard violations under §2-04 of these rules, the Loft Board shall review the determination with regard to whether the facts found therein are supported by substantial evidence in the record, whether the law was correctly applied, and whether the penalty imposed is appropriate, but shall not consider any evidence not presented to the hearing officer, unless good cause is shown as to why the evidence was not previously available.

(e) The Loft Board shall have the power to reverse, remand, or modify any determination appealed from pursuant to this section and may reduce the penalty imposed by a hearing officer for housing maintenance standard violation.

HISTORICAL NOTE

Section added City Record July 15, 1998 eff. Aug. 14, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 3, 2001:

The amendments to §1-07 provide that if a party files a timely application for reconsideration, the time to commence an Article 78 proceeding in court will be tolled until the Loft Board decides the reconsideration application. As in current practice, parties are not required to file a reconsideration application before seeking judicial review. This amendment is intended to save parties the effort and expense of commencing both a reconsideration application and an Article 78 proceeding, and save the Loft Board staff the effort of having to both defend an Article 78 and review an identical reconsideration application.

In the past, aggrieved parties often filed reconsiderations only to reargue legal issues that had been determined against them in the underlying proceeding. This was, however, never the purpose of the rule. The proposed amendments limit the grounds on which a person aggrieved by a Loft Board determination may seek reconsideration, to extraordinary grounds such as lack of due process or error in the determination which could not have been anticipated at the time of the underlying proceeding. An example of the latter would be a mathematics error made in the calculation of rent in a rent overcharge case.

Section 1-07.1 amends the Loft Board's rules to clarify when a person may obtain the full Loft Board's review (i.e., appeal) of a determination made by the Executive Director, or by a hearing officer in the context of a minimum housing standards violation case. A new provision states that an appeal from an administrative determination must be made within 45 days of the date of mailing of the determination sought to be appealed. In order to seek judicial review of such an administrative determination, the aggrieved party must first exhaust its administrative remedies by obtaining a Loft Board order upholding the administrative determination. The section also provides that the Loft Board's determination, rather than the Director's or hearing officer's determination, constitutes the final agency determination.

The amendments contained herein shall not apply to orders of the Loft Board, written determinations of the Executive Director, or determinations of hearing officers or administrative law judges pursuant to section 2-04 issued prior to the effective date of this rule.

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RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-08 Ex Parte Communications on Pending Applications.

(a) After an application has been filed with the Loft Board, an employee of the Board assigned to conduct a conference or hearing, or make findings of fact and recommendations on that application, shall not communicate on any substantive matter involving the merits of the application with one party to a dispute without notice and opportunity for all parties to participate.

(b) After an application has been filed with the Loft Board, a member of the Board shall not communicate with any member of the staff concerning such application until the matter is before the Board for determination, except that the Chair in its administrative capacity may communicate with the Executive Director, the Operations Director, and Counsel, and shall disclose the fact of such communication to the Board when the case reaches the Board for its determination. Nor shall any member of the Board be present at hearings or conferences conducted by the staff.

(c) When an application has been processed by staff and reaches the Loft Board for determination, any member of the Board who has had **ex parte** communication with a party to such application shall disclose this fact to the other members of the Board prior to the Board's consideration of the matter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-09 Action by the Board on Its Own Initiative.

The Board on its own initiative may commence appropriate proceedings or investigations pursuant to its powers or duties under Article 7-C of the Multiple Dwelling Law, including, but not limited to, findings, determinations or enforcement proceedings concerning coverage, hardship claims, rent adjustments, fixture fee disputes, exemptions and compliance with requirements of Article 7-C, including the minimum housing maintenance standards promulgated by the Board. Prior to making a finding or determination pursuant to Article 7-C, the Board shall afford the party against whom a proceeding is directed an opportunity to be heard on not less than 10 days notice by regular mail.

HISTORICAL NOTE

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RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-10 Administrative Authority and Correspondence.

Administrative authority is vested in the Executive Director of the staff, under the direction of the Chair. Official correspondence regarding administrative matters shall be signed by the Executive Director or by his or her designees. Official correspondence to the Board may be addressed to the New York City Loft Board or to the attention of the Chair or the Executive Director at the New York City Loft Board.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 1 PRACTICE AND PROCEDURE

§1-11 Petitioning Board to Adopt Rules.

(a) **Definitions.**

Persons. "Persons" shall mean an individual, partnership, corporation or other legal entity, and any individual or entity acting in a fiduciary or representative capacity.

Petition. "Petition" shall mean a request or application for the Loft Board to adopt a rule.

Petitioner. "Petitioner" shall mean the person who files a petition.

Rule. "Rule" shall have the same meaning set forth in Section 1041 (5) of the New York City Charter.

(b) **Procedures for Submitting Petitions.** (1) Any person may petition the Loft Board to consider the adoption of rules.

(2) The petition must contain the following information:

(i) The proposed language for the rules to be adopted;

(ii) A statement of the Loft Board's authority to promulgate the rules and their purpose;

(iii) The petitioner's argument in support of adopting the rules;

(iv) The period of time the rule should be in effect;

(v) The name, address and telephone number of the petitioner;

(vi) The signature of the petitioner.

(3) All petitions should be typewritten.

(4) The Loft Board is authorized to adopt a form petition. Every petition shall be submitted on such form unless such a form is not available from the Loft Board, in which case the petition shall be filed on plain white, durable paper which shall be eleven by eight and one-half inches in size.

(5) Petitions shall be mailed or delivered to the offices of the Loft Board marked to the attention of the Chair or the Executive Director.

(6) Upon receipt of a petition submitted in proper form, the petition shall be stamped with the date it was received and shall be assigned a processing number. The petition shall then be forwarded to the Chair who may, at his or her discretion, reject the petition or present the petition for consideration by the Board. If the Chair rejects the petition, he or she must do so by written notice stating the reasons for denial. Copies of the Chair's notice rejecting the petition, together with a copy of the petition, shall be presented to the Board at the next regularly scheduled session, after which any Board member may present the petition for consideration by the Board.

(7) Within sixty days from the date the petition was received by the Loft Board, the Loft Board shall either deny any petition not preciously rejected by the Chair by written notice stating the reasons for denial, or shall state in writing the Loft Board's intention to grant the petition and to initiate rulemaking by a specified date. In proceeding with such rulemaking, the Loft Board shall not be bound by the language proposed by petitioner, but may amend or modify such proposed language at the Loft Board's discretion.

(8) The Loft Board's decision to deny or grant a petition is final and shall not be subject to judicial review.

HISTORICAL NOTE

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***** Current through December 2009 ****

29 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-01 Code Compliance Work.

(a) **Code compliance timetable for IMD's.** The owner of any building, structure or portion thereof that meets the criteria for an IMD set forth in §281 of Article 7-C and Loft Board coverage regulations, shall comply with the code compliance deadlines set forth below. Any building or unit that is not covered by Article 7-C because of the denial of a grandfathering application or expiration of study area status is not required to be legalized pursuant to these regulations, unless either the area in which the building is located is rezoned to permit residential use or a unit or units at the building qualify for coverage pursuant to M.D.L. §281(4). However, the building must still comply with all other applicable laws and regulations.

In these code compliance regulations, the term "month" shall mean thirty days and the term "occupant," unless otherwise provided, shall mean a residential occupant qualified for the protections of Article 7-C, any other residential tenant, and any nonresidential tenant.

The failure of an owner to meet any of the code compliance deadlines set forth below does not relieve the owner of its obligations to comply with these requirements.

Paragraphs (1) through (4) of this subdivision implement the initial code compliance deadlines that applied pursuant to §284(1)(i) of Article 7-C before the enactment of later amendments, and paragraphs (5) through (8) reflect those amendments, as set forth in §284(1)(ii) through (v).

(1) **Deadlines for filing alteration applications.** (i) Code compliance timetable for buildings in which all residential units are as of right.

The owner of an IMD that contains only residential units in which residential use is permitted as of right under the Zoning Resolution shall have filed an alteration application by March 21, 1983.

(ii) Buildings with 3 or more as of right units and additional units eligible for grandfathering.

The owner of an IMD that, on December 1, 1981, contained 3 or more residential units as of right and 1 or more units eligible for coverage by use of one of the grandfathering procedures set forth in subsection 281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall have filed an alteration application for all covered as of right residential units by March 21, 1983, and

(B) Following the grandfathering approval of any additional residential units, the owner shall amend the existing alteration application to reflect approval of the grandfathering application for the additional unit or units within a month from such approval or within a month of the effective date of these regulations, whichever is later.

(iii) Buildings with fewer than 3 as of right units and additional units eligible for grandfathering.

The owner of an IMD that, on December 1, 1981, contained fewer than three residential units as of right and 1 or more units eligible for coverage by use of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall file an alteration application for all covered residential units within 9 months after approval of the grandfathering application of the unit that becomes the third covered residential unit, and

(B) Following the grandfathering approval of the unit that becomes the third eligible residential unit, the owner of a building with additional units eligible for grandfathering shall amend the existing alteration application to reflect approval of the grandfathering application for the additional unit or units within a month after such approval or within a month after the initial timely filing of the alteration application referred to in §2-01(a)(1)(iii)(A) above, whichever is later.

(iv) Buildings in study areas rezoned to permit as of right residential use.

The owner of an IMD located in an area designated by the Zoning Resolution as a study area that is rezoned to permit residential use as of right shall file an alteration application within 9 months after the effective date of such rezoning.

(v) Buildings in study areas rezoned to permit residential use with 3 or more as of right units and additional units eligible for grandfathering.

The owner of an IMD that is located in an area designated by the Zoning Resolution as a study area and that, as a result of rezoning, contains 3 or more residential units as of right and 1 or more units eligible for coverage by use of one of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08 "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall file an alteration application for all covered as of right residential units within 9 months after the effective date of such rezoning, and

(B) Following the grandfathering approval of any additional residential units, the owner shall amend the existing alteration application to reflect approval of the grandfathering application for the additional unit or units within a month after such approval.

(vi) Buildings in study areas rezoned to permit residential use with fewer than 3 as of right units and additional units eligible for grandfathering.

The owner of an IMD that is located in an area designated by the Zoning Resolution as a study area and that, as a result of rezoning, contains fewer than 3 residential units as of right and 1 or more units eligible for coverage by use of one of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall file an alteration application for all covered residential units within 9 months after approval of the grandfathering application of the unit that becomes the third covered residential unit, and

(B) Following the grandfathering approval of the unit that becomes the third eligible residential unit, the owner of a building with additional units eligible for grandfathering shall amend the existing alteration application to reflect approval of the grandfathering application for the additional unit or units within a month after such approval or within a month after the initial timely filing of the alteration application referred to in §2-01(a)(1)(vi)(A) above, whichever is later.

(2) **Deadlines for obtaining permits.**

(i) Code compliance timetable for buildings in which all residential units are as of right.

The owner of an IMD that contains only residential units in which residential use is permitted as of right under the Zoning Resolution shall take all necessary and reasonable actions to obtain a building permit within 6 months after the effective date of these regulations.

(ii) Buildings with 3 or more as of right units and additional units eligible for grandfathering.

The owner of an IMD that, on December 1, 1981, contained 3 or more residential units as of right and 1 or more units eligible for coverage by use of one of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall take all necessary and reasonable actions to obtain a building permit for all covered residential units within 6 months after the effective date of these regulations, and

(B) Following the grandfathering approval of any additional residential units, the owner shall take all necessary and reasonable actions to obtain approval of the amended alteration application for the additional units within 6 months after such grandfathering approval or within 6 months after the effective date of these regulations, whichever is later.

(iii) Buildings with fewer than 3 as of right units and additional units eligible for grandfathering.

The owner of an IMD that, on December 1, 1981, contained fewer than 3 residential units as of right and 1 or more units eligible for coverage by use of one of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall take all necessary and reasonable actions to obtain a building permit for all covered residential units within 6 months after the effective date of these regulations or within 6 months after the timely filing of an alteration application, whichever is later, and

(B) Following the grandfathering approval of the unit that becomes the third eligible residential units, the owner of a building with additional units eligible for grandfathering shall take all necessary and reasonable actions to obtain approval of the amended alteration application for the additional units within 6 months after such grandfathering approval or within 6 months after the effective date of these regulations, whichever is later.

(iv) Buildings in study areas rezoned to permit as of right residential use.

The owner of an IMD located in an area designated by the Zoning Resolution as a study area that is rezoned to

permit residential use as of right shall take all necessary and reasonable actions to obtain a building permit for all covered residential units within 6 months after the effective date of these regulations or within 6 months after the timely filing of the alteration application, whichever is later.

(v) Buildings in study areas rezoned to permit residential use with 3 or more as of right units and additional units eligible for grandfathering.

The owner of an IMD that is located in an area designated by the Zoning Resolution as a study area and that, as a result of rezoning, contains 3 or more residential units as of right and 1 or more units eligible for coverage by use of one of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall take all necessary and reasonable actions to obtain a building permit for all covered residential units within 6 months after the effective date of these regulations or within 6 months after the timely filing of the alteration application, whichever is later, and

(B) Following the grandfathering approval of any additional residential units, the owner shall take all necessary and reasonable actions to obtain approval of the amended alteration application for the additional units within 6 months after such grandfathering approval.

(vi) Buildings in study areas rezoned to permit residential use with fewer than 3 as of right units and additional units eligible for grandfathering.

The owner of an IMD that is located in an area designated by the Zoning Resolution as a study area and that, as result of rezoning, contains fewer than three residential units as of right and one or more units eligible for coverage by use of one of the grandfathering procedures set forth in §281(2)(i) or (iv) of Article 7-C, as defined in §2-08(a) "Grandfathering" (i) and (ii) of these Loft Board regulations:

(A) Shall take all necessary and reasonable actions to obtain a building permit for all covered residential units within 6 months after the effective date of these regulations or within 6 months after the timely filing of the alteration application, whichever is later, and

(B) Following the grandfathering approval of the unit that becomes the third eligible residential unit, the owner of a building with additional units eligible for grandfathering shall take all necessary and reasonable actions to obtain approval of the amended alteration application for the additional units within 6 months after such grandfathering approval.

(3) **Deadlines for Article 7-B compliance.** The owner of an IMD shall achieve compliance with the fire and safety standards of Article 7-B of the M.D.L. for all covered residential units within 18 months after a building permit has been obtained or within 18 months after the effective date of these regulations, whichever is later. Or the owner may elect to comply with other local building codes or provisions of the M.D.L. that provide alternative means of meeting the fire and safety standards of Article 7-B (pursuant to §287 of Article 7-C) within 18 months after a building permit has been obtained or within 18 months after the effective date of these regulations, whichever is later. Where an owner is required to amend the existing alteration application to reflect approval of grandfathering applications for additional units pursuant to §2-01(a)(1)(ii)(B), (iii)(B), (v)(B) or (vi)(B) above, the owner shall achieve compliance with the fire and safety standards of Article 7-B, or with alternative building codes or provisions of the M.D.L. for the additional grandfathered unit or units within 18 months after the timely approval of the amended alteration application or within 18 months after the effective date of these regulations, whichever is later. Issuance of a temporary certificate of occupancy shall be considered the equivalent of Article 7-B compliance or compliance with alternative building codes or provisions of the M.D.L.

(4) **Deadlines for obtaining a final certificate of occupancy.** The owner of an IMD shall take all necessary and

reasonable actions to obtain a final certificate of occupancy as a class A multiple dwelling for all covered residential units within 6 months after compliance with the fire and safety standards of Article 7-B, alternative building codes or provisions of the M.D.L. has been achieved, or within 6 months after a temporary certificate of occupancy has been obtained. The owner of an IMD that contains additional units subject to §2-01(a)(1)(ii)(B), (iii)(B), (v)(B) or (vi)(B) above, shall take all necessary and reasonable actions to obtain a final certificate of occupancy as a class A multiple dwelling for the additional unit or units within 6 months after the date such unit or units come into compliance with the fire and safety standards of Article 7-B, alternative building codes, or provisions of the M.D.L., or within 6 months after the date such unit or units are covered by a temporary certificate of occupancy.

(5) Notwithstanding the provisions of subdivisions (a)(1) through (4) of this section, the owner of an IMD who has not been issued a final certificate of occupancy as a class A multiple dwelling for all covered residential units on or before June 21, 1992 shall:

(i) File an alteration application by October 1, 1992; and

(ii) Take all reasonable and necessary action to obtain a building permit by October 1, 1993; and

(iii) Achieve compliance with the fire and safety standards of Article 7-B of the M.D.L. for all covered residential units by April 1, 1995, or within 18 months after an approved alteration permit has been obtained, whichever is later. The owner may, alternatively, elect to comply with other building codes or provisions of the M.D.L. that provide alternative means of meeting the fire and safety standards of Article 7-B (pursuant to M.D.L. §287) by April 1, 1995 or within 18 months after an approved alteration permit has been obtained, whichever is later; and

(iv) Take all reasonable and necessary actions to obtain a final certificate of occupancy as a class A multiple dwelling for all covered residential units by October 1, 1995, or within 6 months after achieving compliance with the fire and safety standards of Article 7-B, alternative building codes, or provisions of the M.D.L., whichever is later.

(6) Notwithstanding the provisions of subdivisions (a)(1) through (a)(5) of this section, the owner of an IMD who has not complied with the requirements of M.D.L §284(1)(i) or (ii) by June 30, 1996 shall:

(i) File an alteration application by October 1, 1996; and

(ii) Take all reasonable and necessary action to obtain an approved alteration permit by October 1, 1997; and

(iii) Achieve compliance with the fire and safety standards of Article 7-B of the M.D.L. for all covered residential units by April 1, 1999 or within 18 months after obtaining an approved alteration permit, whichever is later; and

(iv) Take all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for all covered residential units by June 30, 1999, or within 3 months after achieving compliance with the fire and safety standards of Article 7-B of the M.D.L., whichever is later.

(v) As an alternative to complying with the requirements of subparagraph (iii) of this subdivision, an owner may, pursuant to M.D.L. §287, elect to comply with other local building codes or provisions of the M.D.L. that provide alternative means of meeting the fire and safety standards of Article 7-B by April 1, 1999 or within 18 months after obtaining an approved alteration permit, whichever is later.

(7) Notwithstanding the provisions of subdivisions (a)(1) through (a)(6) of this section, the owner of an IMD who has not complied with the requirements of M.D.L. §284(1)(i), (ii), or (iii) by June 30, 1999 shall:

(i) File an alteration application by September 1, 1999; and

(ii) Take all reasonable and necessary actions to obtain an approved alteration permit by March 1, 2000; and

(iii) Achieve compliance with the fire and safety standards of Article 7-B of the M.D.L. for all covered residential units by May 1, 2002, or within 12 months after obtaining an approved alteration permit, whichever is later; and

(iv) Take all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for all covered residential units by May 31, 2002, or within 1 month after achieving compliance with the fire and safety standards of Article 7-B of the M.D.L., whichever is later.

(v) As an alternative to complying with the requirements of subparagraph (iii) of this subdivision, an owner may, pursuant to M.D.L. §287, elect to comply with other local building codes or provisions of the M.D.L. that provide alternative means of meeting the fire and safety standards of Article 7-B by May 1, 2002 or within 12 months after obtaining an approved alteration permit, whichever is later.

(8) Notwithstanding the provisions of subdivisions (a)(1) through (a)(7) of this section, the owner of an IMD who has not complied with the requirements of M.D.L. §284(1)(i), (ii), (iii) or (iv) by May 31, 2002 shall:

(i) File an alteration application by September 1, 1999; and

(ii) Take all reasonable and necessary actions to obtain an approved alteration permit by March 1, 2000; and

(iii) Achieve compliance with the fire and safety standards of Article 7-B of the M.D.L. for all covered residential units by May 1, 2008, or within 12 months after obtaining an approved alteration permit, whichever is later; and

(iv) Take all reasonable and necessary action to obtain a certificate of occupancy as a class A multiple dwelling for all covered residential units by May 31, 2008, or within 1 month after achieving compliance with the fire and safety standards of Article 7-B of the M.D.L., whichever is later.

(v) As an alternative to complying with the requirements of subparagraph (iii) of this subdivision, an owner may, pursuant to M.D.L. §287, elect to comply with other local building codes or provisions of the M.D.L. that provide alternative means of meeting the fire and safety standards of Article 7-B by May 1, 2008 or within 12 months after obtaining an approved alteration permit, whichever is later.

(b) **Extensions of time to comply with the amended code compliance timetable.** (1) **Extensions of current deadlines.** Pursuant to M.D.L. §284(1)(vi), an owner of an IMD may apply to the Loft Board for an extension of time to comply with the code compliance deadlines set forth in §284 of the Multiple Dwelling Law, as in effect on the date of the filing of the extension application. An application for an extension shall not be filed after the deadline for which an extension is sought has passed, except that where title to the IMD was conveyed to a new owner, within 90 days after acquisition of title, such new owner may file an application for an extension of time of up to one (1) year to comply with the most recently passed deadline. "New Owner" shall be defined as an unrelated entity or unrelated natural person(s) to whom ownership interest is conveyed for a bona fide business purpose and not for the purpose of evading code compliance deadlines of the Multiple Dwelling Law. The Executive Director shall make a determination of whether an applicant qualifies as a "new owner." The Executive Director may request documentation or other appropriate information to substantiate that an applicant is a "new owner."

(2) **Statutory standard.** The Loft Board will grant an extension pursuant to this subdivision only where an owner has demonstrated that it has met the statutory standards for such an extension, namely, that the necessity for the extension arises from conditions or circumstances beyond the owner's control, and that the owner has made good faith efforts to meet the code compliance timetable requirements. Examples of such conditions or circumstances include, but are not limited to, a requirement for a certificate of appropriateness for modification of a landmarked building, a need to obtain a variance from the Board of Standards and Appeals or the denial of reasonable access to an IMD unit. The existence of conditions or circumstances beyond the owner's control must be demonstrated in the application by the submission of corroborating evidence, for example, copies of documents from the Landmarks Commission or the Board of Standards and Appeals, or an architect's statement. Failure to include such corroborating evidence in the application

shall be grounds for denial of the application without further consideration.

(3) The owner of an IMD may apply to the Loft Board's Executive Director for an extension to comply with the amended code compliance timetable. The Loft Board's Executive Director will promptly decide each application for an extension. Where the Loft Board's Executive Director determines that the owner has met the statutory standards for an extension, the Executive Director shall grant the minimum extension required by the IMD owner. The Executive Director's determination shall be mailed to the owner and to the affected parties identified in the application submitted pursuant to paragraph (4) of this subdivision, and shall be subject to review by the Loft Board upon application by such owner or affected party. An application for review of such determination shall be timely if filed within 20 days after the date of mailing. Applications for extensions pursuant to this subparagraph shall be limited to one per deadline in the amended code compliance timetable.

(4) **Form of application and tenant responses.** An extension application filed pursuant to this subdivision (b) of §2-01 shall be filed on a form prescribed by the Loft Board and shall meet the requirements of this subdivision and §§1-06 and 2-11 of these rules. An application for an extension must specify a date to which the applicant seeks to have the deadline extended. Failure to so specify in the application shall be grounds for dismissal of the application. Applications must include a list of all residential IMD units in the building. Applications filed pursuant to paragraph (3) of this subdivision must be filed with the Loft Board along with two copies. Prior to filing an extension application pursuant to paragraph (3), an owner shall serve a copy of such application upon each occupant of an IMD unit in the building. Any occupant of an IMD unit in the building may file an answer to such application with the Loft Board within 20 days from completion of service by owner. The occupant(s) of an IMD unit shall serve a copy of such answer upon the owner prior to filing the answer with the Loft Board. Service pursuant to this subdivision may be by first class mail, or by any method permitted by Article 3 of the New York Civil Practice Law and Rules. Each application and answer filed with the Loft Board shall include proof of such service. Service by mail shall be deemed completed five days following mailing. If service of the application is performed in any manner other than mailing, service shall be deemed completed on the date the application is served. While an application filed under this subdivision is pending, an owner may amend such application one time to request a longer extension period than was originally sought in the application.

(c) **Violations of the code compliance timetable.** (1) The Loft Board, on its own initiative or in response to complaints, may commence a proceeding to determine whether an owner has violated the provisions of §284(1) of the MDL or these code compliance rules. In addition, a residential occupant of an IMD building may make an application seeking a Loft Board determination whether the owner of the occupant's building is in violation of the provisions of §284(1) of the MDL or these code compliance rules.

(2) An owner who is found by the Loft Board to have violated the code compliance timetable or any provision of these rules may be subject to a civil penalty not to exceed $1,000 for each violation as prescribed by the Loft Board; (ii) may be subject to all penalties set forth in Article 8 of the M.D.L.; (iii) may be subject to the penalties set forth in Chapter 1 of Title 26 and Chapter 1 of Title 27 of the Administrative Code; and (iv) may be subject to a specific performance proceeding as set forth in subparagraph (4) below.

(3) Upon demonstration by an owner of insufficient funds to proceed with code compliance, the Loft Board shall consider the lack of sufficient funds in mitigation of any fine to be imposed against the owner upon a finding of noncompliance. To obtain the benefit of the defense of insufficient funds, an owner shall supply the Loft Board with an income and expense statement for the building verified by an independent certified public accountant, a written estimate of the cost of compliance with the cited deadline or requirement from a registered architect, and if the building does not provide sufficient funds for purposes of compliance then the owner shall also supply a letter from two separate banks or mortgage brokers refusing to offer sufficient funds to comply, accompanied by copies of the owner's applications for such funds, or if the lenders refuse to provide a written rejection, then the owner shall file an affidavit setting forth the basis for the owner's belief that the applications have been rejected.

(4) If the Loft Board finds an owner in violation of the code compliance timetable of these rules, the Board or any three occupants of separate, covered residential units in the building may apply to a court of competent jurisdiction for an order of specific performance directing the owner to satisfy all code compliance requirements set forth in this section.

(5) The owner of an IMD who is found by the Loft Board to have wilfully violated the code compliance timetable of these regulations or to have violated the code compliance timetable more than once may be found guilty of harassment with respect to such IMD in a harassment proceeding before the Loft Board.

(6) If any residential occupant is required to vacate its unit as a result of a municipal vacate order that has been issued for hazardous conditions as a consequence of an owner's unlawful failure to comply with the code compliance timetable:

(i) The occupant, at its option, shall be entitled to recover from the owner the fair market value of any improvements made or purchased by the occupant and shall be entitled to reasonable moving costs incurred in vacating the unit. All such transactions shall be fully in accordance with Loft Board rules and regulations regarding Sales of Improvements. These rights are in addition to any other remedies the occupant may have.

(ii) Any municipal vacate order shall be deemed an order to the owner to correct the noncompliant conditions, subject to the provisions of Article 7-C. The issuance of such an order as a result of the owner's unlawful failure to comply with the code compliance timetable shall result in a rebuttable presumption of harassment in a harassment proceeding brought by an occupant or occupants before the Loft Board.

(iii) When the owner has corrected the noncompliant conditions the occupants shall have the right to reoccupy the unit and shall be entitled to all applicable tenant protections of Article 7-C, including the right to reoccupy the unit at the same rent paid prior to the vacancy period plus any rental adjustments authorized by the Loft Board pursuant to its rules and regulations. Furthermore, the occupant shall be entitled to recover from the owner reasonable moving costs incurred in reoccupying the unit in accordance with Loft Board rules and regulations regarding Sales of Improvements.

(iv) At no time shall rent for the unit be due or collectible for such period of vacancy.

(d) **Procedure for occupant review of plans, resolution of occupant objections, and certification of estimated future rent adjustments.** (1) **Notice: form and time requirements.** (i) All notices, requests, responses and stipulations served by owners and occupants directly upon each other shall be in writing, with a copy delivered or mailed to the Loft Board, accompanied by proof of service, within five days of delivery, if service was made personally, or within five days of mailing if service was performed by mail. Service by the parties shall be effected either

(A) by personal delivery or

(B) by certified or registered mail, return receipt requested, with an additional copy sent by regular mail.

Proof of service shall be in the form of a verified statement of the person who effected service, setting forth the time, place and other details of service, if service was made personally, or by copies of the return receipt and verified statement of mailing, if service was performed by mail. Communications by the Loft Board pursuant to these regulations will be sent by regular mail.

Service shall be deemed effective upon personal delivery or five days following service by mail. Deadlines provided herein are to be calculated from the effective date of service.

(ii) Modifications on consent, change of address. Applications may be withdrawn and disputes may be resolved, by written agreement of the parties, subject to Loft Board approval. Parties may change their addresses upon service of written notice to the other parties and the Loft Board, and such notice shall be effective upon personal delivery or five

days following service by mail.

(2) **Procedure for occupant review of plans and resolutions of occupant objections.** This paragraph (2) shall apply to IMD's for which a building permit for achieving compliance with the fire and safety standards of Article 7-B, alternative building codes or provisions of the M.D.L. has not been issued as of October 23, 1985, the date of adoption of these regulations. In the case of a building permit that has been issued as of October 23, 1985 and that remains in effect or is renewed, an owner who thereafter requests reinstatement of the underlying alteration application pursuant to Department of Buildings ("D.O.B.") Directive No. 17 of 1971 shall be required to comply with all provisions of this paragraph (2) with respect to all work yet to be performed as of the date that reinstatement is requested.

This paragraph (2) shall apply where an owner is required to amend an alteration application to reflect grandfathering approval of additional units pursuant to §§2-01(a)(1)(ii)(B), (iii)(B), (v)(B), or (vi)(B), or where an owner is required to amend an alteration application to reflect the coverage of additional units under M.D.L. §281(4); however, if the proposed work is to be performed solely within the additional unit(s), this paragraph (2) shall only apply to the occupant(s) of such unit(s). This paragraph (2) shall not apply to IMD's for which a building permit for achieving compliance with Article 7-B, alternative building codes or provisions of the M.D.L. has already been issued and is in effect as of the date of adoption of these regulations, and which remains in effect or is renewed without reinstatement of the underlying alteration application until such compliance is achieved. However, an occupant of such an IMD may file an application with the Loft Board based on the grounds that the scope of the work approved under the alteration application for which the permit was issued constitutes an unreasonable interference with the occupant's use of its unit in accordance with the provisions of §2-01(h) of these regulations. This paragraph (2) also shall not apply to those units in IMD's for which a temporary or final/permanent certificate of occupancy as a class A multiple dwelling has been issued and is in effect as of the date of adoption of these regulations.

(i) Within 15 days of the filing of its alteration application or within 30 days after the effective date of this regulation, whichever is later, the owner shall provide all occupants with a narrative ,statement, upon such form as is prescribed by the Loft Board, describing separately for each unit, both residential and nonresidential, all the work to be performed in such unit and all the work to be performed in common areas. This description shall include a listing of all noncompliant conditions, citation to the specific provisions of law or regulation that require their correction, and the work to be performed to correct them; an estimated time schedule for performance of the work; and a certification that the narrative statement is a complete and accurate statement reflecting the work proposed in the filed alteration application. In accordance with the procedures set forth in §2-01(d)(1), following service of such narrative statement, the owner shall file with the Loft Board the original statement with proof of service, two copies of its filed alteration application along with the D.O.B's acknowledgment of filing, and two copies of the submitted plans. Occupants may examine the alteration application and plans by appointment at the Loft Board or at the D.O.B in accordance with the department's procedures. An occupant may request from the owner a reproducible copy of the alteration application and plans, construction specifications, if any, and the tenant safety plan described in subparagraph (ii) below, and the owner shall supply such copy within 7 days of service of the request. Cost to the occupant shall be $5.00 per page for plans required by §27-162 of the Administrative Code and $0.25 per page for all other documents.

(ii) The owner shall certify to the D.O.B., upon such form as is prescribed by the Loft Board for this purpose, that it has complied with the provisions of the preceding subparagraph (i); that it shall comply with all other requirements of this paragraph (2) of the Loft Board's regulations and with the requirement for a tenant safety plan pursuant to D.O.B. Directive No. 2 of 1984; and that prior to obtaining the building permit, the owner shall submit to the department a letter from the Loft Board, certifying compliance with all requirements of §2-01(d)(2). This certification shall be filed with the D.O .B. within 5 days after the owner's filing with the Loft Board pursuant to the procedures described in the preceding subparagraph (i).

(iii) Within 30 days after the owner has filed the narrative statement, as required by §2-01(d)(2)(i), the Loft Board will notify the owner and all occupants that a conference has been scheduled. This notification shall be by regular mail. This conference is for informational and conciliatory purposes. The Loft Board representative assigned to conduct the

conference shall outline the requirements of Article 7-B of the M.D.L., shall review the provisions of these code compliance regulations, including the section dealing with occupant participation (§2-01(f)) and shall address the participants' questions.

The owner or its representative will present its proposed work plan and the estimated time schedule for performance of the work. The occupants may raise any questions, comments or suggestions regarding the proposed work plan and the estimated schedule. The Loft Board representative shall encourage the owner and occupants to discuss fully the prepared plan and schedule and to reach an agreement as to the performance of code compliance work. The Loft Board representative may authorize an additional period of time, not to exceed 21 days, for the parties to negotiate an agreement. If the parties are unable to come to an agreement within the authorized time period, the remaining provisions of this paragraph (2) shall apply. Any agreement reached by the parties, including any agreement reached after the above-mentioned 21 day period, must be in writing and filed with the Loft Board as provided in §2-01(f).

With the exception of material contained in any written agreement(s) among the parties, the conference shall not be electronically recorded, and the specifics or nature of communications made at the conference or in the course of negotiations during the authorized time period shall not be admissible as evidence in any Loft Board proceedings. Information or responses to questions provided by the Loft Board representative will be advisory only and should not be relied upon as a substitute for professional advice of lawyers, architects or engineers retained by the participants.

The conference may be scheduled in the evening. Upon the request of the owner and the occupant(s), the Loft Board shall schedule a conference for any IMD for which §2-01(d)(2) does not apply.

(iv) (A) Within 45 days after the conference or, if authorized, the additional period of time described in §2-01(d)(2)(iii), any occupant may file (a) with the D.O.B. an alternate plan for work affecting the occupant's use of its unit*1 when the owner's proposed plan may unreasonably interfere with the occupant's use of the unit or (b) with the Loft Board an application in support of any claim that the owner's proposed plan will diminish services to which an occupant is legally entitled. In addition, if authorized by the Loft Board representative, an alternate plan may be proposed by an occupant which is not required to be filed with the D.O.B. when the occupant's claim does not require a D.O.B. review of code issues in order for the Loft Board to resolve the dispute.

(B) If the alternate plan proposed pursuant to this subparagraph is required to be filed with the D.O.B., it shall be filed by a registered architect or professional engineer retained by the occupant, who shall be responsible for any required fees. An application concerning plumbing work shall be filed with the D.O.B. by a licensed plumber retained by the occupant, who shall be responsible for any required fees. Two or more occupants may file a joint application setting forth their alternate plan. Failure to file an alternate plans application within the prescribed time period will constitute a waiver of an occupant's right to challenge the owner's submitted work plan on the ground that it would unreasonably interfere with such occupant's use of its unit or constitute a diminution of services; however, late filing of an alternate plans application shall be permitted if, upon application, the Loft Board or its staff by administrative decision, determines that good cause existed for such occupant's failure to file in a timely manner and if a building permit has not yet been issued. Within 5 days after filing an alternate plans application, the occupant(s) shall provide the owner and all other occupants with a narrative statement setting forth the occupant's(s') objections to, comments on, or criticisms of the owner's plan and any projected increase(s) in code compliance costs resulting from the occupant's(s') alternate plan. In accordance with the procedures set forth in §2-01(d)(1), the occupant(s) shall file with the Loft Board: the original of such narrative statement with proof of service, two copies of its filed alternate plans application with the D.O.B.'s acknowledgment of filing, and two copies of the submitted plans, if it is an alteration application. The owner and other occupants may review the alternate plans application and plans by appointment at the Loft Board or at the D.O.B. in accordance with the department's procedures. An owner or another occupant may request from the filing occupant(s) a reproducible copy of the application and plans and shall be supplied with such copy within 7 days after service of the request. Cost to the requesting party shall be $5.00 per page for plans required by §27-162 of the Administrative Code and $0.25 per page for all other documents.

(v) The D.O.B. shall review the owner's alteration application and plan and any alternate application(s) and plan(s) submitted by occupant(s) of the building. The D.O.B. may issue objections pursuant to its usual procedures. The occupant(s) through its (their) architect(s) or engineer(s), shall take all necessary and reasonable actions to cure such objections within 45 days of notice of objections from the D.O.B. The owner, through its architect or engineer, shall take all necessary and reasonable actions to cure such objections within 60 days of notice of objections from the D.O.B. An applicant's failure to take all necessary and reasonable actions to cure such objections within the prescribed time period may subject the applicant to civil penalties of up to $1,000 to be imposed by the Loft Board for failure to comply with these regulations.

(vi) If amendments to the plans initially submitted to the Loft Board are made, the applicant shall file two copies of any amended plans with the Loft Board, and copies shall be supplied upon request in accordance with the procedures described in paragraphs (2) and (4) above. Within 40 days of service by the Loft Board of notice of revised plans any occupant(s) who has (have) not previously done so, may file with the D.O.B. an alternate plan application for work affecting the occupant's(s') use of its (their) unit(s). Such occupant(s) shall comply with all the requirements of subparagraph (iv) above. The occupant(s) is (are) limited in its (their) objections to only those items that represent a change from submissions previously received. The procedures for D.O.B. review set forth in subparagraph (v) above shall apply.

(vii) (A) When the D.O.B has no further objections to the owner's application and plan, and if no alternate plan has been filed by any occupant of the subject building within the time period provided for such filing in this regulation, the Loft Board shall issue a letter certifying compliance with all requirements of §2-01(d)(2). To receive such certification, the owner shall verify to the Loft Board that no revisions have been made to the plans since the narrative statement conference or summarize any revisions which may have been made. If an alternate plan has been filed and the 45 day period for addressing objections has expired without all necessary and reasonable actions having been taken to cure the objections, the Loft Board shall issue a letter certifying compliance with all requirements of §2-01(d)(2). Upon submission of such letter, the D.O.B may approve the owner's application and plan and issue a building permit.

(B) **(a)** Where the occupant(s) have submitted alternate application(s) and plan(s) and are unable to agree with the owner upon the work to be performed, and the D.O.B. has no objections to such applications and plans, the applicant shall advise the Loft Board and the owner of the D.O.B. approval of the plans and refer them to the Loft Board for review and resolution of the dispute, as to which application(s) and plan(s) should be approved and the work for which a building permit should be issued. Such referral will occur no sooner than 30 days after notification of the removal of the last objection or of the lack of objection. In addition, when authorized by the Loft Board representative, such referral may be made before all objections have been removed if the remaining objections do not need to be resolved in order for the Loft Board to resolve the dispute. If the owner and the occupant(s) come to an agreement, they shall immediately inform the D.O.B. and the Loft Board and void the abandoned application(s) and plan(s).

(b) If alternate approvable applications and plans are referred to the Loft Board, the Loft Board shall review the plans and on its own initiative may commence a proceeding to determine whether the owner's plan would result in an unreasonable interference of the occupant's(s') use of its (their) unit(s). The proceeding will be governed by the Board's regulations on Internal Board Procedures. Parties shall have an opportunity to submit a written statement setting forth the basis for seeking disapproval of the alternate plan(s). In the case of an occupant, such a statement shall include an explanation of how the owner's proposed plan would result in an unreasonable interference with the occupant's use of its unit. If the Loft Board finds that the owner's plan would result in such an unreasonable interference, it shall order the owner to amend its plan or to authorize the final approval of plan(s) submitted by the occupant(s) for the space(s) involved. A failure or refusal to comply with such an order may constitute a violation of §§284(1)-(i)(B) of Article 7-C and these regulations, and the owner may be subject to civil penalties and actions initiated by the Loft Board to compel specific performance, and such other penalties as are outlined in §2-01(c) of these regulations.

If the Loft Board or its Executive Director finds that the owner's approvable application and plan would not unreasonably interfere with the occupant's(s') use of its (their) unit(s), the Loft Board or its Executive Director shall

issue an order stating that the owner's plan may be approved by the D.O.B. and a building permit issued, and that the alternate application(s) and plan(s) be voided. Also such an order shall certify compliance with all requirements of §2-01(d)(2).

(viii) Within 10 days after the issuance of a building permit by the D.O.B., or within 30 days after the effective date of these regulations, whichever is later, the owner shall file a copy of the building permit with the Loft Board. Furthermore, the owner shall file two copies of any subsequent amendments, including plans, to the alteration application upon which the building permit is based, within 10 days after the filing of such amendment(s) with the D.O.B.

(ix) Approval of plans by the D.O.B. pursuant to this subsection shall not be construed as approval of the costs incident to construction in accordance with such plans as necessary and reasonable costs of code compliance work for purposes of rent adjustment proceedings under §§2-01(i) through 2-01(l) of these regulations.

(3) **Procedures for certification of estimated further rent adjustments.** Following the approval of an alteration application or alternate plans by the D.O.B., an owner may apply to the Loft Board for certification of estimated future rent adjustments, based on the owner's work plan and the Loft Board Schedule of Allowable Necessary and Reasonable Code Compliance Costs. The filing of such an application, however, shall be totally at the discretion of the owner and shall not be a basis for staying commencement or continuation of work under a valid building permit issued by the D.O.B. All applications for certification of estimated future rent adjustments shall be processed in accordance with the Loft Board's regulations governing Internal Board Procedures, except as provided herein. The owner shall file with the Loft Board an application on a form prescribed by the Board. The application shall describe separately for each residential unit all of the work to be performed and the work to be performed in common areas and nonresidential units; and calculation of the necessary and reasonable costs based on the Loft Board schedule and any other necessary and reasonable costs as permitted pursuant to §2-01(j) of these regulations. If the owner anticipates the use of financing, the application shall also include any statements, letters of intent or commitment, or other materials from institutional or noninstitutional lenders regarding the terms or conditions of such financing. In addition, the owner shall file with the Loft Board two copies of the approved alteration application and two copies of the approved plans.

The owner's application shall be served on the building's occupants by the Loft Board in accordance with its regulations on Internal Board Procedures. Occupants may review the alteration application and plans at the D.O.B. in accordance with the Department's procedures or by appointment at the Loft Board. An occupant may request from the owner a reproducible copy of the alteration application and plans, and the owner shall supply such a copy within 7 days after service of the request at a cost to the occupant of $5.00 per page for plans required by §27-162 of the Administrative Code and $0.25 per page for all other documents. Occupants may submit an answer within 20 days after the date on which service of the application was completed (§1-06(c) of these regulations) in response to the owner's application, setting forth any objections, comments or suggestions regarding the calculation of necessary and reasonable costs of approved work. The Loft Board may schedule a conference to discuss objections, comments or suggestions raised by the occupants and responses by the owner. Following such a conference, the application will be processed, and the Loft Board will certify the necessary and reasonable code compliance work and concomitant costs, and the estimated future rent adjustments. The certification is a reasonable estimate based on available information. However, actual rent adjustments shall be determined by the Loft Board in accordance with §§2-01(i) through 2-01(l) of these regulations.

(e) **Code compliance for nonconforming units.** If the D.O.B. has issued an objection to the owner's alteration application because a covered residential unit cannot be brought into compliance under appropriate building codes, provisions of the M.D.L., or the Zoning Resolution because of its size, design, or location within the building, the owner and affected occupant(s) should make every effort to reach accommodations that would permit every covered unit to be made code compliant.

If the owner and affected occupant(s) are unable to reach a resolution, either the owner or the residential occupant

may apply to the Loft Board for a determination as to whether the unit can be made code compliant. In processing such an application the Loft Board may, following a hearing:

(1) Order the owner to apply for a non-use related variance, special permit, minor modification, or administrative certification, where the granting of such an application would make compliance possible; or

(2) Order the owner to alter the unit, or to redesign residential units and common area space into a configuration that can be legally converted to residential use; or

(3) If these remedies are unavailing, remove a unit from Article 7-C Coverage if it cannot be legally converted to residential use.

Such orders also shall require compliance within a specified period of time and shall require occupant cooperation in achieving compliance.

(f) **Occupant participation in the code compliance process.** (1) The Loft Board encourages the owners and occupants of interim multiple dwellings to work together to achieve code compliance. Such cooperation may include, but is not limited to, occupants' performance of code compliance work. Owners, occupants and their representatives should make good faith efforts to communicate and cooperate with each other throughout the process so as to reduce or eliminate potential disputes during the course of code compliance. Cooperation may result in benefits to all the parties insofar as:

(i) costs incurred by the owner may be minimized, reducing the capital the owner would have to raise and reducing the rent adjustment increases that would have to be passed along to residential occupants;

(ii) access difficulties may be minimized;

(iii) incidents of harassment may be eliminated or reduced;

(iv) losses incurred by nonresidential tenants may be eliminated or minimized; and

(v) code compliance may be achieved in a timely fashion.

(2) While occupants have no right as a matter of law to perform code compliance work, the owner and the occupants(s) may agree voluntarily to allow such occupant(s) to perform code compliance work or any portion thereof, within the building, to the extent permitted by applicable laws and regulations. The owner is required to obtain the appropriate Department of Buildings approval for all work to be performed, but where the owner and occupant(s) have agreed that work will be performed by the occupant(s) they may also agree that the occupant(s) is (are) required to obtain all consents and approvals prior to filing with the D.O.B. pursuant to Administrative Code §§27-142, 27-151 and 27-220 on any work so permitted. Should the owner and the occupant(s) agree upon performance of the code compliance work or any portion thereof by such occupant(s), the owner and the occupant(s) shall file a written Agreement with the Loft Board pursuant to §2-01(d)(1) of these regulations. Such Agreement shall include:

(i) an outline specification of all work to be performed and by whom it is to be performed;

(ii) a time schedule for work to be performed as well as the identification of who is to supervise all construction work;

(iii) a certification that the parties shall provide all information required in the processing of applications for rent adjustment(s), if any, by the Loft Board;

(iv) a certification by the owner and occupant(s) that all work shall be in accordance with the code compliance timetable set forth in §2-01(a) of these regulations.

Such Agreement by the owner and the occupant(s) shall be consistent with the Alteration Application and any Building Notice(s) or Plumbing Repair Slip(s) filed with the D.O.B. and the Loft Board.

(3) If at any time after execution of the Agreement but prior to the completion of the code compliance work the occupant(s) or the owner abrogate(s) the Agreement, the abrogation shall be in writing, served upon all other parties to the Agreement and filed with the Loft Board in accordance with §2-01(d)(1). Such abrogation shall not relieve the owner of the obligation to comply with Article 7-C and these regulations. The owner and the occupant(s) may also agree in writing, with a copy served on the Loft Board, to: (i) waive the procedure for occupant review of plans and resolution of occupant objections set forth in §2-01(d)(2) of these regulations; or

(ii) modify the procedure for notice to occupants of proposed work set forth in §§2-01(d)(2) and 2-01(g)(3) of these regulations. Any other Agreement for waiver or modification of other provisions of these regulations shall be submitted to the Loft Board for its approval. No Agreement shall be approved that proposes that code compliance will not be achieved or that it will be achieved after the deadlines prescribed in §§2-01(a) and 2-01(b) of these regulations.

(4) If an owner who has agreed to allow an occupant to perform code compliance work applies to the Loft Board for an extension of time to obtain a final residential certificate of occupancy pursuant to §2-01(b) of these regulations, the owner must exercise due diligence in monitoring the timely completion of such code compliance work in order to have grounds of good cause for its inability to meet the code compliance timetable.

(g) **Notice to occupants of proposed work, repairs and inspections and occupant's obligation to provide access.** (1) Unless otherwise agreed by the parties, the owner shall provide all occupants with written notice of the approximate commencement date, duration and scope of all work to be performed within their units and of all common area work that may interfere with access to their units or the provision of services to their units. The notice need not provide an exact date for the work, but must provide a range of three consecutive working days during which work to be completed in one working day will take place and a range of five consecutive working days during which work expected to require more than one consecutive working day will begin. Such notice shall be served by personal service, first class mail, registered mail (return receipt requested), or certified mail (return receipt requested), such that service is effective at least 3 days prior to the first date in the range of days for work that may reasonably be expected to be completed within one working day and at least 10 days prior to the first date in the range of days for all other work expected to require two or more consecutive working days.

(2) No later than the day preceding the first scheduled day of work, the owner shall provide written notice, either confirming a specific starting date from among those specified or cancelling the scheduled work for the day or days specified. In instances where scheduled work is cancelled, it must be rescheduled in accordance with the provisions of §2-01(g)(1). Notice under this provision shall be accomplished by personal delivery of the written notice to the occupant or, in the occupant's absence, to a person of suitable age and discretion within the unit. If delivery to a person as prescribed herein cannot be achieved, the owner or agent shall deposit the written statement under the main entrance of the unit or, if that is not possible, shall affix such notice to the main entrance of the unit. An occupant may designate in writing another occupant within the building to receive notice pursuant to this §2-01(g) provided that such designee is authorized to provide reasonable access to the occupant's unit as required in such notice. Such designation shall be served on the owner by personal service, first class mail, registered mail (return receipt requested), or certified mail (return receipt requested).

(3) Upon appropriate notice, occupants shall provide the owner with reasonable access to their units so that all requisite code compliance or repair work, or inspections and surveys as may be required for the purpose of code compliance, may be performed. Upon the failure of an occupant to provide such access, the owner may apply to the Loft Board for an order affording the owner reasonable access to the unit. Recognizing the necessity of construction work proceeding without unnecessary delays caused by administrative processing, the Loft Board will process applications for access under the following expedited procedures:

(i) The owner shall serve the occupant with a copy of the owner's verified or affirmed application for access on such form as prescribed by the Loft Board, and shall file twelve copies of the application at the offices of the Loft Board, along with proof that a copy of the application has been served upon the occupant. Service on the occupant shall be effected either by:

(A) personal service or

(B) certified or registered mail, return receipt requested, with an additional copy sent by regular mail.

(ii) The occupant shall file with the Loft Board twelve copies of a written answer in response to the application within ten business days of service of the application.

(iii) (A) If the occupant answers, the Loft Board shall serve a copy of the answer on the owner by regular mail at the address designated on the application and shall notify both owner and occupant of a hearing date, which shall be scheduled for a date no fewer than 8 days nor more than 15 days from the mailing of the notice. There shall be no more than one adjournment per party, limited to 7 days, for good cause shown. Except as provided herein, the provisions of §1-06 shall apply to an application for access under this subdivision.

(B) If the occupant fails to answer, the Loft Board may issue an order granting access.

(iv) A finding by the Loft Board of failure by the owner to comply with any of the notice provisions of this section or a finding by the Loft Board that an occupant has unreasonably withheld access shall be the basis for a civil penalty not to exceed $1,000 for each such finding of violation. The necessary and reasonable cost of bringing and pursuing a Loft Board access proceeding that results in a finding that a residential occupant has unreasonably withheld access as well as labor or other costs incurred by the owner because access was unreasonably denied, may be included in the owner's application for code compliance rent adjustment as an allowable cost to be allocated to such occupant's residential unit, as provided for in §2-01(l)(1) of these rules.

(v) The failure of an occupant to comply with a Loft Board order regarding access shall be grounds for eviction of that occupant in a proceeding brought before a court of competent jurisdiction.

(h) **Unreasonable interference with use.** Whenever reasonably possible, work to achieve code compliance should be performed without any, including the temporary, dislocation of occupants from their units and with minimal disruption to the occupants' use of their units. The owner shall take all reasonable actions to ensure that code compliance work does not unreasonably interfere with the use of any occupied unit. Arrangements should be made for each day's work to be a full day's work, to the extent possible. Scheduling of work must be done, to the extent possible, in a fashion that minimizes disruptions in the provision of essential services. Regular maintenance shall be performed within the building during the construction period, except when construction renders regular maintenance impossible.

After the filing of an alteration application by the owner but before the issuance of a building permit, occupants who object to the proposed work because it will unreasonably interfere with their use of their units must bring their objections to the D.O.B. as provided in §2-01(d)(2). After a permit has been issued through the process described in §2-01(d)(2), in which the occupants have had an opportunity to participate, the occupants may raise no further objections to the scope of the work approved under the permit on the grounds that it constitutes an unreasonable interference with their use of their units. In the case of an IMD for which a building permit for achieving code compliance with Article 7-B, alternative building codes or provisions of the M.D.L. has been issued and is in effect as of the date of adoption of these regulations, such that §2-01(d)(2) is not applicable, an occupant of such an IMD may file an application pursuant to this subdivision (h) on the grounds that the scope of the work approved under the permit constitutes an unreasonable interference with the occupant's use of its unit. In granting such an application, the Loft Board shall process the application in accordance with Loft Board regulations on Internal Board Procedures and may order the owner to amend its alteration application. If the permit is revoked by the D.O.B. on these grounds, the occupants shall have the opportunity to participate in the review of plans through the process described in §2-01(d)(2).

If, in the course of performing the work, the owner or its agents engage in work beyond that authorized by the permit, depart significantly from the work described in the owner's narrative statement and plan or from the estimated time schedule for performance of the work as amended according to the requirements of §2-01(d)(2), engage in repeated or substantial violations of the notice provisions of §2-0l(g), or violate the provisions of the tenant safety plan, an occupant aggrieved by such action(s) may file an application with the Loft Board setting forth the factual basis for its claim that such unauthorized work, departure from the schedule, or violation of the tenant safety plan unreasonably interferes with the occupant's use of its unit. A finding by the Loft Board of unreasonable interference with an occupant's use by the owner or its agents may result in civil penalties of up to $1,000 for each violation. A finding by the Loft Board of unreasonable and willful interference with an occupant's use by the owner or its agents may result in civil penalties of up to $1,000 for each violation and may constitute harassment of tenants. The exemptions from rent regulations provided to an owner pursuant to §286(6) of the M.D.L. and Loft Board Regulations on Sales of Improvements may not be available in a building when an owner has been found guilty of harassment of tenants subject to regulations adopted by the Loft Board.

(i) **Applications for rent guidelines board increases and for rent adjustments based on costs of compliance.** (1) **Rent guidelines board increases.** (i) Upon issuance of a final certificate of occupancy, an owner shall be eligible for the percentage rent increases established by the New York City Rent Guidelines Board (RGB) (hereinafter "RGB Increases"). The first such rent increase shall commence as of the first day of the first month following the day an owner submits to the Loft Board a Notice of RGB Increase[s] in the form prescribed by the Loft Board, and each such subsequent rent increase shall be effective on each one- or two-year anniversary of such commencement date, as applicable. (This one-or two-year period during which a particular RGB Increase is effective is referred to herein as the "RGB Increase Period.") The last RGB Increase prior to issuance by the Loft Board of the final rent owner setting the initial legal regulated rent, pursuant to §2-01(m) of these rules, shall remain effective until expiration of the applicable RGB Increase Period. The amount of each RGB increase shall be equal to the percentage increase applicable to one or two-year leases as established by the RGB on the date the Notice is submitted and on each one- or two-year anniversary thereof, as applicable, and shall be applied to the maximum rent permissible under Loft Board rules as of the date the Notice of RGB Increase[s] filing is submitted to the Loft Board. The RGB Increase shall apply to all covered residential units, except for those units that are exempt from rent regulation as a result of the owner's purchase of improvements or rights pursuant to M.D.L. §286(6) or §286(12) and Loft Board rules promulgated pursuant thereto.

(ii) To obtain the rent increase, the owner shall submit two copies of a Notice of RGB Increase on a form prescribed by the Loft Board. The notice shall contain the rent in effect, including escalations and increases provided under M.D.L. §286(2), for each covered residential unit subject to rent regulation, and shall be submitted with a copy of the final certificate of occupancy, a copy of the individual notices described in subparagraph (iii) of this paragraph, and an affidavit that such notices were sent by certified or registered mail to each affected occupant.

(iii) The owner shall send to each affected occupant a notice in the form prescribed by the Loft Board setting forth the maximum permissible rent under Loft Board rules for the unit occupied by such occupant. The notice shall also request the occupant to elect RGB increases applicable to one-year or two-year leases. Such election shall be binding upon the occupant for the entire period prior to expiration of the last RGB Increase before issuance by the Loft Board of the final rent order setting the initial legal regulated rent. The failure of an occupant to make an election and return a copy of same to the Loft Board within 45 calendar days of the mailing thereof by the applicant shall be deemed to be an election to be governed by increases applicable to one year leases.

(iv) If an occupant disputes the maximum permissible rent under Loft Board rules as set forth in the aforementioned notice, such occupant shall, within the 45-day period described in subparagraph (iii) of this paragraph, notify the Loft Board and the owner, on the form provided pursuant to subparagraph (v) of this paragraph, of the amount in dispute. Failure of such occupant to notify the Loft Board within such 45-day period shall be deemed to be an acceptance by the occupant of the amount of rent claimed by the owner. During the period prior to the resolution of the dispute, the occupant shall pay rent in an amount no less than the amount not in dispute plus the RGB Increase authorized by these rules (for example, if the owner claims the rent in effect is $450 and the occupant claims it is $400,

the rent paid to the owner prior to resolution of the dispute shall be no less than $400 plus the applicable RGB Increase). The occupant shall pay any deficiency in one lump sum at the time that the first rent payment is due following resolution of the dispute.

(v) Responses from affected occupants to the Loft Board notifying the Loft Board of a dispute in the rent or of an election of the period of the RGB rent increase shall be in the form prescribed by the Loft Board, a copy of which form shall be included in the aforementioned notice from the owner to each affected occupant pursuant to subparagraph (iii) of this paragraph.

(2) **Cost of compliance increases.** (i) An owner may apply for rent adjustments based on the necessary and reasonable costs of obtaining a residential certificate of occupancy: once upon certification of compliance with Article 7-B of the M.D.L., alternative local building codes or provisions of the M.D.L. or issuance of a temporary residential certificate of occupany, or once upon issuance of a final residential certificate of occupancy, or both. The application may include those necessary and reasonable costs incurred prior to June 21, 1982 for which the residential occupant(s) have not reimbursed or are not in the process of reimbursing the owner. In the course of the processing of the application, the residential occupant(s) who claim(s) that reimbursement has been or is being made for such costs shall be required to present satisfactory proof of such reimbursement to the Loft Board. Rent adjustments shall be allowed for both necessary and reasonable code compliance costs incurred by an owner in obtaining the building permit under which code compliance work is performed and for necessary and reasonable costs incurred for work performed after the issuance of such a permit. An owner who has failed to register its building as an IMD on or before December 1, 1985 or, in the case of a building which is an IMD solely pursuant to M.D.L. §281(4), an owner who has failed to register his building as an IMD on or before February 11, 1993, shall be allowed only necessary and reasonable code compliance costs incurred after registration. An owner who fails to register its building as an IMD on or before March 1, 1986 or, in the case of a building which is an IMD solely pursuant to M.D.L. §281(4), an owner who fails to register its building as an IMD on or before May 11, 1993, shall be allowed only the necessary and reasonable code compliance costs incurred after registration, and such costs shall be based upon the schedule in effect on the effective date of these regulations, without indexing, regardless of when such costs were incurred.

(ii) An application filed pursuant to this paragraph (2) of §2-01(i) shall be filed within nine months after the owner has obtained a certificate of occupancy or February 1, 2000, whichever date is later. An owner that fails to file an application for code compliance rent adjustments in a timely manner pursuant to this provision shall be deemed to have waived its right to seek such a rent adjustment. An application submitted pursuant to this paragraph shall be submitted on a form prescribed by the Loft Board and shall meet the requirements of this paragraph and §§1-06 and 2-11 of these rules, except that for applications filed pursuant to clause (A) of subparagraph (iii) of this paragraph, only two copies must be filed plus one for each affected party, and for precertified applications filed pursuant to clause (B) of subparagraph (iii) of this paragraph, only two copies of the application must be filed. As part of the application the applicant must submit an itemized statement of costs incurred, including paid bills, cancelled checks or receipts for work performed, any construction contracts, the certificate issued by the Department of Buildings for the pertinent level of compliance, and such other information or materials as the Board requires. If the applicant seeks reimbursement for interest and service charges incurred in connection with compliance costs, the applicant must submit the information and materials required under paragraph (4) of §2-01(k) of these rules. In accordance with the provision of §1-06(j)(1), the Board may require the applicant to furnish such reports and information as it may require concerning the code compliance work performed and may audit the books and records of the applicant with respect to such matters.

(iii) An application filed pursuant to this paragraph (2) of §2-01(i) may be submitted to the Loft Board for an audit or may be precertified pursuant to clause (B) of this subparagraph.

(A) If the application is not precertified, the Loft Board shall audit the application to ascertain whether the code compliance costs set forth in the application: (a) are substantiated by invoices and copies of cancelled checks or other similarly reliable documentary evidence submitted as part of the application; and (b) do not exceed the reasonable code compliance costs set forth in the schedule contained in these rules. Once the Loft Board's audit of an application is

completed, the Executive Director shall, by first class mail, send the affected residential occupants a copy of the owner's application and send the affected residential occupants and the owner a copy of the auditor's report.

(B) An owner shall have the option to file a precertified application for code compliance rent adjustments pursuant to this clause (B). Costs attributable solely to the precertification of the application shall not be included as reimbursable code compliance costs. A precertified application shall meet the requirements of subparagraph (ii) of this paragraph as to form and content, shall be served on all affected residential occupants, and shall be filed, together with:

(a) certification by a certified public accountant ("CPA"), certifying that said CPA has audited the code compliance cost information contained in the application and that the code compliance costs set forth in the application (i) are substantiated by invoices and copies of cancelled checks or other similarly reliable documentary evidence; and (ii) do not exceed the reasonable code compliance costs set forth in the schedule contained in these rules;

(b) certification by a registered architect that the code compliance work described in the application for which the owner seeks reimbursement has been performed, meets the requirements of MDL Article 7-B, and is reimbursable pursuant to these rules; and

(c) proof of service of the precertified application upon all affected residential occupants.

(C) Residential occupants may, no later than 45 days following mailing by the Loft Board of the auditor's report pursuant to clause (A) of this subparagraph or service of a precertified application pursuant to clause (B) of this subparagraph, as the case may be, serve comments concerning the application upon the owner, and shall file such comments with the Loft Board along with proof of such service. Comments may include, but are not limited to, such matters as the scope of work performed, its necessity and reasonableness, the quality of the workmanship, and the actual costs claimed by the owner. Such comments shall specify the items in contention and the reasons therefor, and shall be supported by corroborating evidence, e.g., contractors' estimates, invoices, and/or architects' statements. The Executive Director may extend the 45-day period for a period of time not to exceed 21 days, upon a written request of a registered architect, contractor or CPA stating that he or she has been retained by an affected residential occupant for the purpose of reviewing the owner's application and the Loft Board audit, where an audit has been performed, and stating the reason an extension of time is needed to complete such review. Within the 45-day period, or within the period of any extension granted by the Executive Director, an affected residential occupant may request that the Executive Director schedule a conference at the offices of the Loft Board with the owner or the owner's representative. The conference shall be scheduled expeditiously and shall be limited to the issues presented in the owner's application and in the Loft Board audit, where an audit has been performed.

(D) If the Executive Director determines that there are no genuine issues of material fact with regard to the application, the Executive Director shall recommend approval of the application. In the event that the Executive Director finds that a genuine issue of material fact has been raised with regard to any item in the application, he shall proceed with respect to such item in accordance with clause (E) or (F) of this subparagraph, as appropriate, and at the same time shall recommend approval of the part of the application as to which he has determined there are no genuine issues of material fact. In considering the application under this clause (D), the Board shall review the application, the comments submitted, and the recommendation of the Executive Director, and shall determine whether to approve the application or any part thereof.

(E) Where the Executive Director finds that a genuine issue of material fact has been raised he may take appropriate action to obtain such relevant information as in his discretion is necessary to assist him in reaching a determination. Such action may include, but shall not be limited to, ordering an inspection of the premises, directing the parties to serve and file additional information or corroborating evidence in support of their positions, holding an informal conference with the parties, or directing that a hearing be scheduled pursuant to the provisions of clause (F) of this subparagraph. No later than 45 days following the end of the period in which residential occupants may submit comments pursuant to clause (C) of this subparagraph, the Executive Director shall either make findings of fact and a

recommended determination to the Board, or shall direct that a hearing be scheduled pursuant to clause (F) of this subparagraph; provided, however, that the 45-day period shall be extended an additional 30 days if, prior to the expiration of the 45-day period, the Executive Director has requested additional information or documentary evidence pursuant to item (2) of this clause (E) and the time to provide such additional information or documentary evidence, or to respond to such additional information or documentary evidence, has not yet passed. In making a recommended determination pursuant to this clause (E), the Executive Director shall consider, and shall make available to the Board, the application, any comments of the residential occupants, inspection results, information provided by the parties at an informal conference, additional comments, information or corroborating evidence submitted by the parties in writing, or other relevant information.

(a) If the Executive Director orders an inspection of the premises, the results of the inspection shall be mailed to the parties within three business days of completion of such inspection, and the parties may serve and file comments concerning the inspection results within eight business days after the date of mailing of such results.

(b) A party directed to serve and file additional information or documentary evidence shall serve and file the additional information or evidence within fourteen business days of such order. The party upon whom the additional information or evidence has been served shall serve and file its response, if any, within five business days after service of the information or evidence.

(c) If the Executive Director obtains any other relevant information to assist him in making his recommended determination under this clause (E), the Executive Director shall ensure the parties are provided with such information, shall provide the parties an opportunity to comment in writing on such information within up to 15 business days after service thereof, and shall provide the parties an opportunity to respond to each other's comments within five business days after service of such comments.

(F) If the Executive Director determines that a genuine issue of material fact has been raised which may be resolved only by a hearing, the Executive Director may bifurcate the application into two parts: (1) the part that requires no hearing, which shall proceed pursuant to clause (D) or (E) of this subparagraph, as applicable, and (2) the part as to which a hearing is required, which shall proceed pursuant to this clause (F). Such hearing may be preceded by an informal conference, but in any case, shall be commenced not more than 30 days after the decision of the Executive Director to bifurcate the application, unless the parties stipulate in writing otherwise. Within 30 days after the conclusion of the hearing, the hearing officer shall make findings of fact and a recommended determination. In making the recommended determination the hearing officer shall consider, and shall make available to the Board, the application, any comments of the residential occupants, inspection results, information provided by the parties at an informal conference, additional comments, information or corroborating evidence submitted by the parties in writing, testimony given at any hearing, or other relevant information. The hearing officer shall submit his recommended determination with respect to the portion of the application proceeding pursuant to this clause (F) to the Board for its consid- eration.

(G) Nothing in this subparagraph (iii) of §2-01(i)(2) shall be construed to preclude partial approval of an application by the Board pursuant to clause (D) or (E) of this subparagraph prior to a hearing pursuant to clause (F). If the Board issues an initial order determining the portion of the application that proceeded under clause (D) or (E) of this subparagraph and grants a rent adjustment to the owner pending the conclusion of a hearing pursuant to clause (F), the owner may continue to collect rents in the amounts stated in the initial order unless and until a supplementary order is issued.

(iv) In evaluating all applications for code compliance rent adjustments, the Loft Board shall review the owner's application, the comments of residential occupants, the Loft Board schedule of costs described in §2-01(j), or alternative schedule described below, and any other information considered by the Executive Director and the hearing officer in making a recommended determination. The Board shall determine the necessary and reasonable code compliance costs incurred by the owner, which shall be charged to all affected residential occupants as rent adjustments. Owners shall be

allowed to pass along no more than the costs recited in the current Loft Board schedule as of the date on which the construction contract(s) is (are) entered into for items included in the contract(s), except as provided in the first paragraph of this subdivision (i) and other necessary and reasonable costs not on the schedule pursuant to §2-01(j) below. For items not included in the construction contract(s), costs will be determined based upon the schedule in effect at the time work was performed and §2-01(j) below. Owners submitting applications on or after June 1, 1989 shall be allowed to pass along no more than the costs recited in the revised schedule of costs promulgated by the Board on October 25, 1990. In all cases, if actual compliance costs are less than the amount recited in the Loft Board schedule, rent adjustments shall reflect the lesser actual costs.

(v) An owner may elect that the Loft Board shall deem the total cost of compliance to be the amounts certified by the Department of Housing Preservation and Development in any certificate of eligibility issued in connection with an application for tax exemption or tax abatement (such as "J-51") to the extent that such certificate reflects categories of costs approved by the Loft Board.

(vi) An owner may expressly waive its right to a rent adjustment based on the cost of compliance. To do so, it shall indicate its waiver decision on the Notice of RGB Increase form described in §2-01(i)(1) and follow the procedures therein for notification of the affected occupants. In addition, an owner may be deemed to have waived its right to a rent adjustment based on the cost of compliance pursuant to §2-01(i)(2)(ii).

(vii) Whenever service upon parties is required in this §2-01(i)(2), service shall be made, and proof of service filed, in accordance with the requirements of §2-01(d)(1)(i).

(viii) If the Loft Board finds, following notice and an opportunity to be heard, that an architect or CPA has knowingly made a misleading material statement in the context of a certification issued pursuant to §2-01(i)(2)(iii)(B), the Loft Board may refuse to accept subsequent certifications from such architect or CPA, and shall refer its findings to the appropriate licensing agency.

(j) **Schedule of costs.** The Loft Board schedule of reasonable code compliance costs for obtaining a residential certificate of occupancy promulgated pursuant to §§280 and 286(5) of Article 7-C is appended to these regulations. The schedule is current as of September, 1984, will be applicable to applications filed with the Board before June 1, 1989 and shall be indexed annually, both prospectively and retroactively, based upon the average of the annual percentage change reported in the Dodge Building Cost Index and the Engineering News-Record Building Cost Index for New York as of September of each year. However, for periods prior to 1977 and after 1988 only the Engineering News-Record Building Cost Index will be used. The schedule promulgated by the Board on October 25, 1990 will be applied to all rent adjustment applications submitted on or after June 1, 1989 and shall be indexed annually, both prospectively and retroactively, based upon the annual percentage change reported in the Engineering News-Record Building Cost Index for New York as of September of each year. The schedule is intended to include all necessary and reasonable code compliance cost items. It includes the allowable costs of materials and labor for demolition and construction necessary for achieving minimal code compliance. It also includes professional fees and municipal filing fees necessary for code compliance. Rent adjustments shall not be allowed for items not included in the schedule unless upon owner application they are shown to be necessary and reasonable costs of code compliance, nor shall rent adjustments be allowed for costs not necessary to obtain a residential certificate of occupancy. In addition, notwithstanding the existence of a work item on the schedule, rent adjustments shall not be allowed for: (1) costs incurred in repairing or replacing items located in the common or commercial areas of the building or involving its exterior (such as masonry, fire escape, or skylight repairs) to the extent such items are repaired or replaced with a similar or comparable item due to their deteriorated condition (such costs being "deferred maintenance" costs); (2) the costs of curing preexisting violations in the building evidenced by municipal notices of violation to the extent such violations would have to be cured even if the building did not have to be made code compliant pursuant to Article 7-C; and (3) other "soft" costs, such as BRAC payments. The repair or replacement of work items (other than windows, as provided below) located within the residential units of the building shall not constitute a deferred maintenance cost. The foregoing rules are qualified to the following extent; (x) if the roof is required to be repaired or replaced, and it has been

replaced within the 10-year period prior to the narrative statement conference for the building, half the necessary and reasonable costs shall be recognized as code compliance costs and allocated equally among any residential units whose occupants had made significant use of the roof during this 10-year period ("significant use" may be evidenced by the presence on the roof of the residential occupants' property, such as outdoor furniture, plants, decking, and clotheslines); otherwise, the costs of roof repair and replacement shall be excluded as deferred maintenance; (y) if windows are required to be repaired or replaced, the necessary and reasonable costs shall be recognized as code compliance costs if incurred to meet residential certificate of occupancy standards, but shall be excluded if they resulted instaed from the deteriorated condition of the windows; and (z) the repair or replacement of utility risers, other building system components, or structural components due to their deteriorated condition with similar or comparable items shall constituye deferred maintenance costs unless these components had been installed by a residential tenant.

In determining the appropriate rent adjustment for code compliance for each affected unit the Loft Board will decide on a case-by-case basis whether the work item applied for was necessary and reasonable to achieve minimal code compliance in the building. "Minimal code compliance" shall not be limited exclusively to the least expensive method of compliance but may also include other reasonable approaches to meeting legal requirements which are not unduly burdensome to the residential occupants. In assessing the reasonableness of the approach, the Board may consider the construction standards and specifications applied in housing programs financed by the Department of Housing Preservation and Development and other affordable housing programs in New York City. Where the cost of an allowable code compliance item has been included in the initial rent adjustment based upon Article 7-B compliance, the cost of any subsequent work performed to repair or replace that item may not be included in the final rent adjustment based upon issuance of a final residential certificate of occupancy. Rent adjustments for approved work items will be based on the lower of the actual cost or the scheduled amount for the item. In the case of approved work items that do not appear on the schedule, the necessary and reasonable cost of such items will be determined and included in the rent adjustments.

Further, if in order to provide heat as required by Loft Board Minimum Housing Maintenance Standards, the landlord is or was required to install a central heating system or individual heating systems or to modify an existing system, the necessary and reasonable costs incurred in purchasing and installing or modifying such system or systems shall be costs that may be passed along to tenants as part of the rent adjustment calculated pursuant to these regulations.

If in order to meet utility company standards or rules, an owner is required to perform work such as installing meters or constructing meter rooms, the necessary and reasonable costs of such work shall be costs that may be passed through as rent adjustments pursuant to these rules. Also, if in order to provide elevator services as required by the Department of Buildings or Loft Board Minimum Housing Maintenance Standards, the landlord has modified or replaced an existing elevator, the necessary and reasonable costs of performing such work shall be costs that may be passed along to the tenants as part of the code compliance rent adjustments.

As part of the legalization work, the landlord shall also replace elevator hoistway door locks where prohibited with a security device on residential floor landings that provides substantially the same or enhanced security to the tenants, and the necessary and reasonable costs of performing such work shall be costs that may be passed along to the tenants as part of the code compliance rent adjustment. "Substantially the same or enhanced security" shall be defined as follows: (1) a "zero clearance vestibule," if the elevator is equipped with sliding doors and the vestibule may be created without altering their operation; (2) a vestibule extending into the IMD unit, with the minimum dimensions required to meet code requirements, if the elevator is equipped with swinging doors which open into the IMD unit; or (3) any other security arrangement to which the owner and tenant agree which meets DOB and Fire Department requirements. On request of the residential tenant, additional security measures such as mirrors and reinforced vestibule walls shall be installed by the owner, provided they are acceptable to DOB and the Fire Department, and the cost of their installation shall also be a recognized cost of code compliance.

If a tenant has performed construction without the owner's consent at any time after the initial narrative statement conference, and additional costs are incurred by the owner as a result, such as architectural fees to revise plans or labor

and material costs to perform additional work, these costs may be passed through to the tenant as part of the code compliance rent adjustments.

In situations in which the owner alters or reconfigures residential units in a manner which results in changes in residential floor area pursuant to a Loft Board order or agreement among the parties, the Loft Board may determine the base rents to be charged for such spaces reflective of the change. Installation of an elevator vestibule to provide a tenant with security from intruders using the elevator shall not be the basis for an adjustment of base rent.

Also, see §2-01(0).

(k) **Rent adjustments.** (1) When an owner files an application for code compliance rent adjustments pursuant to §2-01(i)(2) prior to obtaining a certificate of occupancy, rent adjustments granted by the Board shall be retroactive to the first day of the month following the date of the filing of the completed rent adjustment application by the owner. When an owner files an application for code compliance rent adjustments pursuant to §2-01(i)(2) after obtaining a final certificate of occupancy, rent adjustments granted by the Board shall be retroactive to the first day of the month following the date of the issuance of the final certificate of occupancy. In either case, rent adjustments granted by the Board shall take effect on the first rent payment date that occurs at least 10 days after the Loft Board has mailed a final rent adjustment order to the owner and all affected residential occupants. For example, in a case where an owner filed an application for a rent adjustment prior to obtaining a certificate of occupancy, if the owner filed its application on March 15, 1986, and the Loft Board's order was mailed on October 6, 1986, the increase would be effective November 1, 1986, retroactive to April 1, 1986. At the option of the residential occupant, such retroactive increase may be paid either in a lump sum or as an addition to the regular monthly rent payments at a rate equal to 20 percent of the rent in effect, including any escalators, as of the date of application for adjustment ("base rent") until payment of the full retroactive amount is completed. Also, see §2-01(o).

(2) The total rent adjustment per building shall be determined by the Loft Board:

(i) by dividing the allowable cash costs of compliance approved by the Loft Board, exclusive of interest and service charges, over a 10-year period of amortization; or

(ii) by dividing the allowable cash costs of compliance approved by the Loft Board over a 15-year period of amortization and adding the actual mortgage debt service, incurred by the owner to pay allowable cash costs of compliance approved by the Loft Board that are attributable to interest and service charges in each year of indebtedness to an Institutional Lender (as defined in paragraph (4) of this subdivision) or any Qualified Noninstitutional Lender (as defined in paragraph (4) of this subdivision) that is approved by the Loft Board pursuant to such paragraph. The portion of the rent adjustment attributable to mortgage debt service shall be computed on the basis of the average annual debt service attributable to interest, finance and service charges over the loan term, provided that the maximum total amount of interest charged includable in rent shall not exceed that reflected in a 15 year self-amortizing mortgage.

Service charges shall include mortgage application fees; commitment fees; fees for professionals who are required to be paid by the lender (such as appraisers, attorneys and surveyors); mortgage title examination and insurance fees and charges; origination fees; points; mortgage recording tax; and other recording charges.

The use of a 10-year period of amortization, not including debt service, or of a 15-year period of amortization, including debt service, shall be at the option of the owner when interest and service charges are incurred to pay for any portion of allowable cash costs of compliance approved by the Board.

(3) In cases where the owner of a building receives tax abatement and exemption under Part 1 of Subchapter 2 of Chapter 2 of Title II (§11-243 formerly J-51) of the Administrative Code, the total annual rent adjustment for the IMD shall be adjusted to reflect a reduction equal to one-half of the total annual tax abatement granted for the IMD for those categories of costs approved by the Loft Board as necessary and reasonable for code compliance. The allocation of such reduction shall be in accordance with the formulae for allocation of rent adjustments contained in §2-01(l) of these

regulations.

(4) (i) **Definitions.** For purposes of amortizing code compliance costs and interest and service charges over a 15-year period, the following terms have the following meanings: (A) "Institutional lender" shall mean any bank, trust company, national bank, savings bank, state or federal savings and loan association, state or federal credit union, insurance

company; any pension fund or retirement system of any corporation, association or any other entity owned or controlled by any one of the above, provided the same is supervised by or responsible to any agency of the federal government, or the State or the City of New York; and any governmental agency.

(B) "Qualified noninstitutional lender" shall mean any person or entity other than (A) the owner of the building, (B) any person or entity that owns, directly or through another entity, more than 50% of the ownership interest in the property, or any person or entity that at any time after March 26, 1993 has owned directly or through another entity, more than 50% of the ownership interest in the property, or (C) the spouse of any person described in clauses (A) or (B) above.

(ii) **Procedure for applying for rent adjustment based on loans used to finance allowed compliance costs.**

(A) Required documentation for all loans. An applicant seeking a rent adjustment based on interest and service charges for any loan from an institutional lender or qualified noninstitutional lender shall submit, as part of the application described in §2-01(i)(2), a descripion of the terms of the loan, the identity of the lender, a copy of all documents (including amendments thereto) evidencing or securing the loan (e.g., the note, loan agreement, mortgage, and security agreement, if any) certified by the lender as being true and correct copies; and evidence of the payment of service charges in the form of paid bills, canceled checks or other similar evidence.

(B) Additional documentation required for a loan from any qualified noninstitutional lender. In the case of a loan from a qualified noninstitutional lender, an applicant must submit, in addition to the documents enumerated in sentence (i) of subparagraph (b) of this paragraph, a completed Application for Noninstitutional Lender Approval in the form prescribed by the Loft Board together with an affidavit of Noninstitutional Lender-Lender Approval Form and an Affidavit of Noninstitutional Lender-Loan Approval Form. A completed Application for Noninstitutional Lender Approval and Affidavit of Noninstitutional Lender-Lender Approval Form must be submitted before the Loft Board will begin to process the rent adjustment application described in §2-01(i)(2).

(C) Additional documentation required for a loan from a qualified noninstitutional lender that is related to the applicant by blood, marriage or ownership of stock, partnership interests or other ownership interests. In the case of a loan from any qualified noninstitutional lender that is related to the applicant by blood, marriage or ownership of stock, partnership interests or other ownership interests, an applicant must submit, in addition to the documents enumerated in sentences (ii) and (iii) of subparagraph (b) of this paragraph, a statement from the lender's certified public accountant to the effect that the loan under consideration is a bona fide loan and that the interest payable thereunder has been included or is includable as income in the lender's federal income tax return or, alternatively, a true and correct copy (certified as such by the lender or the lender's certified public accountant) of the lender's federal income tax return(s) (or the applicable schedules thereto) showing that such interest has been included in the lender's income for federal income tax purposes for each year to date of such application that interest under the loan has been paid to an including the most recent year in which a federal income tax return has been filed; and copies (both sides) of canceled checks drawn on an account of the lender evidencing payment of the proceeds of the loan to or on behalf of the owner.

The Loft Board shall approve a noninstitutional lender in determining rent adjustments pursuant to §2-01(k)(2); provided, however, in the case of a qualified noninstitutional lender that is related to the applicant by blood, marriage or ownership of stock, partnership interests or other ownership interests, that the applicant submits reliable evidence (in the form described above) that the loan under consideration is a bona fide loan. Service charges shall be reimbursable only

to the extent that they have been paid on or prior to the date of application and only when supported by reliable evidence (in the form described above). Only that portion of interest charges on a noninstitutional loan that does not exceed 2 points over the Federal National Mortgage Association's yield on multi-family, 15-year fixed-rate loans shall be included in rent adjustments. The procedures for applications to the Loft Board set forth in §1-06 of these rules shall not apply to Applications for Non- Institutional Lender Approval. The owner shall be required to submit two copies of the Application for Non-Institutional-Lender Approval. Such application will be approved provided such filing contains the information required by these rules.

The portions of the preceding provisions of §2-01(k) pertaining to loans from qualified noninstitutional lenders (specifically, the reference to qualified noninstitutional lenders in §§2-01(k)(2)(ii), and §§2-01(k)(4)(i)(B), 2-01(k)(4)(ii)(B), 2-01(k)(4)(ii)(C), and the paragraph immediately following §2-01(k)(4)(ii)(C) shall terminate on June 30, 1995 unless extended by the Loft Board.

(1) **Allocation of rent adjustments.** The total rent adjustment per IMD determined pursuant to §§2-01(i) through (k) above, for obtaining a residential certificate of occupancy shall be allowed among individual residential units in the following manner:

(1) Allowable code compliance costs of work performed in a residential unit to bring the unit into compliance shall be allocated to that residential unit.

(2) Allowable code compliance costs of systems work, such as utility service or heat, that only services and is only capable of servicing the residential units and of work performed in nonresidential units solely to achieve Article 7-C compliance for the residential units shall be allocated equally among those residential units regardless of where the work is performed.

(3) An equal share of allowable code compliance costs of work in common areas and nonresidential units, except as provided in §2-01(1)(2), in the building shall be allocated to each residential unit. Allowable code compliance costs for systems work, such as utility service or heat, which services or is capable of servicing nonresidential units shall be deemed to be code compliance costs of work in common areas.

This share, as described in this §2-01(l)(3), shall be equal to the portion of total allowable code compliance costs of work in common areas and nonresidential units, except as provided in §2-01(l)(2), which bears the same proportion to the total as the sum of the amount of floor area devoted to the maximum number of residential units in the building at any time after April 1, 1980 which qualified for coverage under M.D.L. Article 7-C and of the residential units which appear on the final certificate of occupancy which did not qualify for coverage under M.D.L. Article 7-C bears to the building's total floor area, divided equally among the sum of the maximum number of residential units in the building at any time which qualified for coverage under M.D.L. Article 7-C and the number of residential units which appear on the final certificate of occupancy which did not qualify for coverage under M.D.L. Article 7-C so that

$$\mathbf{S} = \frac{(\mathbf{TC} \times \mathbf{RA/TA})}{\mathbf{R}}$$

that is S equals (TC multiplied by (RA divided by TA)) divided by R,

where S = Share per residential unit

TC = Total allowable code compliance costs of work in common areas and nonresidential units, except as provided in §2-01(l)(2)

RA = Sum of the floor area of the maximum number of residential units in the building at any time which qualified for coverage under M.D.L. Article 7-C and of the residential units which appear on the final certificate of occupancy

which did not qualify for coverage under M.D.L. Article 7-C

TA = Total Floor area

R = Sum of the maximum number of residential units in the building at any time which qualified for coverage under M.D.L. Article 7-C and the number of residential units which appear on the final certificate of occupancy which did not qualify for coverage under M.D.L. Article 7-C

For purposes of allocating rent adjustments pursuant to §2-01(1)(3):

Total floor area (TA) is defined as the sum of the gross areas of the floors of a building measured from the exterior faces of exterior walls or from the center line of walls separating two buildings. Floor area includes rentable space, such as space in penthouses, cellars, and basements, but excludes rooms with mechanical, heating and air conditioning equipment and elevator and stair bulkheads, water tanks and cooling towers. Nonresidential tenant, residential tenant and vacant rental spaces are included in the floor area.

Floor Area of Residential Units (RA) is defined as the sum of the clear area of the floor contained within the partitions or walls enclosing any room, space, foyer, hall or passageways of each of the residential units. It shall not include common areas, public halls, public vestibules, public rooms or other public parts of the building.

Common areas are defined as spaces used for bulkheads, stairs, hallways, cellars, basements, fire escapes, rooms used for mechanical, elevator and heating equipment, and other areas used by all the residential occupants of the building, including storage areas.

(m) **Initial legal regulated rents/issuance of residential leases.** (1) Following the calculation of code compliance rent adjustments pursuant to §2-01(i)(2)(ii) or the waiver of an owner's right to such rent adjustments pursuant to §2-01(i), the Loft Board shall set the initial legal regulated rent for all covered residential units remaining subject to rent regulation under M.D.L. Article 7-C.

(2) If an owner has waived its right to code compliance rent adjustments, the Loft Board may establish the initial legal regulated rents for covered residential units subject to rent regulation under M.D.L. Article 7-C based on the owner's RGB application pursuant to §2-01(i)(1), or, if no RGB application was filed, by evidence including, but not limited to, Loft Board records, documents submitted by affected parties, and the testimony of witnesses.

(3) (i) Upon the issuance by the Loft Board of an order establishing the initial legal regulated rent, the owner shall offer each residential occupant a residential lease subject to the provisions regarding evictions and regulation of rent set forth in the Emergency Tenant Protection Act of 1974, except that to the extent the provisions of Article 7-C are inconsistent with such act, the provisions of Article 7-C and these rules shall govern. At such time, the owner shall register with the New York State Division of Housing and Community Renewal in accordance with the ETPA.

Note: §285(3) of the M.D.L. requires registration with a real estate industry stabilization association; however, amendments to the ETPA (Chapter 403 of the Laws of 1983) modified that filing requirement as shown.

(ii) If the owner has received any RGB Increase under §2-01(i)(1), then the initial term of such lease shall end upon expiration of the last RGB Increase Period (as defined in §2-01(i)(1)) prior to the setting of the initial legal regulated rent; provided, however, that no notice or proceeding by the owner to recover the unit pursuant to §2524.4 of the Rent Stabilization code may be commenced during the pendency of this initial abbreviated lease term.

The initial legal regulated rent established by the Loft Board pursuant to this subparagraph (ii) shall be equal to:

(A) the rent in effect, including escalations, and any RGB Increase granted under §2-01(i)(1) as of the date of the rent order ("base rent"), plus

(B) the maximum annual amount of any increase allocable to compliance as provided herein.

(iii) If an owner has not received any RGB Increases under §2-01(i)(1), then the rent shall be the sum of clauses (A) and (B) of subparagraph (ii) above plus the percentage increase then applicable to one-or-two year leases, as elected by the tenant, as established by the RGB and applied to the base rent, provided, however, such percentage increases may be adjusted downward by the Loft Board if prior increases based on Loft Board guidelines cover part of the same time period to be covered by the Rent Guidelines Board adjustments. For units in buildings that have been rented at market value subject to subsequent rent regulation as a result of the owner's purchase of improvements pursuant to M.D.L. §286(6) and §2-07(f)(5) of these rules, the initial legal regulated rent shall be calculated as set forth above except that the code compliance cost increase shall be zero.

(4) Rental adjustments attributable to the cost of code compliance shall not become part of the base rent for purposes of calculating rent adjusted pursuant to Rent Guidelines Board increases and shall terminate, after 10 or 15 years, as established by Loft Board order.

(n) **Cooperatives and condominiums.** (1) Cooperative or condominium conversion of an IMD shall be fully in accordance with Article 23-A of the General Business Law, as amended, and the rules and regulations promulgated by the New York State Attorney General pursuant thereto. No eviction plan for conversion to cooperative or condominium ownership for a building that is, in whole or in part, an IMD shall be submitted for filing to the office of the New York State Attorney General pursuant to the General Business Law until a final residential certificate of occupancy is obtained and the residential occupants are offered residential leases in accordance with these regulations.

(2) Noneviction plans for such buildings may be submitted for filing provided that the sponsor or owner association remains legally responsible for bringing all rental, cooperative, and condominium units and all common areas of the building into compli ance with Article 7-B of the M.D.L., or alternative building codes or provisions of the M.D.L. described in §2-01(a)(3) of these regulations and for all work in common areas required to obtain a residential certificate of occupancy. An IMD that has been converted to cooperative or condominium ownership is subject to compliance with Article 7-C and Loft Board rules and regulations promulgated pursuant thereto.

(3) Cooperative and condominium units occupied by unit owners or tenant-shareholders are not subject to rent regulation pursuant to Article 7-C of the M.D.L. Cooperative and condominium units occupied by residential occupants qualified for the protection of Article 7-C of the M.D.L., i.e., who are not unit owners or tenant-shareholders, are subject to rent regulation pursuant to the statute.

(4) The sponsor or owner association of an IMD building that has converted to cooperative or condominium ownership shall file for code compliance rent adjustments for any units remaining subject to rent regulation pursuant to M.D.L. Article 7-C by the time set forth in §2-01(i)(2)(ii). A sponsor or owner association that fails to file an application for code compliance rent adjustments in a timely manner pursuant to this provision shall be deemed to have waived its right to seek such a rent adjustment.

(5) At any time after obtaining a residential certificate of occupancy, the sponsor or owner association of such an IMD building shall file with the Loft Board a list of all units originally registered as IMD units that are occupied by unit owners or tenant-shareholders, certifying that such units are occupied by unit owners or tenant-shareholders, and affirming that the sponsor or owner association seeks exemption for those units from the Loft Board's order setting the initial legal regulated rents. The building shall remain subject to the annual registration renewal requirement pending completion of Loft Board review of such list.

(o) Reserved.

(p) **Schedule of costs.**

Description	Unit	Revised Schedule*

(1) **Demolition.**

Dumpster (incl. permit)	Mini	30.45/load
	10 yd.	385.78/load
	20 yd.	482.13/load
Demolition susp. plaster or sheetrock ceiling	sq. ft. sq. ft.	1.27 0.76
Demolition of non fire-rated partition	sq. ft.	1.02
Removal of non-code compliant hot water heater	each	76.13
Removal of non-code compliant space heater	each	64.35
Removal of non-code compliant heater, ceiling unit	each	193.05
Removal of non-code compliant plumbing fixture	each	64.35
Remove window and frame on lot lines	each	64.35
Demolition of wooden stairs	per floor	256.39

(2) **Masonry**

Allowance for openings in interior walls for exhausts, vents and heaters	per opening	50.75
Fireproofing columns, 4" solid block	sq. ft.	6.44
New window opening in brick or concrete block wall	each	386.11
New door opening in sheetrock	each	76.13
New door opening in brick or concrete block wall	each	386.11
Exterior wall opening for exhausts, vents and space heater	each	321.76
New fire-rated stair enclosure-		
top floor to roof	each	1,287.02
first floor to cellar	each	1,287.02
Extend brick parapet to provide 3'6" height	sq. ft.	32.18
New bulkhead (25 linear feet)	each	3,217.55
Bulkhead ventilation louver (12" x 12") completely installed	each	128.70
Gypsum block (4") to enclose boiler/meter rooms	sq. ft.	6.44

(3) **Metals**

New metal stair, 2'6" wide, for top floor to roof*	floor	2,233.00
New roof railings to provide 3'6" parapet	lin. ft.	19.31
Metal stair to cellar to replace existing*	floor	1,930.53
Skylight including screen 20 sq. ft.	each	772.21
Scuttle ladder to roof	each	257.40
Fire escape, new	floor	2,445.44
Extend fire escape to roof & platform	each	1,930.53
Exterior screened stair	floor	3,217.55
Cellar "engineer's" hatch with frame, ladder, cutting, patching1 hardware new steel (24" x 24") completely inst.	each	1,930.53

(4) **Carpentry**

Floor joist, 3 × 10	lin. ft.	10.15
Floor joist, 3 × 12	lin. ft.	12.18
Subflooring replacement	sq. ft.	1.83
Framing for new partitions	sq. ft.	1.29

(5) **Doors and Windows**

Building entry and/or vestibule, new installation	lin. ft.	257.40
Hollow metal door and frame (common area)-replacement	each	450.46
Hollow core wood door and frame	each	128.70
Dwelling unit entrance door with frame including lock, door knobs and hinges	each	514.81

Bulkhead door with frame	each	450.46
Repair existing dwelling unit entrance door	each	128.70
New dwelling unit entrance door lock	each	128.70
Reversing swing of door	each	86.28
Double hung window (double glaze) 20 sq. ft.	each	321.76
Double hung window (single glaze) 20 sq. ft., installed	each	268.98
Windows larger than 20 sq. ft.	each sq. ft. above 20	25.74
Lot line window	each	406.00
Glazing-wired	sq. ft.	10.94

(6) **Finishes**

Painting (primer coat on sheetrock, plus one coat)	sq. ft.	0.37
Plaster patching	sq. ft.	1.93
Gypsum board, non-fire rated (1/2") for interior unit partitions	sq. ft.	2.03
Fire-rated gypsum board (5/8") to fireproof underside of stairs, 2 hrs. rating	sq. ft.	2.58
To separatecommercial/manufacturing from residential portion of building, 1 or 2 hrs. rating	sq. ft.	1.29/2.58
To separate apartments, 1 hr. rating	sq. ft.	1.29
To enclose fire stairs and/or fire corridor, 1 or 2 hrs. rating	sq. ft.	1.29/2.58
To enclose cellar, common area rooms 1 or 2 hrs. rating	sq. ft.	1.29/2.58
To enclose bath and/or kitchens	sq. ft.	1.29
Dry-wall, impervious to water, for bathroom use	sq. ft.	1.93

Note: All gypsum board descriptions and prices are finished, i.e. taped and spackled.

INSULATION

Wall Insulation (R-11)	sq. ft.	0.32
Roof Insulation (R-30)	sq. ft.	0.64

TILE AND FLOORINGS

Tile repair in residential bathroom	sq. ft.	7.61
Tile work in residential bathroom (newbase only)	bathroom	64.35

(7) **Specialities**

Mail Boxes	each	56.84
Floor Signs	each	12.87
Peephole Bell Chain on Existing Door	per door	64.35
Smoke Detector, Hard Wired	each	128.70
Intercom in Buildings with 8 or more units	per D.U.	152.25
Bell and Buzzer System	per D.U.	50.75

(8) **Equipment**

Electric or Gas Range	each	386.11

(9) **Conveying Systems**

ELEVATORS

New Elevator: Base Price	each	57,915.90
Additional	per floor	7,722.12
Seal Off Shaft	per floor	514.81
Service Car	per floor	15,225.00

(10) **Mechanical**

HEAT AND HOT WATER

Hot Water Heater, Gas Fired, 40 Gal.	each	321.76
Hot Water Heater, Electric, 40 Gal.	each	450.46
Separate Domestic Central	per D.U.	321.76
Hot Water System Central Heating System, Gas or Oil, Including Piping and Radiators	per D.U.	3,861.06
Central Boiler, Gas or Oil	per D.U.	1,287.02
Gas Fired Heater, Residential	each	965.27
Gas Meter: Lines (3/4") to Individual D.U.	lin. ft.	7.61
Electric BaseboardHeater to Heat 1,000 Sq. Ft.	per D.U.	1,930.53
New Radiator or Convector	each	450.46
Radiator: I. Valve and Air Vent	each	96.53
Radiator: II. Valve and Steam Trap	each	115.83
Gas Riser for Heat or Hot Water	per D.U.	772.21
Gas Riser for Cooking	per D.U.	643.51
Gas-Fired Hot Water Boiler for Individual Dwelling Unit, Installed with Piping, Venting and Valving	per D.U.	4,504.57
Plumbing Valve on Existing Fixture	each	45.05
Mechanical Ventilation (Including Exhaust Ducts) for Internal Units (with Existing Shaft)		
-Bathroom	each	304.50
-Kitchen	each	365.40
-Fan (Including Wiring)	each	609.00

WATER DISPOSAL AND PLUMBING

Water Closet	each	231.66
Bath Tub w. Trim	each	463.33
Shower Body, Piping with Trim	each	160.37
Kitchen Sink with Trim	each	231.66
Lavatory with Trim	each	193.05
Sink Faucet	each	96.53
Copper pipe (1/2")+	lin. ft.	6.44
Copper pipe (3/4")+	lin. ft	9.01
Replace Inadequately Sized Sink Trap	each	193.05
Waste and Trap for Existing Tub	each	208.08
Lead Bend for Water Closet	each	257.40
New Water Riser and Branches	per D.U.	1,480.07
New Water Main Assuming 6-story building 2" copper main street main on same of street as building2	each	3,552.50
Replace Sprinkler Head	each	38.61
Sprinkler System, New, Based on Per Head	each	261.87
Relocate Existing Sprinkler Head	each	193.05
Siamese Connection**	each	772.21
Fire Pump**	each	15,444.24
Alarm Valve**	each	965.27
New Standpipe Main**	each	9,009.14
Siamese, Check Valve**	each	1,544.42
Siamese, Check Valve with Piping and Water Flow Alarm**	each	3,861.06
Roof Tank 5,000 Gal. Inc. Structural Supports**	each	19,305.30
New Water Meter:		

2"	each	2,030.00
3"	each	3,045.00
4"	each	4,060.00

AIR DISTRIBUTION

Supply Air Fan or Roof Exhaust Fan	each	487.20
Wall Exhauster	each	436.45
Fire Damper and Grill in Existing Shaft	each	64.35
Turbine Fan in Existing Shaft	each	193.05
Provide Ventilation for Enclosed Central Heating System Equipment	each	1,287.02

VENTILATION EXHAUST RISER

Kitchenette	each	386.11
Bath	each	321.76

(11) **Electrical**

Panel Board with Separate Electric Riser, Single Phase, Three Wire Service	each	900.91
Single Pole Switch Outlet Fully Installed	each	77.22
Lighting Outlet, Fully Installed	each	128.70
New Fixture on Switch, Fully Installed	each	193.05
Hall Lighting Outlet, Fully Installed	each	154.44
110 V Outlet	each	116.73
110 V Outlet (Ground Fault Interrupter Electrical Meter:	each	137.03
-Panel & Rough Wiring	building	1,319.50
-Meter (Assembly) Plan	per D.U.	167.48

(12) **Municipal Filing Fees, Professional Fees, Local Law Compliance and Extraordinary Costs of Legalization**

Municipal fees for filing necessary for Code Compliance (e.g. Dept. of Buildings Alteration Application, City Planning Commission Special Permit, etc.). Does not include regular annual filings for inspections or regulation.	Actual fee charged
All Architectural and Engineering Fees	Maximum 7 percent of approved, necessary and reasonable costs of Code Compliance items in categories 1-12 of this schedule.
Legal Fees-costs incurred in obtaining financing for Code Compliance	Maximum 4 percent of approved necessary and reasonable costs of Code Compliance for cost items in categories 1-12 of this schedule.
Local Law Compliance (Handicapped, Landmarks and Asbestos)	Approved necessary and reasonable costs of Code Compliance, reviewed and determined by the Loft Board case by case.
Extraordinary Costs of Legalization (construction management fees; overtime costs for alterations required to be done after hours; and excessive costs above scheduled allowance resulting from individual building characteristics)	Maximum 7.5 percent for this category of approved, necessary and reasonable costs of Code Compliance.

[1] Includes concrete plan.

[2] All other situations will be resolved on a case by case basis.

[+] Plumbing items include necessary pipe installation. These items are for replacement work only.

* The figures in this final cost schedule have been calculated by using the 1989 prices, published in the City Record on August 13, 1990, multiplied by 1.5 percent, the yearly index for 1990.

** These items will only be considered as necessary and reasonable when installation is mandated resulting from other required code compliance work.

The following Department of Buildings memoranda are included here for informational purposes only and not for comment. These directives are referred to in §2-01(d)(2) of the code compliance regulations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 29, 2006 §1, eff. Sept. 28, 2006.[See Note 8]

Subd. (a) par (8) subpars (iii), (iv), (v) amended City Record Apr. 29, 2008 §1, eff. May 29, 2008.

[See Note 10]

Subd. (b) amended City Record Sept. 8, 2006 §1, eff. Oct. 28, 2006. [See Note 9]

Subd. (c) par (1) amended City Record May 8, 1997 eff. June 7, 1997. [See Note 2]

Subd. (c) par (2) numbered and amended City Record May 8, 1997 eff. June 7, 1997. [See Note 2]

Subd. (c) par (3) numbered and amended City Record May 8, 1997 eff. June 7, 1997. [See Note 2]

Subd. (c) par (4) renumbered and amended (formerly (2)) City Record May 8, 1997 eff. June 7,

1997. [See Note 2]

Subd. (c) par (5) renumbered by editor (formerly (3)).

Subd. (c) par (6) renumbered by editor (formerly (4)).

Subd. (d) par (2) subpars (iv), (v), (vi), (vii) amended City Record Aug. 19, 1994 eff. Sept. 18, 1994.

Subd. (e) amended City Record Aug. 19, 1994 eff. Sept. 18, 1994.

Subd. (g) amended City Record Apr. 8, 1999 eff. May 8, 1999. (This amendment supersedes Mar.

30, 1999 version) [See Note 3]

Subd. (i) par (2) amended City Record July 3, 1996 eff. Aug. 2, 1996.

Subd. (i) par (2) subpar (i) amended City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected

copy supersedes the Mar. 30, 1999 version) [See Note 4]

Subd. (i) par (2) subpar (ii) amended City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected

copy supersedes the Mar. 30, 1999 version) [See Note 4]

Subd. (i) par (2) subpar (vi) amended City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected copy supersedes the Mar. 30, 1999 version) [See Note 4]

Subd. (j) amended City Record Aug. 19, 1994 eff. Sept. 18, 1994.

Subd. (k) par (1) amended City Record July 3, 1996 eff. Aug. 2, 1996.

Subd. (m) amended City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected copy supersedes the Mar. 30, 1999 version) [See Note 4]

Subd. (n) amended City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected copy supersedes the Mar. 30, 1999 version) [See Note 4]

Subd. (o) repealed City Record Apr. 7, 1999 eff. May 7, 1999. (This corrected copy supersedes the Mar. 30, 1999 version) [See Note 4]

DERIVATION

Subd. (a) par (5) amended City Record May 8, 1997 eff. June 7, 1997. [See Note 2]

Subd. (a) par (5) added City Record Jan. 12, 1993 eff. Feb. 11, 1993.

Subd. (a) par (6) added City Record May 8, 1997 eff. June 7, 1997. [See Note 2]

Subd. (a) par (7) amended City Record Nov. 3, 2005 §1, eff. Dec. 3, 2005. [See Note 6]

Subd. (a) par (7) amended City Record Aug. 22, 2003 eff. Sept. 21, 2003. [See Note 5]

Subd. (a) par (7) added City Record Jan. 14, 2000 eff. Feb. 13, 2000. [See Note 1]

Subd. (a) par (8) amended City Record Nov. 3, 2005 §2, eff. Dec. 3, 2005. [See Note 6]

Subd. (a) par (8) added City Record Aug. 22, 2003 eff. Sept. 21, 2003. [See Note 5]

Subd. (b) amended City Record May 8, 1997 eff. June 7, 1997. [See Note 2]

Subd. (b) par (1) amended City Record June 23, 2006 eff. July 23, 2006. [See Note 7] There were amendments made without brackets and italics.

Subd. (b) par (1) amended City Record Nov. 3, 2005 §3, eff. Dec. 3, 2005. [See Note 6] This erroneous amendment was corrected by the Law Department.

Subd. (b) par (1) amended City Record Aug. 22, 2003 eff. Sept. 21, 2003. [See Note 5]

Subd. (b) par (1) amended City Record Jan. 14, 2000 eff. Feb. 13, 2000. [See Note 1]

Subd. (b) repealed and added City Record Jan. 12, 1993 eff. Feb. 11, 1993.

Subd. (b) par (2) subpar (iii) amended (as par (3)) City Record Apr. 5, 1996 eff. May 5, 1996.

Subd. (c) par (1) amended City Record Aug. 19, 1994 eff. Sept. 18, 1994.

Subd. (g) amended City Record Aug. 19, 1994 eff. Sept. 18, 1994.

NOTE

1. Statement of Basis and Purpose in City Record Jan. 14, 2000:

In July 1999, the Legislature amended Article 7-C of the Multiple Dwelling Law (the "Loft Law") to extend the code compliance deadlines that owners are required to meet. As a result, it is necessary to amend the Loft Board rules to conform to the legislative changes. These amendments update the rules to conform to the terms of the amended Loft law.

2. Statement of Basis and Purpose in City Record May 8, 1997: These amendments revise the rules relating to code compliance legalization deadlines; extensions of the code compliance legalization deadlines; violations of the code compliance legalization deadlines; and sales of improvements. Text added to the rules is shown underlined, and text deleted from the rules is bracketed. Text that is neither underlined nor bracketed remains unchanged. In July, 1996, the Legislature amended Article 7-C of the Multiple Dwelling Law (the "Loft Law") to extend the code compliance deadlines which owners are required to meet. As a result, it is necessary to amend the Loft Board rules to conform to the legislative changes. These amendments update the code compliance deadlines in sections 2-01(a), (b), and (c), and section 2-07, to conform to the amended law.

3. Statement of Basis and Purpose in City Record Apr. 8, 1999: The amendment allows owners to serve a notice seeking access either by personal service or by first class mail alone or certified mail alone (removing the cumbersome requirement of duplicate mailings). The amendment also allows tenants to serve owners by personal service or first class mail or certified mail, to inform the owner of the designation of another tenant to receive notice and provide access. The amendment also increases the number of copies of applications and answers that owners and occupants must file with the Loft Board from two to twelve, in order to reduce the agency's administrative costs. Cross-references to the notice provisions set forth in §2-01(d)(1) are deleted to make the rule easier to understand.

4. Statement of Basis and Purpose in City Record Apr. 7, 1999: It is the Loft Board's mandate to take a fixed group of buildings and move them through the process of legalization, ultimately reducing the number of buildings in its jurisdiction. The last step in that process is setting the initial legal regulated rents, and directing the owners to issue rent stabilized leases and to register with the State Division of Housing and Community Renewal (DHCR). This occurs after the owner has achieved compliance with Article 7-B of the Multiple Dwelling Law or has obtained a residential certificate of occupancy. It is not uncommon, however, for owners to obtain a residential certificate of occupancy but delay obtaining a final rent order setting the initial legal regulated rents. This has the effect of keeping such buildings in the Loft Board's jurisdiction indefinitely. Under current rules, there is no deadline for filing these applications. This amended rule requires owners to file their applications for a final rent order soon after obtaining a residential certificate of occupancy. Also, current rules do not give the Loft Board the authority to issue final rent orders in the absence of an owner's application. This amendment gives the Board that authority. The amendment provides that owners who do not file an application for code compliance rent adjustments within the time limit set forth are deemed to have waived their right to such adjustments. The rule gives owners until February 1, 2000, whichever is later, to make their application. The amendment allows the Loft Board to set the initial legal regulated rent in cases where an owner has submitted neither an application for code compliance rent adjustments nor a Rent Guidelines Board increase under 2-01(i)(1). In such case, the Loft Board can commence a proceeding to establish the initial legal regulated rents (without reference to the costs of code compliance) based on evidence such as records in the Loft Board's files, documents submitted by affected parties, and the testimony of witnesses. Section 2-01(n) is amended to clarify the Loft Board's existing policy on IMD buildings converted to cooperative or condominium ownership. The provision makes clear that owners of

coops or condos must file for a final rent order for any rent-regulated units remaining in the building by the deadline applicable to all final rent order applications. It also requires owners of such buildings to provide the Loft Board with a list of owner-occupied units after the building obtains its residential certificate of occupancy. The filing of this form triggers a review of Loft Board records. If the Loft Board's records confirm that the identified units are all owner-occupied, the Loft Board will initiate a summary proceeding to issue a final order, which will result in the removal of the building from the Loft Board's jurisdiction. The amendment makes clear that until the Loft Board issues that order, a coop or condo remains in the Loft Board's jurisdiction and must continue to renew its annual registration. Section 2-01(o) is repealed. Section 2-01(o) states that the "foregoing regulations" constitute a "comprehensive set of rules governing code compliance" but that the "Loft Board reserves the right" to promulgate additional rules on related topics. Subdivision (o) is unnecessary because it contains no substantive provisions, and because the Loft Board's rulemaking authority is set forth in MDL Article 7-C and Executive Order No. 66 (Sept. 30, 1982). The repeal of this subdivision in no way limits the Loft Board's rulemaking authority.

5. Statement of Basis and Purpose in City Record Aug. 22, 2003: On April 23, 2002 and again on May 29, 2002, the Legislature amended Article 7-C of the Multiple Dwelling Law (the "Loft Law") to extend the code compliance deadlines that owners are required to meet. As a result, it is necessary to amend the Loft Board rules to conform to the legislative changes. These amendments update the rules to conform to the terms of the amended Loft Law.

6. Statement of Basis and Purpose in City Record Nov. 3, 2005: The Legislature has recently amended Article 7-C of the Multiple Dwelling Law (the "Loft Law") to extend the code compliance deadlines that owners are required to meet. As a result, it is necessary to amend the Loft Board rules to conform to the legislative changes. These amendments update the rules to conform to the terms of the amended Loft Law.

7. Statement of Basis and Purpose in City Record June 23, 2006: The extension provisions set forth in §2-01(b) are being amended to correct a typographical error in a citation to a provision of the Multiple Dwelling Law. The citation is being amended from MDL §284(1)(vi) to MDL §284(1)(v).

8. Statement of Basis and Purpose in City Record Aug. 29, 2006: The Legislature recently amended Article 7-C of the Multiple Dwelling Law (the "Loft Law") to extend the code compliance deadlines that IMD owners are required to meet in legalizing their buildings and to extend the deadline for the Loft Law itself. The compliance extensions are set forth in §284 of the Multiple Dwelling Law. As a result, it is necessary to amend the Loft Board rules to conform to the legislative changes. After consultation with counsel and further deliberation, these amendments were drafted to parallel more closely the language in the statute and to conform to the terms of the amended Loft Law, including the recent amendment by Part Q of Chapter 62 of the Laws of 2006. Sections 2-01(a)(1)(iv) through 2-01(2)(iii) have been restored because these sections were inadvertently omitted by the present publisher, although they were duly promulgated prior to the time they became effective.

9. Statement of Basis and Purpose in City Record Sept. 28, 2006: The extension provisions set forth in §2-01(b) are being amended to eliminate most retroactive extensions of missed code compliance deadlines and to simplify the application process for obtaining an extension. This proposed rule would prohibit most owners from seeking retroactive extensions of missed code compliance deadlines. Extensions should be granted only to diligent owners who are in the process of complying with the Loft Law but are unable to meet the next deadline due to a condition or circumstance beyond their control. There is no acceptable reason an owner could not bring such circumstances to the Loft Board's attention and seek appropriate relief before the expiration of the deadline. The only exception provided is for owners who recently bought their IMD buildings. Such owners would be given 90 days after taking title to seek an extension of a missed code compliance deadline, provided they can meet the statutory standards and other requirements set forth in §2-01(b)(2) of the Rules. The proposed rule also would simplify the extension rule by eliminating the three types of extension applications (extensions of 90 days or less, 91 days to one year and more than one year) and their attendant special procedures. Currently, the three time periods alter the service requirements. Additionally, the short extension rule codified in subdivision (b) of §2-01 of the Board's rules provides that owners may obtain an extension of 90 days or less on an **ex parte** basis. In contrast, under the new rule there would no longer be three different types of extension

applications, but only one. The same standards for granting an application would apply to extensions of any length. The Executive Director would decide all extension applications. By eliminating separate procedures for different length extensions and the ability of owners to apply for short extensions on an **ex parte** basis, these amendments will provide occupants of IMD units with notice of every owner's request for an extension and an opportunity to be heard on the merits of every extension application. In addition, the rule would provide that for all applications, regardless of length of extension sought, the owner-applicant rather than the Loft Board would be responsible for mailing the application to the affected tenants and providing the Loft Board with proof of service upon the tenants.

10. Statement of Basis and Purpose in City Record Apr. 29, 2008: The Legislature recently amended Article 7-C of the Multiple Dwelling Law (the "Loft Law") to extend the code compliance deadlines that IMD owners are required to meet in legalizing their buildings and to extend the deadline for the Loft Law itself. See Laws of 2007, chapter 62. The compliance extensions are set forth in §284 of the Multiple Dwelling Law. As a result, it is necessary to amend the Loft Board rules to conform to these legislative changes.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Loft Board's determination that cost of restoring elevator service would be borne by tenants was let stand since Loft Board was precluded from reaching and in fact did not reach this issue in context of proceeding pursuant to 29 RCNY 2-01(d)(2)(vii)(B)(b); rather Loft Board offered tenants right to waive requirement of elevator service if cost of repairs would shift to them. Nardo v. NYC Loft Bd., 202 AD2d 364 [1994].

¶ 2. A building owner may file an application to extend a legalization deadline pursuant to paragraph (b) of this section after that deadline has expired, and the application will relate back to the expired deadline. Matter of Drewvin Building Corporation, OATH Index No. 748/96 (July 12, 1996), aff'd, Loft Bd. Order No. 2004 (Sept. 26, 1996); Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996), aff'd, Loft Bd. Order No. 1935 (Mar. 28, 1996).

¶ 3. The Loft Board's amendment of paragraph (b) of this section, providing for adjudication of extension applications by submission of papers without evidentiary hearings, would be applied prospectively, not retroactively to a case that was pending and had already been tried when the amendment became effective. Matter of Drewvin Building Corporation, OATH Index No. 748/96 (July 12, 1996), aff'd, Loft Bd. Order No. 2004 (Sept. 26, 1996).

¶ 4. Although a building owner obtained a building permit, completed article 7-B compliance, and obtained a final certificate of occupancy while the owner's application for an extension of time to obtain a building permit remained pending, the application was not rendered moot by the issuance of the building permit or by the completion of the legalization process. Matter of Drewvin Building Corporation, OATH Index No. 748/96 (July 12, 1996), aff'd, Loft Bd. Order No. 2004 (Sept. 26, 1996).

¶ 5. An application pursuant to paragraph (b) of this section for an extension of the legalization deadlines in the 1992 amendments to the Loft Law was not rendered moot by the enactment of new deadlines in the 1996 amendments to the Loft Law, because the 1996 amendment did not retroactively entitle building owners to maintain non-payment proceedings against tenant for periods of non-compliance with the 1992 deadlines. Matter of Dezer Properties Co., OATH Index No. 894/98 (Dec. 18, 1997), aff'd, Loft Bd. Order No. 2220 (Feb. 26, 1998); Matter of Landau, OATH Index No. 130/98 (Aug. 7, 1997), aff'd, Loft Bd. Order No. 2155 (Oct. 10, 1997).

¶ 6. The grant of an application for an extension of a legalization deadline pursuant to paragraph (b) of this section constituted a determination that the owner had exercised good faith efforts at legalization before the deadline that was thus extended, and that determination was final and binding on the tenants and could not be relitigated in the context of the owner's application for an additional extension of the legalization deadline. Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996), aff'd, Loft Bd. Order No. 1935 (Mar. 28, 1996).

¶ 7. Where a building owner obtained an approved alteration permit while the owner's application for a third extension of the deadline to obtain that permit was pending, the requested extension expired on the date that the permit

was obtained, and the issue for adjudication was whether the owner exercised good faith efforts to obtain the permit up until that date. Matter of Dezer Properties Co., OATH Index No. 894/98 (Dec. 18, 1997), aff'd, Loft Bd. Order No. 2220 (Feb. 26, 1998).

¶ 8. The provision in subparagraph (b)(2)(iii) (formerly subparagraph (b)(3)) of this section for the grant of "the minimum extension required by the IMD owner" should be construed to permit the minimum extension reasonably likely to be required, not the minimum extension that conceivably could be required. Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996), aff'd, Loft Bd. Order No. 1935 (Mar. 28, 1996).

¶ 9. An application by a building owner's architect for an 18-month extension of the deadline to obtain an alteration permit, after the owner had previously obtained extensions of 90 days and one year, was granted where the architect had in good faith pursued resolution of the Department of Buildings' objections to the work plans, and where two of the objections required approvals from the Landmarks Commission and the Loft Board. Matter of Gerep Realty, OATH Index No. 747/96 (Jan. 3, 1996), aff'd, Loft Bd. Order No. 1910 (Jan. 24, 1996).

¶ 10. Where a building owner retained a legalization architect, paid the architect's fees as agreed, and frequently asked the architect about the progress of legalization, but the architect misled the owner by repeatedly stating that completion was near although in fact the architect had failed for some time to work on moving the building toward legalization, the owner's application for an extension pursuant to paragraph (b) of this section was granted because the owner had exercised good faith efforts at legalization despite the architect's nonfeasance. Matter of Drewvin Building Corporation, OATH Index No. 748/96 (July 12, 1996), aff'd, Loft Bd. Order No. 2004 (Sept. 26, 1996).

¶ 11. Because a building owner's delay in obtaining an approved alteration permit was occasioned by a process agreed to between the owner and the tenants, whereby the tenants sought Department of Buildings approval for their alternative plans, and, upon grant of such approval, the owner amended its alteration application to conform to the tenants' alternative plans, the owner's application for an extension of time to obtain an alteration permit pursuant to paragraph (b) of this section was granted. Matter of Hip Hin Realty Corp., OATH Index No. 753/96 (Apr. 2, 1996), aff'd, Loft Bd. Order No. 1959 (Apr. 25, 1996).

¶ 12. Where an escrow account was set up by agreement of the building owner and the tenants, in settlement of various disputes between them, and the escrow funds were to be used to pay legalization costs, the requirement that the owner engage in protracted negotiations with the tenants to obtain release of the escrow funds constituted a matter beyond the owner's control, such that the owner's application for an extension of legalization deadlines pursuant to paragraph (b) of this section was granted. Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996), aff'd, Loft Bd. Order No. 1935 (Mar. 28, 1996).

¶ 13. Where a building owner was unable to obtain an approved alteration permit due to the Loft Board's delay of more than two years in deciding an issue necessary to the completion of the narrative statement process, the delay was attributable to matters beyond the owner's control such that the owner was entitled to an extension pursuant to paragraph (b) of this section. Matter of Landau, OATH Index No. 130/98 (Aug. 7, 1997), aff'd, Loft Bd. Order No. 2155 (Oct. 10, 1997).

¶ 14. A building owner's ultimate success in obtaining an alteration permit did not constitute proof that the owner moved sufficiently diligently to entitle the owner to an extension pursuant to paragraph (b) of this section. Matter of Dezer Properties Co., OATH Index No. 894/98 (Dec. 18, 1997), aff'd, Loft Bd. Order No. 2220 (Feb. 26, 1998).

¶ 15. Delay in legalization due to the ignorance of a new owner of a building that the building was covered by the Loft Law did not constitute an excuse for noncompliance with legalization deadlines, sufficient to justify grant of an extension of those deadlines pursuant to paragraph (b) of this section. Matter of Dezer Properties Co., OATH Index No. 894/98 (Dec. 18, 1997), aff'd, Loft Bd. Order No. 2220 (Feb. 26, 1998).

¶ 16. Where a building owner deferred legalization work until completion of protracted judicial review of the Loft

Board's coverage order, the owner's application for an extension of the legalization deadlines pursuant to paragraph (b) of this section was denied because the owner's failure to obtain a stay of the Loft Board's order pending outcome of judicial review and the owner's casual and indiligent pursuit of the judicial appeal did not satisfy the requirement of good faith efforts to comply with the legalization deadlines. Matter of Dezer Properties Company, OATH Index No. 132/98 (Aug. 27, 1997), aff'd, Loft Bd. Order No. 2174 (Oct. 30, 1997).

¶ 17. Where a building owner contended that delay in obtaining an approved alteration permit was due to the owner's change from an application for a permit for a multiple dwelling to an application for a permit for a two-family dwelling, the delay was not caused by matters beyond the owner's control, and the owner's application for an extension of legalization deadlines pursuant to paragraph (b) of this section was denied. Matter of 20 Beaver Street, OATH Index No. 134/98 (Aug. 28, 1997), aff'd, Loft Bd. Order No. 2164 (Oct. 10, 1997).

¶ 18. Where one of two owners of a building delegated the other owner to handle legalization, and that owner failed to pursue legalization with reasonable diligence, the failure to meet legalization deadlines was not beyond the owners' control, and therefore the first owner's application for an extension pursuant to paragraph (b) of this section was denied. Matter of Longa, OATH Index No. 432/98 (Oct. 10, 1997), aff'd, Loft Bd. Order No. 2191 (Dec. 18, 1997).

¶ 19. A building owner's decision to proceed with alteration of commercial space in the building before filing an application for an alteration permit for legalization work in the residential areas did not constitute a matter beyond the owner's control, and therefore the owner's application for an extension of legalization deadlines pursuant to paragraph (b) of this section was denied. Matter of Debar Realty Corporation, OATH Index No. 138/98 (Oct. 23, 1997), adhered to in supplemental report and recommendation (Feb. 20, 1998), aff'd, Loft Bd. Order No. 2234 (Mar. 24, 1998).

¶ 20. Although a building owner's delay in filing its narrative statement for nine months after filing its alteration permit was on the advise of the owner's architect, the delay was not beyond the owner's control and did not constitute a good faith effort at compliance with the legalization deadlines, and therefore the owner's application for an extension of those deadlines pursuant to paragraph (b) of this section was denied. Matter of Debar Realty Corporation, OATH Index No. 138/98 (Oct. 23, 1997), adhered to in supplemental report and recommendation (Feb. 20, 1998), aff'd, Loft Bd. Order No. 2234 (Mar. 24, 1998).

¶ 21. A tenant's application for a declaration pursuant to paragraph (a) of this section that a building owner was not in compliance with the legalization deadlines in the 1992 amendments to the Loft Law was rendered moot by the enactment of new deadlines in the 1996 amendments to the Loft Law. Matter of Davies, OATH Index No. 126/97 (Aug. 12, 1996), aff'd in part and remanded in part on other grounds, Loft Bd. Order No. 2023 (Nov. 21, 1996); see also Matter of Einzig, OATH Index No. 397/97 (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2064 (Jan. 30, 1997); Matter of Menking, OATH Index No. 1985/96 (Sept. 5, 1996), aff'd, Loft Bd. Order No. 2025 (Nov. 21, 1996); Matter of 790-16 Tenants Group, OATH Index No. 130/97 (Aug. 16, 1996), aff'd, Loft Bd. Order No. 2024 (Nov. 21, 1996); Matter of Halaby, OATH Index No. 1520/96 (Nov. 4, 1996), aff'd, Loft Bd. Order No. 2057 (Jan. 30, 1997).

¶ 22. Although the tenants' non-compliance application pursuant to paragraph (a) of this section was dismissed as moot due to the legislative revision of the legalization deadlines after the application was filed, such dismissal was without prejudice to the parties' positions in future litigation of disputes concerning rent due before the revision of those deadlines. Matter of Residential Tenants of 376 Broome Street, OATH Index No. 128/97 (Feb. 28, 1997), aff'd, Loft Bd. Order No. 2087 (Mar. 20, 1997).

¶ 23. Where a building owner filed an application for an alteration permit in March 1980, that application was disapproved in May 1980, and the owner took no further action toward legalization in the next 17 years, and where the Department of Buildings had issued a letter stating that the 1980 alteration application was no longer valid, the owner was not in compliance with the October 1, 1996 deadline for filing an alteration application pursuant to subparagraph (a)(6)(i) of this section, or with the deadline for serving a narrative statements pursuant to subparagraph (d)(2)(i) of this section. The owner was declared not to be in compliance with the Loft Law and was ordered to file an alteration

application forthwith and serve a narrative statement within 20 days thereafter. Matter of 42-44 Bond Street Tenants, OATH Index No. 132/97 (May 2, 1997), aff'd, Loft Bd. Order No. 2121 (June 26, 1997).

¶ 24. Whether a building owner could include the costs of installing individual heating units and electrical meters as code compliance costs pursuant to paragraph (i) of this section was not determined as part of the tenants' diminution of services application pursuant to §2-04 of this chapter, but was deferred until the owner applies for a code compliance rent adjustment. Matter of 29 John Street Tenants' Association, OATH Index No. 1982/96 (Nov. 20, 1996), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2058 (Jan. 30, 1997).

¶ 25. Once an owner has obtained a residential certificate of occupancy, it is eligible for a retroactive Rent Guidelines Board increase. The Loft Board has interpreted Sec. 2-01(i)(1) to mean that an owner must take the affirmative step of applying for the increase, or will lose the opportunity for the increase (Application of Greenwich Associates, Loft Board Order No. 2068, Feb. 27, 1997). However, in one case, where an owner became eligible for the retroactive increase before December 3, 1993, the effective date of Section 2-01(i)(1), a Loft Board hearing officer told the owner that the increase could be obtained without a separate application, and the Loft Board never told the owner that under its new rule a separate application had to be made, the court in effect applied estoppel against the agency and held that the owner was eligible for the increase despite its failure to have made the separate application. The court distinguished Greenwich on the ground that the owner in Greenwich had not become eligible for the increase until after the effective date of the new regulation. Brady Properties v. New York City Loft Board, 702 N.Y.S.2d 63 (App.Div. 1st Dept. 2000).

¶ 26 While the Loft Board may make findings regarding violations of the code compliance timetables for Interim Multiple Dwellings, the court may also find violations of the code compliance timetables. Suraci v. Mucktar, N.Y.L.J., July 19, 2000, page 24, col. 1 (Civ.Ct. New York Co.).

¶ 27. Amendment of Multiple Dwelling Law section 284(1) compliance deadlines does not render pending non-compliance application moot even where there is no dispute that owner filed alteration application by the new October 1, 1996 deadline. Finding the Loft Board arbitrary for refusing to adjudicate tenant-initiated applications of non-compliance under old legalization deadlines while allowing owner-initiated applications for extensions under old deadlines, the Supreme Court reversed existing Loft Board precedent and found that whether the landlord complied with the superseded 1992 deadlines directly affected the rights of the parties, and therefore application should not have been dismissed as moot. **Rehwinkel v. NYC Loft Bd.,** NYLJ, Apr. 28, 1999, at 26, col. 2 (Sup. Ct. N.Y. Co.), **rev'g and remanding,Matter of D'Emanuelle,** OATH Index No. 1528/96 (Nov. 7, 1996), **aff'd,** Loft Bd. Order No. 2053 (Jan. 9, 1997).

¶ 28. A tenant's application for a declaration pursuant to paragraph (a) of this section that a building owner was not in compliance with the legalization deadlines in the 1992 amendments to the Loft Law was rendered moot by the enactment of new deadlines in the 1996 amendments to the Loft Law. **Matter of Davies,** OATH Index No. 126/97 (Aug. 12, 1996), **aff'd in part and remanded in part on other grounds,** Loft Bd. Order No. 2023 (Nov. 21, 1996); **see also Matter of Einzig,** OATH Index No. 397/97 (Dec. 12, 1996), **aff'd,** Loft Bd. Order No. 2064 (Jan. 30, 1997); **Matter of Menking,** OATH Index No. 1985/96 (Sept. 5, 1996), **aff'd,** Loft Bd. Order No. 2025 (Nov. 21, 1996); **Matter of 790-16 Tenants Group,** OATH Index No. 130/97 (Aug. 16, 1996), **aff'd,** Loft Bd. Order No. 1520/96 (Nov. 4, 1996), **aff'd,** Loft Bd. Order No. 2057 (Jan. 30, 1997).

¶ 29. Although the tenants' non-compliance application pursuant to paragraph (a) of this section was dismissed as moot due to the legislative revision of the legalization deadlines after the application was filed, such dismissal was without prejudice to the parties' positions in future litigation of disputes concerning rent due before the revision of those deadlines. **Matter of Residential Tenants of 376 Broome Street,** OATH Index No. 128/97 (Feb. 28, 1997), **aff'd,** Loft Bd. Order No. 2087 (Mar. 20, 1997).

¶ 30. Owner found in non-compliance by virtue of collateral estoppel where a prior application for an extension of

code compliance deadlines was denied. **Matter of Loback,** OATH Index No. 263/99 (Oct. 22, 1998), **aff'd,** Loft Bd. Order No. 2339 (Nov. 24, 1998).

¶ 31. Where managing agent, on behalf of owner, failed to demonstrate the financial effect a two-year-old rent strike had on its ability to meet legalization deadlines and where lack of access to the units to complete the legalization work was not sufficiently shown to have an impact on legalization efforts, the failure to meet the deadlines was not a matter beyond the owner's control. **Matter of R.E.D.I. Management Corp.,** OATH Index No. 1130/98 (May 15, 1998), **remanded for further consideration,** Loft Bd. Order No. 2347 (Dec. 29, 1999), **on remand, Matter of R.E.D.I. Management Corp.,** OATH Index No. 1130/98, mem. dec. (Feb. 23, 1999), **aff'd,** Loft Bd. Order No. 2383 (Mar. 23, 1999).

¶ 32. The owner did not meet the statutory standard of good faith where the reason for the requested extension was the alleged failure of the architect to properly document the conditions in existence at the premises. Responsibility for bringing a building into compliance is one which the owner may not delegate and a lack of communication between the owner and an architect is a matter which is entirely within the owner's control. **Matter of Katovale Realty,** OATH Index No. 519/99 (Nov. 19, 1998), **aff'd,** Loft Bd. Order No. 2351 (Dec. 29, 1998).

¶ 33. Where application for retroactive extension provided no explanation of what, if any, efforts were made between March 1, 1995 and July 1, 1996 to bring building into compliance, or an explanation of what delayed compliance, and where owner did not even file an alteration application until September 26, 1996, outside the period for which retroactive extension was sought, the owner failed to meet the statutory standard for granting an extension. **Matter of 595 Realty, LLC,** OATH Index No. 898/98 (Mar. 5, 1998), **aff'd,** Loft Bd. Order No. 2239 (Mar. 24, 1998).

¶ 34. Merely stating that owner was unaware that unit was an IMD, and that his architect suffered a debilitating accident five months after the deadline did not meet the statutory standard for granting an extension. **Matter of Masi Corp.,** OATH Index No. 1129/98 (Mar. 23, 1998), **aff'd,** Loft Bd. Order No. 2252 (May 28, 1998).

¶ 35. Application for extension denied absent any corroborating documentation of claim that a discrepancy exists between the number of registered units and number of occupied units and because this confusion may be caused by a lack of communication between the owner and the owner's architect, a circumstance which is not beyond the owner's control. **Matter of Cortlandt Realty Co.,** OATH Index No. 896/98 (Jan. 28, 1998), **aff'd,** Loft Bd. Order No. 2227 (Feb. 26, 1998).

¶ 36. Petitioner bears the burden of persuasion in an extension application to show that he exercised reasonably diligent efforts to meet the code compliance deadlines but was precluded from doing so due to matters beyond his control. This burden is not met where application itself failed to set forth sufficient facts to warrant extension, or where the requisite corroborating documentation was not submitted. **Matter of Meltzer,** OATH Index No. 895/98 (Mar. 11, 1998), **aff'd,** Loft Bd. Order No. 2254 (May 28, 1998).

¶ 37. Extension to obtain alteration permit warranted due to tenants' repeated efforts to thwart owner's installation of sprinkler heads in their units (pursuant to owner's revised narrative statement), the Loft Board's decision to reopen narrative statement process and the Loft Board's representations of the length of time to complete the process. **Matter of Silverstein,** OATH Index No. 989/98 (Apr. 15, 1998), **aff'd,** Loft Bd. Order No. 2253 (May 28, 1998).

¶ 38. Application for extension granted where owner of the largest IMD registered with the Loft Board, was unable to meet the statutory deadlines due to the complexity of the building issues involved, the procedures required by cooperative ownership to get approval for a specific plan, and subsequent litigation commenced by one shareholder-tenant which led to the issuance of a temporary restraining order preventing the co-op from working toward legalization for a period of four months. **Matter of C. True Building Corp.,** OATH Index No. 141/98 (Sept. 2, 1998), **aff'd,** Loft Bd. Order No. 2324 (Oct. 27, 1998).

¶ 39. Application for extension granted due to related pending litigation, brought by one of the IMD shareholder

tenants, was found to be a matter beyond petitioner's control; petitioner demonstrated its good faith efforts to legalize the premises in a prior proceeding and since that time. **Matter of C. True Building Corp.,** OATH Index No. 732/99 (Dec. 16, 1998), **remanded for further hearing,** Loft Bd. Order No. 2354 (Jan. 28, 1999), **on remand, Matter of C. True Building Corp.,** OATH Index No. 732/99 (Apr. 22, 1999), **aff'd,** Loft Bd. Order No. 2402 (May 25, 1999).

¶ 40. Delay in obtaining alteration permit was due to two circumstances beyond owner's control; the Loft Board delay in certifying owner's compliance with the narrative statement process, and delay caused by necessity to negotiate for easements with neighboring property owners. **Matter of Szeto,** OATH Index No. 763/98 (Dec. 31, 1997), **aff'd,** Loft Bd. Order No. 2245 (May 28, 1998).

¶ 41. Extension applications may be granted in part and denied in part. While an owner's efforts prior to the expiration of a particular deadline are "relevant to whether an extension should be granted, a lack of sufficient good faith efforts prior to the deadline's expiration does not, by itself, prevent the Board from granting an extension for a subsequent period of time in which the owner did in fact make good faith efforts but was barred from reaching the next step in legalization for reasons beyond his or her control." Loft Bd. Order 2235/00 (Mar. 24, 1998), **aff'g in part, rev'g in part,Matter of Ken-Zen Institute, Ltd.,** OATH Index No. 897/98 (Feb. 24, 1998).

¶ 42. Pursuant to subparagraph (c)(2) of this section, IMD owner is fined $8,000 for failure to meet eight code compliance deadlines imposed by the Loft Law. **Matter of Loback,** OATH Index No. 263/99 (Oct. 22, 1998), **aff'd,** Loft Bd. Order No. 2339 (Nov. 24, 1998).

¶ 43. Absent proof showing any reasonable and necessary action taken to obtain a building permit pursuant to Multiple Dwelling Law section 284(1)(iii), owner is fined $1,000 for non-compliance with amended deadlines. **Matter of 50 Greene Street Tenants,** OATH Index No. 1321/98 (July 10, 1998), **rev'd and remanded,** Loft Bd. Order No. 2291 (Sept. 24, 1998), **on remand,** OATH Index No. 1321/98, supp. report (Oct. 22, 1998), **aff'd,** Loft Bd. Order No. 2340 (Nov. 24, 1998).

¶ 44. Although non-compliance application was granted, a fine was not imposed because the tenant's application failed to put the owner on notice that a fine was sought. **Matter of Barth,** OATH Index Nos. 990-91/98 (June 5, 1998), **aff'd,** Loft Bd. Order No. 2283 (Sept. 24, 1998).

¶ 45. Respondent failed to file narrative statement within 15 days of filing the alteration application, as required by subparagraph (d)(2)(i) of this rule. **Matter of Loback,** OATH Index No. 263/99 (Oct. 22, 1998), **aff'd,** Loft Bd. Order No. 2339 (Nov. 24, 1998).

¶ 46. Amendment of narrative statements and legalization plans by IMD owners is permitted without limitation under subparagraph (d)(2)(vi) of this rule. **Matter of Sultan,** OATH Index Nos. 1314-15/98 (Aug. 18, 1998), **aff'd,** Loft Bd. Order No. 2323 (Oct. 27, 1998).

¶ 47. Although subparagraph (d)(2)(iv)(B) of this rule would appear to require tenants to file alternative plans with the Department of Buildings in order to object to owner's plans, that requirement would be wasteful where the tenants' position was that the owner's amended plans were improper, and that the owner's previous plans, which had already been filed with DOB, were proper. Therefore there would be no point to requiring the tenants to re-file the owner's previous plans with DOB. **Matter of Sultan,** OATH Index Nos. 1314-15/98 (Aug. 18, 1998), **aff'd,** Loft Bd. Order No. 2323 (Oct. 27, 1998).

¶ 48. The fact that the Loft Board had granted the owner's access application did not mean that the owner was entitled to an extension of the code compliance deadlines based upon the owner's claim that he was prevented from meeting the deadlines due to reasons beyond its control, i.e., denial of access and a tenant rent strike. The Loft Board's access rule (section 2-01(g)) only requires that the owner seek "reasonable access." The rules do not require a finding, implicit or otherwise, that the owner's access request was diligent or that the tenants' denial was unreasonable. Here, the record showed the owner's efforts to secure access were both tardy and half-hearted. **Matter of R.E.D.I. Management**

Corp., OATH Index No. 1130/98 (May 15, 1998), **remanded for further consideration,** Loft Bd. Order No. 2347 (Dec. 29, 1998), **on remand, Matter of R.E.D.I. Management Corp.,** OATH Index No. 1130/98, mem. dec. (Feb. 23, 1999), **aff'd,** Loft Bd. Order No. 2383 (Mar. 23, 1999).

¶ 49. No unreasonable interference with tenant's use and occupancy of her space exists where landlord's proposed internal staircase was required as a second means of egress for legalization, even though the owner's plan would take some of the tenant's space, where tenant's proposed alternatives were shown to be not feasible. However, owner's plan to construct a vestibule to provide direct access to the freight elevator from a neighboring unit, which was not required for legalization, and would take air, light and space from the tenant's unit constituted an unreasonable interference, pursuant to paragraph (h) of this section. **Matter of Langer,** OATH Index No. 1316/98 (Sept. 25, 1998), **aff'd,** Loft Bd. Order No. 2334 (Nov. 24, 1998).

¶ 50. Owner applied for Rent Guidelines Board increase pursuant to paragraph (i) of this section. In determining the initial legal regulated rent, the percentage increase the owner is entitled to is calculated, pursuant to section 2-06(c), on the total rent of the IMD unit, which includes the base rent as set forth in a lease agreement and subsequent riders, and escalator payments, here an agreed to percentage of the increase in real estate taxes. **Matter of Sayage,** OATH Index No. 1505/98 (Aug. 28, 1998), **aff'd,** Loft Bd. Order No. 2325 (Oct. 27, 1998).

¶ 51. Challenges relating to building conditions and/or housing maintenance standards are irrelevant to rent computation where owner seeks a Rent Guidelines Board increase pursuant to paragraph (i) of this rule. Proper remedy is a separate housing maintenance or harassment application. **Matter of JAR Realty,** OATH Index No. 734/98 (Jan. 12, 1998), **aff'd,** Loft Bd. Order No. 2222 (Feb. 26, 1998); **Matter of 110 West 14th Realty Corp.,** OATH Index No. 892/98 (Apr. 14, 1998), **aff'd,** Loft Bd. Order No. 2251 (May 28, 1998).

¶ 52. Applicants established owner's continuing non-compliance with legalization timetables through documentary evidence from Loft Board, Department of Buildings records and testimony of tenants. Fine was requested and imposed for long-term non-compliance. **Matter of Barth**, OATH Index Nos. 538 & 714/00 (Nov. 22, 1999), **modified on penalty**, Loft Bd. Order No. 2469 (Jan. 25, 2000).

¶ 53. Relying on **Rehwinkel v. NYC Loft Bd.**, NYLJ, Apr. 28, 1999, at 26, col. 3 (Sup. Ct., N.Y. Co.), and breaking with prior Loft Board precedent (see earlier annotations), the administrative law judge ruled that dismissal of a non-compliance application as moot due to legislative amendment of legalization deadlines, was improper so long as the Loft Board continued to hear "retroactive" extension applications. **Matter of Kosolapov**, OATH Index No. 271/00, mem. dec. (Oct. 13, 1999).

¶ 54. Access application granted where petitioner established that occupant of loft was properly notified of proposed work dates and failed to provide access on a specified date, as required by paragraph (g). Where, as here, the occupant failed to timely answer the application, the Loft Board may issue an order granting access, pursuant to subparagraph (g)(3)(B) of this section. **Matter of Kiamie Princess Marion Realty**, OATH Index No. 277/00 (Sept. 29, 1999), **aff'd**, Loft Bd. Order No. 2443 (Nov. 1, 1999).

¶ 55. Administrative law judge recommended **sua sponte** that the Loft Board extend a legalization deadline for three months longer than the owner had requested in its extension application where the event beyond its control, a pending unreasonable interference application, would not be resolved by the end of 1998, necessitating another extension application. The Loft Board remanded the matter to the administrative law judge to give any tenants who may have been opposed to the longer extension an opportunity to be heard on the matter. On remand, no tenant submitted written opposition nor appeared to oppose longer extension period. **Matter of C. True Building Corp.**, OATH Index No. 732/99 (Apr. 22, 1999), **aff'd**, Loft Bd. Order No. 2402 (May 25, 1999).

¶ 56. Petitioner's application for an extension of the deadlines for obtaining a building permit and achieving compliance with Article 7-B safety and fire standards was denied where the owner failed to make the required showing

that it was unable to meet the deadline due to circumstances beyond its control. Petitioner's assertions that former architect had failed to make any meaningful progress toward legalization for a two and-one-half year period did not excuse his failure to monitor the progress of his former architect. **Matter of Ken-Zen Institute, Ltd.**, OATH Index No. 2338/99 (Aug. 3, 1999), **aff'd**, Loft Bd. Order No. 2506 (Mar. 30, 2000).

¶ 57. Petitioner's application for a one-year extension of the code compliance deadline based on financial hardship was denied because the owner did not produce sufficient proof that it made good faith efforts to comply with the deadline. Administrative law judge found that a single bank loan application that was rejected shortly after the expiration of the deadline failed to meet the rule's good faith efforts standard. The claimed financial hardship was not shown to be a condition beyond petitioner's control, as no other financing options were considered. **Matter of Rubinstein Realty Associates, Inc.**, OATH Index No. 2339/99 (June 30, 1999), **aff'd**, Loft Bd. Order No. 2429 (Oct. 1, 1999).

¶ 58. Although problems with financing may well qualify for the granting of an extension of time to attain code compliance, the extension application was denied where no proof of the building's current financial status, the loan amount needed, nor copies of loan applications were submitted. This information was found necessary for the owner to meet the standards of proof required for an extension to be granted. **Matter of Les Pieds Nickels**, OATH Index No. 1896/99 (June 29, 1999), **aff'd**, Loft Bd. Order No. 2430 (Oct. 1, 1999).

¶ 59. Applicant failed to make requisite showing that it exercised diligent efforts to obtain building permit, and was prevented from doing so by matters beyond its control where respondent had taken only four steps towards legalization over a two-year period since the Board had granted it a previous extension. **Matter of D.L.B. Co.**, OATH Index Nos. 1407-08/99 (July 29, 1999), **aff'd**, Loft Bd. Order Nos. 2434 and 2435 (Oct. 1, 1999).

¶ 60. In his initial report, the administrative law judge had recommended that the Loft Board deny the owner's application to extend the deadline to obtain a building permit, finding that neither the tenants' rent strike nor the dispute regarding access were beyond the owner's control so as to excuse the owner's failure to obtain the building permit by the statutory deadline. The Loft Board remanded the matter citing to error in report and recommendation's treatment of a prior Loft Board order granting access because "[i]n granting the access application, the Loft Board implicitly found that the owner had in fact diligently sought access and that the access had been unreasonably denied by the tenants." On remand, after reconsideration of the effect of the prior Loft Board order, the administrative law judge adheres to his original recommendation and resubmits it to the Loft Board. The Loft Board's access rules only require that the owner seek "reasonable access" and do not require a finding that the owner's access request was diligent or that the tenants' denial was unreasonable. The access order made no finding that the owner had been diligent in trying to obtain access and no finding that the tenants had been unreasonable in denying access. **Matter of R.E.D.I. Management Corp**., OATH Index No. 1130/98, mem. dec. (Feb. 23, 1999), **aff'd**, Loft Bd. Order No. 2383 (Mar. 23, 1999).

¶ 61. Pursuant to this section, to be entitled to an extension of a legalization deadline, the owner must show that it made diligent efforts to meet the deadline in question but was prevented from doing so by reasons beyond its control. The Loft Board had adopted the administrative law judge's recommendation that an application for an extension of the deadline to obtain a building permit be denied for the period from October 1, 1993 to April 1, 1998, because the owner made no showing of the legalization efforts he had taken during that period. Administrative law judge had recommended that the owner be granted an extension for the period from April 2, 1998 and July 7, 1998, based upon her finding that the owner diligently pursued the permit during that period by clearing 20 of 28 Building Department objections. The Loft Board rejected that recommendation and denied the application in full, finding that although the owner may have exercised diligent effort to clear the objections during that period, it had failed to show that the substance of the department's objections involved matters beyond its control. **Matter of Keung Tat Realty**, OATH Index No. 533/00 (Dec. 6, 1999), **aff'd in part, rev'd in part**, Loft Bd. Order No. 2471 (Jan. 25, 2000).

¶ 62. Pursuant to subparagraph (b)(2)(iii) of this section, no evidentiary hearing is required where petitioner failed to meet initial burden of showing that circumstances beyond its control prevented it from meeting the deadline. Here,

owner did nothing other than register the building as an IMD and hire an architect during the five months since it purchased the building. **Matter of Anorac Realty, Inc.**, OATH Index No. 2125/99 (Aug. 27, 1999), **aff'd**, Loft Bd. Order No. 2441 (Nov. 1, 1999).

¶ 63. Under subparagraph (b)(3) of this section, service of extension application is required only on residential, not commercial occupants. **Matter of Enki Properties, N.V. Ltd., Inc**., OATH Index No. 276/00 (Oct. 5, 1999), **aff'd**, Loft Bd. Order No. 2442 (Nov. 1, 1999).

¶ 64. Pursuant to subparagraph (i)(1)(iv) of this section, a tenant has 45 days from the mailing of the notice of a Rent Guidelines Board increase to file a challenge to the maximum legal rent claimed by the owner or the tenant is deemed to have accepted the rent claimed by the owner. Administrative law judge dismissed the tenant's challenge to the proposed rent increase as untimely where it was filed three months after the 45-day deadline to answer. Administrative law judge rejected the tenant's claim that she had filed her answer late because she had not received the notice of increase from the owner, crediting instead testimony from the owner, corroborated by the return receipt bearing a signature resembling the tenant's signature, that the notice was delivered to the correct address. **Matter of Breson Corp**., OATH Index No. 1758/99 (Aug. 27, 1999), **aff'd**, Loft Bd. Order No. 2437 (Oct. 1, 1999).

¶ 65. The Loft Board held that a residential occupant of a cooperative building who has opted to purchase shares in his unit, and continues to reside there as an owner-occupant, lacks standing to pursue an unreasonable interference application at the Loft Board. **Matter of Domingo**, OATH Index No. 1125/98 (May 21, 1999), **rev'd**, Loft Bd. Order No. 2453 (Dec. 13, 1999), **aff'd sub nom. Domingo v. NYC Loft Bd.**, Sup. Ct. N.Y. Co. Index No. 107058/00 (May 1, 2000) (Tolub, J.)

¶ 66. A tenant's unreasonable interference application alleging that the owner's proposed removal of a staircase between the second and third floors would unreasonably interfere with his use and occupancy was denied where the second and third floors were independent IMD units and the use of the staircase was limited in nature. **Matter of Wertheim**, OATH Index No. 1758/98 (Feb. 1, 1999), **aff'd**, Loft Bd. Order No. 2373 (Feb. 23, 1999).

¶ 67. Pursuant to subparagraph (i)(2)(iii)(C) of this section, tenants had 45 days from the service of the owner's pre-certified application for a cost of compliance rent adjustment to file their response with the Loft Board. Tenants filed late response to owner's application for final rent order and moved to vacate their default. Administrative law judge found that this was an appropriate case to vacate the default because the movants had not received specific notice of the 45-day rule, had had discussions with Board staff in which they were mislead, and had already filed an answer raising facially meritorious defenses to the application. **Matter of EBW, LLC**, OATH Index No. 848/00 (Nov. 24, 1999).

¶ 68. Administrative law judge denied extension application due to five-year delay in curing Landmarks Commission violations that, on their face, could have been cured in a timely manner by applicant. Applicant did not meet its burden of showing reasons beyond its control and reasonable diligence in obtaining a permit. Applicant produced no evidence that Landmarks Commission and Department of Buildings failed to respond to its requests for action. **Matter of Izbar Realty Corp.**, OATH Index No. 2021/00 (June 23, 2000), **aff'd,** Loft Bd. Order No. 2546 (July 20, 2000).

¶ 69. Owner's work on commercial non-IMD portions of the premises was elective and cannot be posited as a ground for delayed work on the IMD units. Owner provided insufficient basis for granting extension of time to comply with code timetables. **Matter of Jackson Mak (JSM Properties Inc.),** OATH Index No. 532/00 (May 10, 2000), **aff'd,** Loft Bd. Order No. 2532 (June 29, 2000).

¶ 70. IMD owner sought extension of the deadlines to file an alteration application and to obtain an approved work permit because the tenant refused access to his apartment. The application was denied because the owner had already received a ninety-day extension of the deadline to file an alteration application and because the owner took no action

during the period from early November 1999 when the Loft Board granted an access order, and February 2, 2000, when the owner attempted but failed to gain access to the tenant's apartment. The owner could have sought fines against and ultimately the eviction of the tenant if access was still withheld. **Matter of Kiamie Princess Marion Realty,** OATH Index No. 2020/00 (July 31, 2000), **aff'd,** Loft Bd. Order No. 2561 (Sept. 26, 2000).

¶ 71. New owner was on notice of the existence of the pending non-compliance application when it took possession of the building and can be held responsible for the prior owner's non-compliance. **Matter of Schwartz,** OATH Index No. 272/00 (June 19, 2000), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2544 (July 20, 2000).

¶ 72. In a tenants' non-compliance proceeding, administrative law judge found that issuance of a final certificate of occupancy by the Department of Buildings established that the building meets all building code requirements for legalization. The Department of Buildings, not the Loft Board, is the agency charged with determining whether to issue a certificate of occupancy. The Loft Board is not the proper forum for tenant challenges to validity of a certificate of occupancy. **Matter of Connors,** OATH Index Nos. 2361-62/00 (Aug. 30, 2000), **aff'd,** Loft Bd. Order No. 2624 (Apr. 24, 2001), **on reconsideration, prior Order is reversed and remanded,** Loft Bd. Order No. 2738 (June 25, 2002) Related subsequent litigation: the tenants made an application to the Department of Buildings to revoke the certificate of occupancy based upon their contention that the landlord did not perform legalization work specified in the approved plans. DOB denied the application and the tenants appealed to the Board of Standards and Appeals, which denied the appeal. On judicial review of the agency determinations, the court ruled for the tenants and declared the certificate of occupancy issued by DOB to be null and void. The court found that the legalization work specified in the approved plans was never completed and therefore the certificate of occupancy should never have been issued in the first place. When DOB and BSA denied the tenants' application to revoke the C of O those agencies wrongfully deprived the Loft Board of jurisdiction it otherwise would have had to supervise the legalization process. **Byrne v. Bd. of Standards and Appeals,** Sup. Ct. N.Y. Co. Part 49, Index No. 11535/01 (Apr. 8, 2002)(Cahn, J.), **rev'g, Matter of Connors,** OATH Index Nos. 2361-62/00 (Aug. 30, 2000).

¶ 73. Despite loft tenants' filing of alternate plans three days after the 45-day deadline had expired, judge found tenants' efforts and lack of prejudice to landlord constituted "good cause" to recommended granting the tenants' application to accept their alternate plans. **Matter of Tenants of 78-82 Reade Street,** OATH Index No. 2015/00 (July 17, 2000), **aff'd,** Loft Bd. Order No. 2560 (Sept. 26, 2000).

¶ 74. New owner's legalization plan, which omitted the roof, unreasonably interfered with tenant's occupancy where tenant has resided in unit for sixteen years and during that time has had unfettered use of a roof adjoining her apartment. Notwithstanding the leases that governed tenant's tenancy between 1984 and 1996 made no mention of the roof, long-term use in the circumstances of this case requires a finding of unreasonable interference in violation of 2-01(h). **Matter of McGehee,** OATH Index No. 1306/00 (Dec. 1, 2000), **aff'd,** Loft Bd. Order No. 2599 (Dec. 19, 2000).

¶ 75. Petitioner sought extension of code compliance deadline for obtaining a building permit based upon the ground that the owner attempted unsuccessfully, through the Loft Board, to address tenant concerns, which resulted in a delay of Loft Board certification of compliance. ALJ found petitioner met the statutory standard of good faith effort and also found the petitioner adequately explained the delay in obtaining Board certification which held up owner's application to DOB for permit. **Matter of 67 Greene Street**, OATH Index No. 1925/01 (July 27, 2001), **aff'd,** Acting Exec. Dir. Decision (Nov. 13, 2001).

¶ 76. Where owner immediately retained an architect who filed extension application within four months after premises had been declared covered, extension of alteration application was recommended. **Matter of 25 Jay Street, LLC,** OATH Index No. 932/01 (May 22, 2001).

¶ 77. Owner pursued legalization with reasonable diligence and was unable to comply due to circumstances beyond its control where owner filed alteration plan and narrative statement, where tenants prolonged negotiations, and where an unreasonable interference application was also pending. Petitioner's application for an extension of the deadlines to

file an alteration application and to obtain an alteration permit should be granted because the owner was unable to meet deadlines pending outcome of unreasonable interference application. **Matter of 40 Lispenard Street, LLC,** OATH Index No. 1677/01 (June 19, 2001), **aff'd,** Acting Exec. Dir. Decision (Nov. 13, 2001).

¶ 78. One sentence application submitted by the owner failed to show it made diligent efforts to meet the legalization deadlines under the relevant period, and that it was prevented from doing so by conditions or circumstances beyond its control for granting an extension as set forth in Loft Board rule 2-01(b)(2). **Loft Bd. v. Matter of Vlachos,**, OATH Index No. 2080/01 (June 7, 2001), **aff'd,** Loft Bd. Order No. 2650 (June 28, 2001).

¶ 79. An extension application was granted in part and denied in part where owner took virtually no steps towards legalization until he retained an architect in November 1999 but thereafter pursued legalization diligently by service of the narrative statement, the alteration plans, and two other items upon the Loft Board and the tenants. **Matter of 111 Mercer Street,**, OATH Index No. 1676/01 (June 20, 2001), **aff'd,** Loft Bd. Order No. 2664 (July 24, 2001).

¶ 80. Owner failed to serve access notice on tenants in compliance with section 2-01(g) of the Loft Board rules. Notice was sent by mail to an attorney and not to the tenants. In addition, no follow up notice setting specific dates for access was served on anyone. The access was premature and the ALJ recommended that the application be dismissed on the record. **Matter of Conners,** OATH Index No. 708/01 (Oct. 30, 2000).

¶ 81. An access application was denied based on the owner's failure to comply with the Loft Board rules regulating amendments to approved plans and narrative statement. Tenants' proof demonstrated that the owner disregarded work required by the narrative statement and made changes to the plans without notifying the Loft Board or the tenants. **Matter of Pelli,** OATH Index Nos. 1195-96/01 (Feb. 26, 2001), **aff'd in part, modified in part,** Loft Bd. Order No. 2624 (Apr. 24, 2001), **aff'd,** _____A.D.2d_____, 774 N.Y.S.2d 492 (1st Dep't 2004).

¶ 82. Prior Loft Board order dismissing noncompliance application lacked **res judicata** status because it was based on a procedural holding rather than on the merits. The owner's sporadic efforts to obtain a permit, where he also used stairway and elevator disputes as excuses to avoid moving forward with legalization, did not excuse owner's failure to meet deadlines. **Matter of Way,** OATH Index No. 2206/00 (Jan. 2, 2001).

¶ 83. An unreasonable interference application was granted based upon tenants' proof showing that the owner materially deviated from the work required in the narrative statement and approved plans. **Matter of Pelli,** OATH Index Nos. 1195-96/01 (Feb. 26, 2001), **aff'd in part, modified in part,** Loft Bd. Order No. 2624 (Apr. 24, 2001), **aff'd,** _____A.D.2d_____, 774 N.Y.S.2d 492 (1st Dep't 2004).

¶ 84. Extension application dismissed without prejudice as moot where the legislature subsequently extended the deadlines for Article 7-B compliance and for obtaining a certificate of occupancy beyond the extension sought by the owner in its application. **Matter of C. True Building Corp.,** OATH Index No. 1926/01 (Nov. 29, 2001), **modified,** Exec. Dir. Decision (Jan. 28, 2002).

Loft Board Executive Director finds there was a five week period during which the owner was not brought back in compliance by operation of law; she grants the application with respect to that five week period (Sept. 15, 2001 to Oct. 29, 2001).

¶ 85. As owner sought extension of the deadline to obtain a certificate of occupancy beyond time the legislature provided by operation of law when Loft Law was amended, Loft Board finds owner's application was not moot with respect to that additional period. Owner's letter recounting financial problems following the death of his father, absent documentary support, did not meet requirements for obtaining an extension. **Matter of 35 West 26th Street,** OATH Index No. 359/02 (Nov. 20, 2001), **aff'd in part, rejected in part,** Loft Bd. Order No. 2703 (Feb. 7, 2002).

¶ 86. Extension application granted where court appointed Administrator recently took over a troubled building requiring significant repair, most notably the installation of a central boiler and hot water system, and where the tenants

disputed his selection of the particular system. **Matter of Manning,** OATH Index No. 1678/01 (Oct. 17, 2001), **aff'd,** Loft Bd. Order No. 2691 (Nov. 29, 2001)

¶ 87. Pursuant to subsection (b)(2) of this rule, the existence of conditions or circumstances beyond the owner's control must be demonstrated in the application by the existence of corroborating evidence. IMD owner's one sentence statement in the applications, that several tenants asked to do the interior work themselves but have not completed it, does not demonstrate the existence of conditions or circumstances beyond the owner's control. Nor do photocopies of work permit renewals for the various addresses at issue constitute corroborating evidence of the existence of conditions or circumstances beyond the owner's control, where original permits had been filed nine years before and owner offered no explanation for the delay. **Matters of 26-32 and 36-40 Tiffany Place,** OATH Index Nos. 1923-24/01 (Aug. 7, 2001), **aff'd,** Loft Bd. Order No. 2673-74 (Oct. 10, 2001).

¶ 88. Extension request denied where the owner claimed that the legalization process was slowed by its recent discovery of existing violations approximately eight months after it purchased the building. ALJ found that this circumstance showed a lack of diligence, not a circumstance beyond the owner's control. **Matter of Mandala LLC,** OATH Index No. 360/02 (Oct. 12, 2001), **aff'd,** Loft Bd. Order No. 2690 (Nov. 29, 2001).

¶ 89. Owner failed to prove its assertion that it complied with Loft Board regulation requiring the filing of a declaration of intent form with the Loft Board before converting IMD unit to commercial use. Therefore, pending litigation over current occupant's residential use of the unit was not a matter beyond owner's control that prevented it from meeting compliance deadlines. **Matter of Mandala LLC**, OATH Index No. 360/02 (Oct. 12, 2001), **aff'd,** Loft Bd. Order No. 2690 (Nov. 29, 2001).

¶ 90. Administrative law judge determined that the owners were not entitled to an extension of any kind, since they could make no showing that their failure to meet the deadlines was beyond their control. Furthermore, the owners could not evade responsibility for their inaction by delegating their code compliance obligations to a net lessee in January 2001, at a time when they had failed to take any substantial compliance actions for nine years. **Matter of Blue 123 Corp.,** OATH Index No. 358/02 (Nov. 23, 2001), **aff'd,** Loft Bd. Order No. 2702 (Feb. 7, 2002).

¶ 91. Access application served simultaneously with access notice was found to be defective on its face because no proof of prior service of access notice and denial of access by tenant was supplied, as required by subsection (g) of this section. **Matter of J.L. Management (SDL Realty),** OATH Index No. 2326/01 (Aug. 14, 2001), **aff'd,** Loft Bd. Order No. 2671 (Oct. 10, 2001).

¶ 92. Administrative law judge recommended maximum fine in default tenant-initiated non-compliance proceeding where judge found that no alteration permit had been obtained and owner had prior non-compliance finding. **Matter of Blakeley,** OATH Index No. 445/03 (Dec. 13, 2002)

¶ 93. Noncompliance application filed in 1997 was granted as owner did not obtain an alteration permit by the deadline then in effect. Owner's argument that 1998 and 2001 agreements with the tenants had operated as extensions of time for the owner to obtain a permit, beyond the initial October 1997 deadline, were unpersuasive. The agreements operated as such only upon the condition that the owner clear all objections and obtain an alteration permit, which the owner failed to do, even as of the time of trial in January 2002. **Matter of Buchen,**, OATH Index Nos. 1132/98 & 105/99 (Mar. 21, 2002), **aff'd,** Loft Bd. Order No. 2725 (Apr. 18, 2002).

¶ 94. An applicant for an extension is required to demonstrate: (1) the owner's good faith efforts to achieve compliance with the statutory deadline and (2) circumstances beyond the owner's control that prevented compliance. Petitioner failed to note any efforts to achieve compliance with building permit deadline and failed to demonstrate circumstances beyond its control. **Matter of D&A 28th Street Realty, LLC,** OATH Index No. 440/03 (Nov. 20, 2002), **aff'd,** Loft Bd. Order No. 2771 (Jan. 9, 2003).

¶ 95. Petitioner sought retroactive 27-month extension of the deadline for obtaining a building permit. Extension application denied for failure to satisfy the standards set forth in subsection (b) of this section. Petitioner claimed that the Loft Board's two-year delay in issuing the certification of the plans precluded its compliance with the deadline. Board found that owner took no steps to inquire as to the status of the certification during this period. Passive pursuit of application does not demonstrate good faith compliance with legalization mandate of Loft Law. **Matter of Estate of Goldman,** OATH Index No. 1080/02 (Mar. 6, 2002), **aff'd,** Loft Bd. Order No. 2724 (Apr. 18, 2002).

¶ 96. Owner's extension application filed in 1998 is denied where the owner failed to testify or otherwise produce any documentary evidence indicating that he made diligent efforts to obtain the building permit prior to the October 1997 deadline, but was prevented from so doing by matters beyond his control. Counsel's representations at trial were argument, not evidence, and in any event did not address the owner's code compliance efforts prior to the deadline. **Matter of Buchen,** OATH Index Nos. 1132/98 & 105/99 (Mar. 21, 2002), **aff'd,** Loft Bd. Order No. 2725 (Apr. 18, 2002).

¶ 97. Extension application denied where owner submitted cursory application without showing circumstances beyond owner's control. **Matter of 125 Rivington Street Associates,** OATH Index No. 602/02 (Jan. 18, 2002), **aff'd,** Loft Bd. Order No. 2715 (Mar. 14, 2002).

¶ 98. Extension application denied despite recent efforts to meet compliance where the owner failed to explain two years of inactivity. **Matter of Millner,** OATH Index No. 795/02 (Feb. 19, 2002), **aff'd,** Loft Bd. Order No. 2716 (Mar. 14, 2002), **reconsideration denied,** Loft Bd. Order No. 2740 (June 25, 2002).

¶ 99. Under subparagraph (b)(2) of this section, petitioner must establish that it pursued legalization deadlines with reasonable diligence and that it has been unable to comply due to circumstances beyond its control. Landlord was unable to meet deadlines due to a pending unreasonable interference application before this tribunal. Extension granted in part for 18-month period. **Matter of 40 Lispenard Street, LLC,** OATH Index No. 1713/02 (June 10, 2002), **aff'd,** Loft Bd. Order No. 2742 (June 25, 2002).

¶ 100. Pursuant to subsection (d)(2)(iv)(A) of this section, an occupant has 45 days from the date of the narrative statement conference to file alternate plans with the Department of Buildings. Subsection (d)(2)(iv)(B) permits consideration of alternate plans filed after the 45-day deadline if the Loft Board determines there was good cause for the failure to meet the deadline. Administrative law judge denied tenant's application to consider an approved "pre-reconsideration" plan that was submitted on eve of second day of hearing, well after the 45-day deadline had run. Administrative law judge did not find good cause existed for the late submission as applicant had opportunity to address owner's narrative statement and legalization plan two years ago and, indeed, did do so in timely filed alternate plans. **Matter of Beaumont,** OATH Index No. 2104/01, mem. dec. (Aug. 27, 2002).

¶ 101. Where the Loft Board finds that the owner is guilty of violations of the "unreasonable interference" regulations, it can issue a fine, even without filing a separate proceeding charging harassment. Pelli v. City of New York, 5 A.D.3d 268, 774 N.Y.S.2d 492 (1st Dept. 2004).

¶ 102. 29 RCNY 2-01(m)(3)(ii) provides in substance that where a loft building owner has received Rent Guidelines Board (RGB) increases during the legalization process, the term of the initial rent stabilized lease ends upon the expiration of the last RGB increase period. The regulation further provides that no notice or proceeding by the owner to recover the unit under Rent Stabilization Code §2524.4 (owner occupancy, in this case) may be commenced during the initial abbreviated lease term. In this case, the tenant's first lease began with an order of the Loft Board setting the initial legal regulated rent and expired only five months later. The court was faced with the following question: can the landlord acquire a unit under the owner occupancy rules as soon as the abbreviated lease has expired, or does he or she have to wait until the end of the next full lease term? The court held that the intent of the law was to give the tenant the benefit of at least one full lease term, and that owner occupancy proceedings could not be brought until the end of the first full-length lease. Damasco v. Berger, 5 A.D.3d 176, 772 N.Y.S.2d 518 (1st Dept. 2004).

¶ 103. Administrative law judge excused applicant's late submission of alternative plans under the good cause exception of subsection (d)(2)(iv) of this section where its submission was disrupted by the events of September 11, 2001. **Matter of Vander Heyden,** OATH Index No. 438/03 (Apr. 22, 2003), **aff'd,** Loft Bd. Order No. 2799 (May 15, 2003).

¶ 104. Petitioner sought extension of time to obtain alteration permit pursuant to the Multiple Dwelling Law and Loft Board rules. Petitioner landlord demonstrated that it pursued legalization with reasonable diligence and that it has been unable to comply due to circumstances beyond its control. Landlord was unable to obtain permit pending resolution of unreasonable interference claim by second-floor tenant. A twelve-month extension was granted to the landlord. **Matter of Lispenard Street, LLC,** OATH Index No. 1352/03 (Mar. 31, 2003), **aff'd in part, modified in part,** Loft Bd. Order No. 2800 (May 15, 2003).

¶ 105. An owner applied for an extension of more than one year to legalize the premises. The owner claimed that the tenants impeded legalization by failing to comply with a stipulation that gave the tenants an opportunity to review and submit modifications to the owner's plans. The administrative law judge found that the owner failed to show good faith efforts to complete legalization or circumstances beyond its control. The owner did not show that it did anything to further legalization during the four-year period between tenants' failure to act and the time of the application or that disputes with tenants obstructed the legalization process. **Matter of 13 East 17th Street, LLC,** OATH Index No. 1099/03 (Mar. 10, 2003), **aff'd,** Loft Bd. Order No. 2790 (Apr. 4, 2003).

¶ 106. A new interim multiple dwelling owner filed an extension application of the March 1, 2000 building permit deadline until September 30, 2003. In its application, the owner alleged that it was unable to obtain copies of the plans filed by the prior owner's architect after inquiring at the Loft Board, the Department of Buildings, and with the prior owner and prior owner's architect. The administrative law judge recommended denial of the application because the current owner failed to show the prior owner's good faith efforts to achieve compliance or circumstances impeding the prior owner's compliance. For the new building owner's three-month period of ownership, the judge similarly recommended denying the application because the owner failed to show the statutory requirements for an extension. **Matter of 145 Reade, LLC,** OATH Index No. 1588/03 (Nov. 25, 2003), **aff'd,** Loft Bd. Order No. 2839 (Jan. 15, 2003).

¶ 107. The tenants of a second floor loft filed an application alleging that the building owner's plan to install a passenger elevator through their kitchen constituted short term and long term unreasonable interference with the use of their unit. Considering that installation of the elevator was not required for legalization, that construction of the elevator would require significant reconstruction of the unit, and that construction would cause considerable short term disruption, the owner's plan was found to be unreasonable. **Matter of Slotkin,** OATH Index No. 741/03 (Nov. 24, 2003), **aff'd,** Loft Bd. Order No. 2853 (Mar. 18, 2004).

¶ 108. A tenant filed an unreasonable interference application alleging that the owner's proposed building wide sprinkler system, the installation of a bathroom vent duct on her ceiling, and the installation of a basewall heating and hot water system in her unit would unreasonably interfere with her use and occupancy of the space. The administrative law judge found that the proposed sprinkler system and installations would not unreasonably interfere with the tenant's use and occupancy because the owner's plan was a rational and reasonable one that provided for building wide safety. In addition, the installations would have negligible or no effect on the tenant's use of her unit. **Matter of Beaumont,** OATH Index No. 2104/01 (Jan. 30, 2003), **aff'd,** Loft Bd. Order No. 2785 (Mar. 7, 2003).

¶ 109. Administrative law judge held that resolution of unreasonable interference application under section 2-01(h) where owner and tenant submitted competing plans with respect to disputed legalization items does not depend on a determination of which plan is more appealing; the owner's plan prevails unless the tenant can show the owner's plan is unreasonable. **Loft Bd. v. 24-26 Harrison Street, New York, NY,** OATH Index No. 1089/03 (June 23, 2003), **aff'd in part, modified in part,** Loft Bd. Order No. 2816 (July 24, 2003).

¶ 110. Administrative law judge held that the Rent Guidelines Board increases under subsection (i)(1)(i) of this section do not commence when owner obtains a certificate of occupancy, but only when the owner makes a demand on the tenant and notice of that demand is served on the Loft Board. **Matter of Trengove,** OATH Index No. 439/03 (Feb. 25, 2003), **aff'd,** Loft Bd. Order No. 2789 (Apr. 4, 2003).

¶ 111. Administrative law judge recommended granting building owner's application for access to loft tenants' unit and for costs incurred as a result of tenants' denial to be calculated into tenants' final rent where the tenants' refusal of access was unreasonable. **Matter of Pelli**, OATH Index No. 546/05 (Oct. 18, 2004), **aff'd**, Loft Bd. Order No. 2892 (Jan. 20, 2005), **reconsideration denied**, Loft Bd. Order No. 2899 (Feb. 24, 2005).

¶ 112. Administrative law judge recommended grant of access application where building owner established that occupant of loft was properly notified of proposed inspection dates and failed to provide access on a specified date. **Matter of Benaresh**, OATH Index No. 1209/04 (Mar. 22, 2004), **aff'd**, Loft Bd. Order No. 2856 (Apr. 27, 2004).

¶ 113. Administrative law judge recommends denial of building owner's access application and fine of $150 for failure to properly serve the tenant with the access notice and access application. **Matter of Plot Realty**, LLC, OATH Index No. 1285/03 (Oct. 6, 2004), **aff'd**, Loft Bd. Order No. 2920 (Apr. 21, 2005).

¶ 114. Administrative law judge held that the owner's failure to specify that windows were double-glazed in the access application did not entitle tenants to refuse access where the access notice need only specify the "scope of all work to be performed" (29 RCNY §2-01(g)(1)). **Matter of Pelli**, OATH Index No. 546/05 (Oct. 18, 2004), **aff'd**, Loft Bd. Order No. 2892 (Jan. 20, 2005), **reconsideration denied**, Loft Bd. Order No. 2899 (Feb. 24, 2005).

¶ 115. Loft Board access rule 2-01(g)(1) permit parties or their representatives to enter agreements on access. **Matter of Les Pieds Nickles, Inc.**, OATH Index No. 1938/04 (July 22, 2004), **aff'd in part, rejected in part**, Loft Bd. Order No. 2874 (Sept. 23, 2004).

¶ 116. The cost of construction of a bulkhead and staircase is attributable solely to the residential tenants. **Matter of Moskowitz**, OATH Index No. 1841/04 (June 10, 2004), **aff'd,** Loft Bd. Order No. 2873 (July 22, 2004).

¶ 117. Alternate plans application pursuant to section 2-01(d)(2)(vii)(B) dismissed where owner withdrew proposed amended plans. **Matter of Connors**, OATH Index No. 2001/04 (July 26, 2004), **aff'd**, Loft Bd. Order No. 2875 (Sept. 23, 2004).

¶ 118. Loft Board rejects ALJs statement that the notice provisions of subsections (g)(1) and (2) of this section do not apply to non-legalization work such as repairs, maintenance work or inspections. **Matter of Bryne**, OATH Index No. 2003/04 (Jan. 14, 2005), **adopting on different grounds**, Loft Bd. Order No. 2999 (Jan. 19, 2006), **resp.'s app. for reconsideration den.**, Loft Bd. Order No. 3050 (May 18, 2006), **pet.'s app. for reconsideration den.**, Loft Bd. Order No. 3080 (July 20, 2006).

¶ 119. Subsection (g)(3)(i)(V) of this section gives the Loft Board authority to fine an owner for filing a frivolous access application. One thousand dollar fine was imposed on the owner where the board found the application appeared to have been motivated more by vindictiveness than a sincere concern about the legality of the wiring. **Matter of Pelli**, Loft Bd. Order No. 3014 (Feb. 16, 2006), **adopting in part, rejecting in part**, OATH Index No. 688/06 (Jan. 19, 2006).

¶ 120. Access notice must be specific enough to inform tenants which areas of their apartments will be affected and to provide tenants some idea of the degree to which the work will interfere with the use of their unit. Loft Board rejected ALJ's use of the narrative statement as a way to provide sufficient description of the scope of the work to be performed, where access notice was deficient. **Matter of 20 Beaver St, LLC**, Loft Bd. Order No. 3086 (July 20, 2006), **rejecting**, OATH Index No. 1732/06 (May 23, 2006).

¶ 121. Mere technical violations of the notice provisions of the Loft Board's access rule does not, without more, make out a claim of unreasonable interference; to establish unreasonable interference under subsection h of this section, a tenant must show that those violations interfered with the tenants use of his or her unit. **Matter of Bryne**, Loft Bd. Order No. 2999 (Jan. 19, 2006), **Resp.'s app. for reconsideration den.**, Loft Bd. Order No. 3050 (May 18, 2006), **pet.'s app. for reconsideration den.**, Loft Bd. Order No. 3080 (July 20, 2006).

¶ 122. Evidence of insufficient funds will not excuse noncompliance, but under subsection (c)(3) of this section, insufficient funds may be considered in mitigation of fines imposed upon a finding of noncompliance. Owner did not provide the required substantiating documentation for its defense of lack of funds, and maximum fines were imposed for missing multiple deadlines. **Matter of Thornley**, OATH Index No. 2180/07 (Sept. 28, 2007).

¶ 123. The duty to comply with code compliance deadlines is nondelegable. Claim that noncompliance was due to unsound advice from building managers was rejected. **Matter of Thornley**, OATH Index No. 2180/07 (Sept. 28, 2007).

¶ 124. A warranty of habitability claim under 2-01(d) of this section may be brought in conjunction with a properly pleaded application for unreasonable interference under 2-01(h), harassment under 2-02(c), or diminution of services under 2-04(c), but a tenant cannot file an independent application before the Loft Board under subsection (d) of this section solely for a breach of warranty of habitability. **Matter of Ashley**, Loft Bd. Order No. 3350 (Oct. 18, 2007), **adopting in part, rejecting in part**, OATH Index No. 1061/06 (Apr. 16, 2007).

¶ 125. Under subsection (h) of this section, an unreasonable interference application must contest conditions arising from the completion of legalization work by the owner. Loft Board dismisses an unreasonable interference application based upon fumes caused by spray painting business conducted by commercial tenant (auto body shop) because the condition was not connected to legalization work. **Matter of 517-525 West 45th Street Tenants' Ass'n**, OATH Index No. 1061/06 (Apr. 16, 2007), **adopted in part, rejected in part on other grounds**, Loft Bd. Order No. 3350 (Oct. 18, 2007).

¶ 126. Pursuant to section 2-01(i)(1)(iv), a tenant has 45 days to elect two-year lease. After a hearing, it was determined that the tenant failed to file the election form until 18 days after the deadline. The tenant failed to establish either good cause for her late filing or that the delay in filing was so minimal as to be excused under the maxim **de minimus non curat lex**. **Matter of Green333 Corp**., OATH Index No. 1206/07 (May 31, 2007), **adopted**, Loft Bd. Order No. 3333 (Sept. 7, 2007).

¶ 127. Loft Board rejects ALJ's rationale that owner should be fined the maximum, $1000 per violation, because the owner failed to comply with all four areas of the legalization timetable. The Board held such finding was not relevant or necessary in order to justify the imposition of maximum fines, but adopted the finding that the owner violated 14

deadlines and should be fined $14,000. **Loft Bd. v. Korean Assoc. of New York, Inc.**, OATH Index No. 1194/08, mem. dec. (Feb. 8, 2008), **adopted**, Loft Bd. Order No. 3416 (Mar. 20, 2008).

¶ 128. An IMD owner may be held responsible for missed deadlines of previous owners, inasmuch as an owner who purchases an IMD after code compliance deadlines have expired is presumed to be on notice of those deadlines. **Matter of Schwartz**, OATH Index No. 966/08 (Feb. 15, 2008), **adopted**, Loft Bd. Order No. 3430 (Apr. 17, 2008).

¶ 129. Owner should not be assessed fines where he was not placed on notice by the pleadings or other communications from the tenants that a fine was sought. **Matter of Schwartz**, OATH Index No. 966/08 (Feb. 15, 2008), **adopted**, Loft Bd. Order No. 3430 (Apr. 17, 2008).

¶ 130. Under subsection (c), residential occupants have standing to file a non-compliance application seeking to impose fines against an owner. The ALJ rejected the owner's "creative and technical" contention that the use of the articles "the" and "an" in the rule indicates that only the Loft Board may commence a proceeding that leads to fines. The

ALJ held that it is the Loft Board that makes the determination whether "the" owner should be fined, whether the matter was commenced by a tenant or by the Board itself. **Matter of Frankel**, OATH Index No. 1556/08, mem. dec. (May 23, 2008).

¶ 131. Subsection (h) of this provision pertains solely to claims of unreasonable interference arising from performance of actual legalization work subsequent to the issuance of a work permit and does not pertain to issues arising from an amendment to the legalization plan. Loft Board rejects claim that owner violated subsection (h) because the amended plan allegedly includes work beyond that authorized by the permit, where the proof showed the legalization work would not unreasonably interfere with the tenants' use of their unit or unreasonably compromise their safety. **Matter of Connors & Byrne**, OATH Index No. 1429/07 (May 4, 2007), **adopted**, Loft Bd. Order No. 3394 (Jan. 18, 2008), **applicationfor reconsideration denied**, Loft Bd. Order No. 3434 (May 15, 2008).

FOOTNOTES

1

[Footnote 1]: * As pursuant to §27-142 of the Administrative Code the Department of Buildings has agreed to accept such applications for filing without requiring the owner's authorization, which is an exception to its normal procedures.

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-02 Harassment.

(a) **Applicability.** These harassment regulations shall apply to all future complaints of harassment filed with the Loft Board after the effective date of these regulations (April 20, 1987). Pending cases in which the Loft Board has not yet rendered a final determination as of the effective date of these regulations (April 20, 1987) shall be subject to all sections of these regulations except §§2-02(c)(i) through 2-02(c)(6)(i); the processing of these pending cases shall be in accordance with the Board's Regulations for Internal Board Procedures-§§l-06(a) to (j). All orders of harassment issued prior to the effective date of these regulations (April 20, 1987) shall be noted in Loft Board records and in the office of the City Register in accordance with the provisions of §2-02(d)(l)(iii) of these regulations. Landlords affected by previous orders may apply to the Loft Board in accordance with §2-02(d)(2) for an order terminating the finding of harassment no sooner than one year and 180 days from the effective date of these regulations.

(b) **Definitions.**

Harassment. The term "harassment"*2 shall mean any course of conduct engaged in by the landlord or any other person acting on its behalf that interferes with or disturbs the comfort, repose, peace or quiet of an occupant in the occupant's use or occupancy of its unit if such conduct is intended to cause the occupant to vacate the building or unit, or to surrender or waive any rights of such occupant under the occupant's written lease or other rental agreement or pursuant to Article 7-C.

Harassment shall include, but is not limited to, the intentional interruption or discontinuance of or willful failure to provide or to restore services customarily provided in the building or required by written lease or other rental agreement or, for residential occupants qualified for the protections of Article 7-C, by the Loft Board regulations regarding

minimum housing maintenance standards. Harassment shall not include either the lawful termination of a tenancy or lawful refusal to renew or extend a written lease or other rental agreement, or acts performed in good faith and in a reasonable manner for the purposes of operating, maintaining or repairing any building or part thereof.

Landlord. The term "landlord" shall mean the owner of an IMD, the lessee of a whole building all or part of which is an IMD, or the agent or other person having control of such a building.

Occupant. The term "occupant", unless otherwise provided, shall mean a residential occupant qualified for the protections of Article 7-C, any other residential tenant, or a nonresidential tenant.

(c) **Procedures for considering harassment applications.** (1) It is unlawful for a landlord or any other person acting on its behalf to engage in conduct constituting harassment against any occupant of an IMD. A complaint of harassment may be filed with the Loft Board by an occupant or occupants of an interim multiple dwelling. The complaint shall be filed on a form prescribed by the Loft Board and shall be processed in accordance with the Board's Regulations for Internal Board Procedures-§§1-06(a) to (j), except as provided herein.

(2) (i) The complaint shall allege in separately numbered paragraphs each type of conduct claimed to constitute harassment of occupants of the IMD by the landlord. Each paragraph shall contain a complete description of the conduct complained of, including the actual or approximate date(s) on which such conduct occurred, the manner and location of each occurrence, and if the complaint is filed on behalf of more than one occupant, the occupant(s) against whom the occurrence was directed. Except for a complaint alleging conduct that has occurred prior to the effective date of these regulations (April 20, 1987), the complaint shall be filed within 180 days of the conduct complained of; where an ongoing course of conduct is alleged, the complaint shall be filed within 180 days of the last occurrence alleged. A complaint alleging conduct that has occurred prior to the effective date of these regulations (April 20, 1987) shall be filed within 180 days of the effective date of these regulations.

(ii) If a complaint fails to set forth a claim of harassment as defined in §2-02(b) "Harassment", the Loft Board shall notify the complainant(s) in writing of the deficiency and of the opportunity to file an amended complaint with the Loft Board within 15 days after the date of notification. Following such period if the complaint does not allege conduct constituting harassment, it shall not be processed further. If appropriate, it shall be deemed a complaint of failure to provide service and shall be processed pursuant to the Loft Board's rules and regulations relating to enforcement of minimum housing maintenance standards. Staff's decision not to process a harassment complaint may be reviewed by the Loft Board upon application by a complainant.

(iii) Once the Loft Board staff has decided to accept a harassment complaint for further processing as described in §2-02(c)(2)(ii), a complainant found by the Loft Board to have filed such a complaint in bad faith or in wanton disregard of the truth may be subject to a civil penalty not to exceed $1,000 for each such violation.

(3) The staff of the Loft Board shall serve all affected parties, including the owner, with a copy of the complaint by regular mail, retaining records attesting to such service. However, where a complaint of harassment solely alleges that the owner's challenge of a sale of improvements is frivolous, the Loft Board staff shall serve only the owner. Instructions for filing an answer and a notice scheduling a conference on the complaint shall be enclosed in each mailing. Where the landlord against whom a complaint of harassment has been filed is not the owner of the IMD, the mailing to the owner shall advise the owner that a finding of harassment may affect the owner's ability to decontrol or to obtain market rentals for covered IMD units pursuant to §286(6) of Article 7-C and the Loft Board's regulations.

(4) Parties shall have 15 days after the date on which service of the complaint was completed to file an answer with the Board. Twelve copies of the answer with proof of service of the answer on the complainant(s) must be filed at the offices of the Loft Board.

(5) (i) The notice of conference will schedule a date and time for an informal conference as soon as possible following the time period for filing an answer.

(ii) Such conferences shall be conducted by the staff with the affected parties in an effort to resolve and alleviate the conditions and events alleged. Where resolution to the mutual satisfaction of the parties is achieved, a stipulation containing the terms of the resolution and the penalties, if any, for its breach shall be executed and shall be filed with the Loft Board for its approval on a summary calendar.

(6) Where charges of harassment remain unresolved following the conference, a hearing on the complaint will be held in accordance with the procedures of §§l-06(e)and (f) of the regulations for internal Board Procedures and the following:

(i) the hearing will be limited to the charges contained on the original complaint, as modified at the conference, and any additional charges of harassment arising as a result of conduct occurring after the conference.

(ii) acts performed by an occupant in good faith and in a reasonable manner for the purposes of operating a nonresidential conforming use shall be presumed not to constitute harassment. The presumption may be rebutted by a showing that such acts were performed on the landlord's behalf and intended by the landlord to cause another occupant to vacate the building or its unit or to surrender or waive any rights of such occupant under the occupant's written lease or other rental agreement or pursuant to Article 7-C.

(iii) a finding by the Loft Board that the owner has willfully violated the code compliance timetable or has violated the code compliance timetable more than once may be considered as evidence of harassment. (See regulations on Code Compliance-§2-01(c)(3)).

(iv) the issuance of a municipal vacate order for hazardous conditions as a consequence of the owner's unlawful failure to comply with the code compliance timetable shall result in a rebuttable presumption of harassment. (See regulations on Code Compliance-§2-01(c)(4)).

(v) a finding by the Loft Board of unreasonable and willful interference with an occupant's use of its unit by the owner or its agents may be considered as evidence of harassment. (See Regulations on Code Compliance-§2-01(h)).

(vi) a finding by the Loft Board of a willful violation of Minimum Housing Maintenance Standards may be considered as evidence of harassment of residential tenants. (See regulations on Enforcement of Minimum Housing Maintenance Standards-§2-04(e)(6)).

(vii) a finding by the Loft Board that the filing of an application by the owner objecting to the sale of improvements was frivolous may be considered as evidence of harassment of residential tenants. An objection to the sale may be found to be frivolous on grounds including, but not limited to, the following:

(A) that it was filed without a good faith intention to purchase the improvements at fair market value or

(B) that the owner's valuation of the improvements has no reasonable relationship to the fair market value, as determined by the Loft Board. (See regulations on Sales of Improvements-§2-07(g)(1)(i)). At the occupant's request the Loft Board shall issue its findings on an outstanding complaint of harassment based upon the allegation that the owner's objection to the sale of improvements is frivolous, or any other pending complaint of harassment in the building, concurrently with its determination of the owner's challenge.

(viii) a determination by a civil or criminal court of landlord harassment of an occupant or occupants may be considered as evidence of harassment.

(d) **Findings of harassment.** (1) (i) An owner found guilty of harassment shall not be entitled to decontrol of or market rental for any IMD unit for which a sale of improvements pursuant to §286(6) of Article 7-C and the regulations promulgated pursuant thereto takes place in the IMD where the harassment occurred. This restriction shall apply to any sale of improvements that takes place on or after the date of the order containing the finding of harassment until such

time as the order may be terminated in accordance with §2-02(d)(2).

(ii) A landlord found guilty of harassment by the Loft Board may be liable for a civil penalty not to exceed $1,000 for each occurrence that is found to constitute harassment. Registration as an IMD shall not be issued or renewed for any building for which fines have been imposed for landlord harassment until such fines have been paid.

(iii) The order containing the finding of harassment shall be attached to and noted upon the current and all subsequent IMD registration applications on file for the IMD affected by such finding until such time as the order may be terminated in accordance with §2-02(d)(2). The order shall be binding upon all persons or parties who succeed to the landlord's interest in the premises. A copy of the Board's order containing the finding of harassment shall be mailed to the complainant, the owner, all occupants of the building, and any other parties to the proceeding. Notice of such order shall be filed by the Loft Board in the office of the City Register.

(iv) The procedure provided for herein shall be in addition to any procedures provided under other provisions of law and shall not be construed to alter, affect or amend any right, remedy or procedure under any other provisions of law, such as:

(A) an occupant may apply to the Supreme Court of the State of New York for an order enjoining the landlords from harassment pursuant to §235-d(4) of the Real Property Law and may pursue all other remedies in relation to harassment including the award of damages before a court of competent jurisdiction.

(B) upon the request of a residential occupant who either vacates, has been removed from or is otherwise prevented from occupying its unit as a result of harassment, a landlord shall take all reasonable and necessary action to restore the occupant to its unit, provided that such request is made within seven days after removal, pursuant to §26-521(b) of the Administrative Code.

(C) residential occupants of IMDs are afforded the protections available to residential tenants pursuant to the Real Property Law and the Real Property Actions and Proceedings Law, including §223-b of the RPL regarding retaliatory evictions, notwithstanding that such occupants may reside in an owner occupied IMD having fewer than 4 residential units.

(D) special proceedings pursuant to RPAPL 7-A are available to all occupants of IMDs, notwithstanding that such IMDs may contain less than three residential units.

(2) (i) Where a landlord has been found guilty of harassment by the Loft Board, the current landlord may apply to the Loft Board pursuant to the regulations for Internal Board Procedures, following the period of time specified in the order containing the finding of harassment, for an order terminating such finding. The order containing the finding of harassment shall specify the period of time, within a range of one to three years from the date of the order of harassment, during which the landlord shall be barred from applying for an order of termination. However, where a landlord has been convicted of a crime for conduct found by the Loft Board to constitute harassment, the current landlord may apply for an order of termination only after at least five years have passed since the date of the order of harassment. The Loft Board may grant such relief if it finds that:

(A) since notification of the order the landlord has not engaged in the proscribed conduct and has not engaged in any other conduct which constitutes harassment; and

(B) the landlord has achieved compliance with the fire and safety standards of Article 7-B, alternative building codes or provisions of the M.D.L., as provided in §2-01(a)(3) of the Code Compliance Regulations and as may be exhibited by the issuance of a temporary certificate of occupancy, or, if Article 7-B compliance was achieved prior to the date of the order of harassment, has obtained a final certificate of occupancy as a class A multiple dwelling; and

(C) the landlord has paid all civil penalties assessed in the order of harassment, and there are no other orders of

harassment outstanding for the IMD; and

(D) the landlord is in compliance with the regulations relating to registration of IMDs.

(ii) An order terminating a prior Loft Board finding of harassment shall apply prospectively only, and the owner shall not be entitled to the decontrol of or market rental for any residential unit for which a sale of improvements pursuant to §286(6) of Article 7-C and the regulations promulgated pursuant thereto has taken place in the period from the date of the order finding harassment to the date of the order terminating such finding.

(iii) If the Loft Board at a regularly scheduled meeting or at a special session called in accordance with §l-03(a) of the regulations for Internal Board Procedures has reasonable cause to believe that harassment is occurring or has occurred at the IMD after the date of an order terminating a prior finding of harassment, the Loft Board shall suspend such order of termination immediately. Notice of such suspension shall be mailed to the landlord and to all occupants. Upon the landlord's written request, the Loft Board shall schedule a hearing as soon as reasonably possible but not later than thirty days after the date of receipt of such request to determine whether the order of termination should be reinstated or revoked.

(iv) The order of termination or of suspension, reinstatement or revocation of termination shall be included among the IMD registration material on file, and notice of termination or of suspension, reinstatement or revocation of termination shall be filed by the Loft Board in the office of the City Register.

(e) **Harassment by prime lessees.** (1) **"Prime lessee."** For the purposes of these harassment regulations the term "prime lessee" shall mean the party with whom the landlord entered into a lease or rental agreement for use and occupancy of a portion of an IMD, which is being used residentially, where s/he is not the residential occupant qualified for protection of the unit, regardless of whether such lessee is currently in occupancy of any portion of the space s/he has leased from the landlord or whether such lease remains in effect.

(2) It is unlawful for a prime lessee or any other person acting on his or her behalf to engage in conduct that would constitute harassment if engaged in by the landlord as defined in §2-02(b) "Harassment" against any of its current or former subtenants who are residential occupants qualified for the protections of Article 7-C. A complaint of harassment may be filed with the Loft Board by a residential occupant qualified for the protections of Article 7-C against its prime lessee. The complaint shall be processed in accordance with the procedures described in §2-02(c).

(3) (i) A prime lessee found guilty of harassment by the Loft Board may be liable for a civil penalty not to exceed $1,000 for each occurrence that is found to constitute harassment.

(ii) A prime lessee found guilty of harassment by the Loft Board shall not be entitled to recover subdivided space pursuant to §2-09(c)(5)(i) and §2-09(c)(5)(iii) of the rules and regulations Relating to Subletting and Similar Matters and shall not be entitled to the rent adjustment provided for in §2-09(c)(6)(ii)(D)(b) of those regulations.

(4) (i) A prime lessee found guilty of harassment by the Loft Board may apply to the Loft Board pursuant to the Regulations for Internal Board Procedures, following the period of time specified in the order containing the finding of harassment, for an order terminating such finding. The order containing the finding of harassment shall specify the period of time, within a range of one to three years from the date of the order of harassment, during which the prime lessee shall be barred from applying for an order of termination. However, where a prime lessee has been convicted of a crime for conduct found by the Loft Board to constitute harassment, the prime lessee may apply for an order of termination only after at least five years have passed since the date of the order of harassment. The Loft Board may grant such relief if it finds that:

(A) since notification of the order the prime lessee has not engaged in the proscribed conduct and has not engaged in any other conduct which constitutes harassment; and

(B) the prime lessee has paid all civil penalties assessed in the order of harassment, and there are no other orders of harassment outstanding for the prime lessee.

(ii) An order terminating a prior Loft Board finding of harassment by a prime lessee shall apply prospectively only.

HISTORICAL NOTE

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. An ongoing course of conduct pursuant to subparagraph (c)(2)(i) of this section is not a series of disparate, unrelated acts, separate in time and tied together only by an allegation of a continuing intent to harass, but is a course of conduct that is continuous and actually in process at a time within the 180-day limitation period. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996), aff'd, Loft Bd. Order No. 2054 (Jan. 9, 1997).

¶ 2. An allegation that a building owner leased a floor to an illegal after-hours establishment, the business of which disturbed the residential tenants, ending less than 180 days before the harassment application was filed, was not barred by the 180-day limitation period pursuant to subparagraph (c)(2)(i) of this section. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996), aff'd, Loft Bd. Order No. 2054 (Jan. 9, 1997).

¶ 3. The claim that the building owner deliberately damaged a tenant's loft unit by flooding the unit above the tenant's unit, although improbable, stated a triable claim of harassment pursuant to this section. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996), aff'd, Loft Bd. Order No. 2054 (Jan. 9, 1997).

¶ 4. A claim that a tenant was without heat on more than 20 days from January to April stated a sufficient claim of harassment at the pleading stage. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996), aff'd, Loft Bd. Order No. 2054 (Jan. 9, 1997).

¶ 5. Although allegations may be time-barred as harassment claims pursuant to the 180-day limitation period of subparagraph (c)(2)(i) of this section, the admissibility of evidence of such time-barred allegations to show motive, intent or any other material fact pertaining to harassment claims that are not time-barred is a matter committed to the discretion of the trial judge. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996), aff'd, Loft Bd. Order No. 2054 (Jan. 9, 1997).

¶ 6. An owner's withholding over an eight-month period of required tenant services-including heat, water pressure, elevator service, electricity, extermination services, cleaning of common areas and building security-combined with other conduct by the owner evidencing an intent to force the two remaining rent-regulated tenants in the building to vacate or give up their rights, constituted harassment pursuant to paragraph (b) of this section. Matter of Kalmanowicz, OATH Index No. 1333/97 (Aug. 25, 1997), aff'd, Loft Bd. Order No. 2162 (Oct. 10, 1997).

¶ 7. For harassment consisting of various denials of required building services and other conduct evidencing an intent to force tenants to vacate or give up their rights, the penalty imposed pursuant to paragraph (d) was a civil penalty of $7,000, and an order barring the owner from applying for termination of the harassment finding for three years. Matter of Kalmanowicz, OATH Index No. 1333/97 (Aug. 25, 1997), aff'd, Loft Bd. Order No. 2162 (Oct. 10, 1997).

¶ 8. A general release given by a tenant to a building owner as part of a settlement of a Civil Court case precluded the adjudication of harassment claims that had accrued on or before the date of the release. To the extent that the tenant might have a claim for harassment based on events that occurred after the date of the release, he is not precluded from filing an application asserting such a claim. Matter of Ashbaugh, OATH Index No. 1979/96 (July 25, 1996), aff'd, Loft Bd. Order No. 2008 (Sept. 26, 1996).

¶ 9. Because the tenant was evicted by order of the housing court, following the tenant's sale of improvements and Loft Law rights in the course of a federal bankruptcy case, the tenant's occupancy was legally terminated and therefore he could not maintain a harassment application pursuant to paragraph (b) of this section. Matter of Jones, OATH Index No. 133/97 (Sept. 12, 1996), aff'd, Loft Bd. Order No. 2038 (Nov. 21, 1997).

¶ 10. Where a landlord's application for termination of a previous finding of harassment pleaded all of the elements required for such termination pursuant to subparagraph (d)(2)(i) of this section, and the answering tenants agreed with the matters pleaded in the application and supported termination of the harassment finding, the application was granted without an evidentiary hearing. Matter of 17-19 Bleecker Street, LLC, OATH Index No. 1462/97 (May 2, 1997), aff'd, Loft Bd. Order No. 2118 (June 26, 1997).

¶ 11. Where the Loft Board has found the landlord to have engaged in harassment, the court must defer to that determination. However, if the Loft Board has ruled on the issue of harassment, the court has jurisdiction to determine whether or not harassment has occurred. If a finding of harassment has been made either by the court or the Loft Board, then a sale of loft fixtures will not result in decontrol of the unit. However, if the sale of fixtures occurred before any finding of harassment was made, the unit will be decontrolled. Suraci v. Mucktar, N.Y.L.J., July 19, 2000, page 24, col. 1 (Civ.Ct. New York Co.).

¶ 12. Tenant failed to meet her burden of establishing intentional harassment where the sole evidence presented were tenant's uncorroborated statements of service disruptions and the owner provided substantial documentation to support his assertions that legally mandated services had been provided. **Matter of Wilson,** OATH Index No. 1573/97 (Mar. 20, 1998), **aff'd,** Loft Bd. Order No. 2280 (Sept. 24, 1998).

¶ 13. Fine of $1,000 imposed pursuant to subparagraph (c)(2)(iii) of this section where tenant's harassment application was baseless and filed in bad faith, and where tenant made false representations in order to delay the adjudicative process and to avoid providing evidence in support of the charges. **Matter of Wilson,** OATH Index No. 1573/97 (Mar. 20, 1998), **aff'd,** Loft Bd. Order No. 2280 (Sept. 24, 1998).

¶ 14. Petitioners failed to establish that the landlord possessed the requisite intent to deprive them of protected occupancy rights, an essential element of harassment. Although petitioners established that: 1) a commercial tenant caused substantial noise at unreasonably late hours of the night; 2) that this condition constituted a breach of the warranty of habitability; and 3) that respondent-landlord failed to take effective remedial action even though fully informed of the noise condition, landlord's buy out offer, without more, was insufficient to support inference that landlord neglected the noise condition in order to induce petitioners to waive protected occupancy rights. **Matter of Latin,** OATH Index No. 1110/00 (June 19, 2000), **aff'd,** Loft Bd. Order No. 2555 (July 20, 2000).

¶ 15. Administrative law judge found (1) tenant's sporadic heat complaints more than 180 days apart were not continuous and therefore time-barred; and (2) the complaint failed to meet the particularity requirement of the regulation (29 RCNY § 2-02(c)(2)(i)) because it failed to allege actual or approximate dates when inadequate heat was provided. **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part on other grounds,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 16. Administrative law judge inferred owner's intent to harass from owner's persistent refusal to comply with orders to restore elevator service by the Loft Board and a Housing Court judge. **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part on other grounds,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 17. Loft Board denied harassment application where respondent attempted to gain access to petitioner's unit to make a window repair without conferring with tenant. Harassment does not include acts performed in good faith and in a reasonable manner for the purpose of repairing the building (29 RCNY § 2-02(b)). **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part on other grounds,** Loft Bd.

Order No. 2704 (Feb. 7, 2002).

¶ 18. Harassment claim based on hiring of security guard and adoption of guest sign-in policy denied. Administrative law judge found implementation of security procedures reasonable given landlord's duty to provide appropriate controls on public access to residential portions of the building (29 RCNY § 2-04(b)(8)). **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part on other grounds,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 19. Loft Board rejected administrative law judge's recommendation of $1,000 fine for bad faith filing based on a finding that twelve charges of direct acts of harassment were made without regard for the truth. **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 20. Loft Board imposes maximum $1,000 fine against owner for its ongoing, persistent denial of elevator service in defiance of an order of the New York City Civil Court, Housing Part (29 RCNY § 2-02(d)(1)(ii)). **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 21. Application to vacate a Loft Board order finding harassment of an outgoing tenant by a former landlord granted where application conformed to all requirements of subsection (d)(2) of this section which governs termination of prior finding of harassment, **i.e.,** current landlord has not engaged in proscribed conduct; current landlord has received certificate of occupancy; there are no other orders of harassment outstanding for the IMD; and, the landlord is in compliance with current IMD registration requirements. **Matter of 31 Washington Brooklyn Corp.,** OATH Index No. 2106/01 (Aug. 1, 2001), **aff'd,** Loft Bd Order No. 2672 (Oct. 10, 2001).

¶ 22. ¶ 22. Administrative law judge grants owner's pre-trial motion to dismiss various allegations of harassment as time barred when the complaint was filed more than 180 days after the alleged conduct. **Matter of Neal,** OATH Index No. 352/02, mem. dec. (July 31, 2002).

¶ 23. In a pre-trial motion to dismiss harassment counts for failure to plead prima facie case, statements allegedly made by owner's representative must be viewed in the light most favorable to the tenant when determining whether the allegations, if credited, would constitute harassment under Loft Board rules. Administrative law judge dismissed one charge based upon statement allegedly made by owner's representative, in the context of arranging for an inspection of petitioner's unit by owner's architect shortly after the owner had purchased the building, that petitioner's unit may have to be demolished due to structural damage, finding it to be too conditional in nature to infer that it was made with the requisite intent to cause the tenant to vacate the building or surrender his rights. Judge denied motion to dismiss another charge based upon subsequent alleged statement that owner would find a way to demolish petitioner's unit if petitioner refused to accept owner's buy out offer. **Matter of Neal,** OATH Index No. 352/02, mem. dec. (July 31, 2002).

¶ 24. Administrative law judge denied building owner's motion to dismiss or strike tenant's harassment application where no collateral estoppel was shown as to harassment claims raised in Supreme Court action which the court expressly refused to hear. **Matter of Connors,** OATH Index No. 223/04, mem. dec. (Oct. 27, 2003).

¶ 25. Administrative law judge dismissed tenant's harassment application finding that reference to the probable demolition of the building would not in and of itself rise to the level of harassment because the owner can not be deemed to have acted in bad faith in relying on an engineer's report and because the definition of harassment specifically excludes good faith acts taken by the owner to repair the building. **Matter of Neal,** OATH Index Nos. 352/02, 672/03 (Feb. 4, 2003), **aff'd,** Loft Bd. Order No. 2787 (Mar. 7, 2003).

¶ 26. Administrative law judge found that the reduction in elevator services was harassment. Administrative law judge also found harassment based on owner's menacing behavior towards the tenants on two specific dates and on owner's refusal to place the co-tenant's name on intercom despite specific requests to do so. Administrative law judge

recommended a $3,000 fine be imposed for the three counts of harassment found and that the owner be barred for two years from applying for an order to terminate the harassment finding. **Matter of Rebo,** OATH Index Nos. 924/03 & 926/03 (Dec. 18, 2003), **aff'd,** Loft Bd. Order No. 2840 (Jan. 15, 2003).

¶ 27. Administrative law judge found that building owner harassed tenant by entering into tenant's apartment without notice and removing bathroom fixtures; Administrative law judge recommended that owner be fined $1,000 and barred from filing an application terminating the finding of harassment for three years. **Matter of the Alkara**, OATH Index No. 1101/03 (Oct. 6, 2004), **aff'd in part, modified in parton other grounds**, Loft Bd. Order No. 2920 (Apr. 21, 2005).

¶ 28. Count of harassment relating to damaged windows was not time barred, although the date that the windows were damaged was outside the 180-day time frame, because the failure to repair the window was a "continuing violation". **Matter of Tenants of 13 East 17th Street**, Loft Bd. Order No. 3041 (Apr. 20, 2006), **adopting in part, rejecting in part**, OATH Index Nos. 1343/03, 354/03, 357/03 (Aug. 17, 2005).

¶ 29. Count of harassment relating to damaged windows was dismissed as not rising to the level of harassment, where nothing adduced during the hearing evidenced that the damage to the windows constituted anything other than an annoyance to the occupant whose view through the windows is impaired. **Matter of Tenants of 13 East 17th Street**, Loft Bd. Order No. 3034 (Apr. 20, 2006), **adopting in part, rejecting in part**, OATH Index Nos. 1343/03, 1354/03, 1357/03 (Aug. 17, 2005).

¶ 30. Pursuant to subsection (d)(2) of this section, a current IMD owner may file an application with the Loft Board to terminate a prior finding of harassment. Application to terminate 1991 finding of harassment granted where remaining IMD tenants withdrew objections to the application pursuant to a negotiated settlement, outstanding fines were paid, and 7-B compliance achieved. **Matter of Falcon Properties Inc.**, OATH Index No. 444/07 (Mar. 27, 2007).

¶ 31. Application to vacate a finding of harassment, issued against former owner in 1993, is granted pursuant to subsection (d)(2)(i) of this section. There was no evidence of further harassment, the owner achieved Article 7-B compliance, paid all outstanding fines and properly registered the building. **Matter of Infinite Realty, LLC,** OATH Index No. 1219/08 (Feb. 8, 2008), **adopted**, Loft Bd. Order No. 3417 (Mar. 20, 2008).

FOOTNOTES

2

[Footnote 2]: * Real Property Law cf. §235-d.

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-03 Hardship Applications.

(a) **Procedures.** (1) **Who may file.** (i) The owner of an interim multiple dwelling registered with the Loft Board may file an application for exemption of a building or portion thereof from Article 7-C of the Multiple Dwelling Law on the basis that compliance in obtaining a residential certificate of occupancy would cause hardship for any of the reasons set forth in §2-03(b) below.

(ii) A lessee of a whole building, any portion of which is an interim multiple dwelling registered with the Loft Board, may file an application for exemption from Article 7-C, provided that no application filed by a lessee shall be considered by the Loft Board unless the owner of the building consents in writing to the filing of such application.

(iii) A duly authorized agent (including the attorney) of the owner of an interim multiple dwelling registered with the Loft Board may file an application for exemption on behalf of the owner.

(2) **Filing deadline.** (i) Notices of application for exemption due to hardship for a building or portion thereof must be submitted to the Loft Board by no later than June 30, 1983 pursuant to §285(2) of the Multiple Dwelling Law. Such notices shall be filed by letter from the owner, lessee of the whole building or agent and shall only be accepted for buildings registered or which by June 30, 1983 had applied to register as interim multiple dwellings with the Loft Board.

(ii) The applicant must perfect his/her/its application by no later than October 31, 1983.

(iii) Notwithstanding any provisions of subparagraphs (i) and (ii) of this paragraph (2) to the contrary, the owner,

lessee of the whole building or agent of a registered interim multiple dwelling which is subject to coverage under Article 7-C solely pursuant to MDL §281(4) shall file his application on or before April 27, 1988 pursuant to MDL §285(2).

(3) **Perfecting hardship applications.** (i) An application shall only be accepted for a building with a current interim multiple dwelling registration.

(ii) The application shall be in a form acceptable to the Loft Board and shall be consistent with the requirements of these regulations, the Board's regulations relating to applications to the Board (regulations for Internal Procedures-§§1-06(a) to (j), and fees §2-11. The applicant must provide all information necessary or appropriate by no later than October 31, 1983 in order for the application to be considered. An additional time period of no more than sixty days for the submission of all required documentation in support of the completed application may be requested and will be granted if good cause is shown. The applicant must indicate the basis for the application, the residential units for which exemption is being applied for, and the specific claims for exemption being made. In addition, supporting data must be provided with the application whenever necessary or appropriate to fully set forth to explain the basis for the application. Where an applicant is unable to file all necessary and appropriate information by October 31, 1983, due to the absence of legalization regulations, but has filed submissions and paid the filing fee such applicant may request additional time to provide all necessary and appropriate information within 30 days of the effective date or legalization regulations adopted by the Loft Board. Notwithstanding the foregoing, an applicant who timely filed his application on or before April 27, 1988 for a hardship exemption involving an interim multiple dwelling subject to coverage under Article 7-C pursuant to MDL§281(4) must provide all additional information necessary or appropriate in support of such application on or before February 21, 1993.

(iii) In processing the application, the Loft Board may demand such additional information as it deems necessary or appropriate in making a determination. Failure of the applicant to provide any such information required by the Loft Board may result in the denial of the application.

(iv) Applications for exemption shall not be considered unless the owner has also filed an alteration application with the Department of Buildings. A copy of such alteration application must accompany each hardship application including two copies of the submitted plans and such additional copies of the plans as the Board may require. The Loft Board may vote to waive the requirement that an alteration application be filed and proceed with the consideration of the application for exemption. The approval of such a waiver shall apply only to the consideration of a hardship application and shall in no way affect the owner's obligation to file an alteration application for all other purposes as required by §284 of the Multiple Dwelling Law.

In deciding whether to waive the requirement that an alteration application be filed, the board will consider the following criteria:

(A) whether the information that would be contained in the alteration application is already available in other records or could be made available in an alternate form in other records or could be made available in an alternate form acceptable to the Board; and

(B) whether hardship can be proved without the information contained in the alteration application.

(v) Processing of an owner's application for exemption shall be in accordance with the rules regarding applications to the Board (Regulations for Internal Board Procedures-§§1-06(a) to (j), except as set forth below. These rules provide for the service of the application on all affected parties, opportunity to answer in writing, and the conducting of informal conferences and administrative hearings.

If a perfected application appears to the staff to be well rounded, there shall be conducted an administrative hearing following notice as provided pursuant to Internal Board Procedures at least sixty days in advance of the hearing date.

(b) **Processing of applications for exemption due to hardship.** (1) **Basis for application.** The basis for applying for an exemption due to hardship is that compliance with Article 7-C of the Multiple Dwelling Law in obtaining a legal residential certificate of occupancy would cause hardship for one of the following two reasons.

(i) **Adverse impact.** Compliance would cause an unreasonably adverse impact on a non-residential conforming use occupant existing on June 21, 1982 within the building, or compliance would cause an unreasonable adverse impact on a non-residential conforming use occupant existing on July 27, 1987 for a building which is subject to coverage under Article 7-C pursuant to MDL §281(4).

(ii) **Infeasible costs.** The costs of compliance would render legal residential conversion financially infeasible.

(2) **Appropriate tests.** (i) **Adverse impact.** The test for unreasonably adverse impact on a non-residential conforming use occupant existing on June 21, 1982, or on July 27, 1987 for a building subject to coverage under Article 7-C pursuant to MDL §281(4), shall be whether legal residential conversion would necessitate displacement of such occupant. An owner making a claim on this basis will be required to produce as part of the application, evidence to substantiate the claim. Displacement of non-residential conforming use occupants may include instances where:

(A) all or a critical portion, adversely affecting the conduct of business, of the space of an existing non-residential conforming use occupant would be lost as a result of the residential conversion;

(B) the nature of an existing non-residential conforming use would render legal residential conversion to be infeasible or illegal by causing an imminent peril to the health and safety of residential occupants;

(C) the result of the legal residential conversion would be unreasonably disruptive to the business of the non-residential conforming use; or

(D) the inability of an owner who purchased the building before June 21, 1982, or before July 27, 1987 for a building subject to coverage under Article 7-C pursuant to MDL §281(4), to expand his/her/its business which is an existing non-residential conforming use due to legal residential conversion would result in the elimination of existing jobs.

(ii) **Infeasible costs.** The test for cost infeasibility shall be that the owner would be unable to attain a reasonable return on his/her/its investment; not maximum return on investment.

(A) Reasonable rate of return on the owner's investment shall be defined as a net annual return of five percent or more where net annual return is the percentage amount by which the annual earned income from the building exceeds the annual operating expenses of the building.

(B) Earned income shall mean the maximum annual collectible rent for the building, including any and all escalators, for both residential and non-residential units, plus miscellaneous income from all other sources in the building including vending machines, and sign rentals. The Loft Board shall impute a rental value for vacant units or units occupied either residentially or non-residentially by the landlord, any member of the landlord's family or an employee of the landlord, at the fair market value for the space, or if subject to Article 7-C at the maximum legal rent.

(C) Operating expenses shall consist of the actual, reasonable cost of: fuel, labor, utilities, taxes other than income or corporate franchise taxes, fees, permits, necessary contracted services and non-capital repairs, insurance, parts and supplies, management fees and other administrative costs and interest on a bona fide mortgage. Criteria to be considered in determining a bona fide mortgage other than an institutional mortgage shall include: condition of the property; location of the property, the existing mortgage market at the time the mortgage is placed, the term of the mortgage, the amortization rate, the principal amount of the mortgage, security and other terms and conditions of the mortgage.

(D) **(a)** No application shall be approved unless the owner's equity in such building exceeds five percent of:

(1) the arms length purchase price of the property;

(2) the cost of any capital improvements for which the owner has not collected or will not collect a surcharge;

(3) any repayment of principal of any mortgage or loan used to finance the purchase of the property or, any capital improvements for which the owner has not collected or will not collect a surcharge; and

(4) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner.

(b) For the purposes of this paragraph, owner's equity shall mean the sum of: (1) the purchase price of the property less the principal of any mortgage or loan used to finance the purchase of the property,

(2) the cost of any capital improvement for which the owner has not collected or will not collect a surcharge less the principal of any mortgage or loan used to finance said improvement,

(3) any repayment of the principal of any mortgage or loan used to finance the purchase of the property or any capital improvement for which the owner has not collected or will not collect a surcharge, and

(4) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner.

An owner making a claim on this basis will be required to produce, as part of the application, evidence, subject to audit, based on a representative consecutive 12 month period beginning no earlier than January 1, 1982, or, for a building subject to coverage under Article 7-C pursuant to MDL §281(4), no earlier than January 1, 1987, of the current net annual return for the building and the projected net annual return following legalization including, but not limited to, current and projected earned income, operating expenses and equity information.

Inability to make a reasonable return on investment may include situations where the necessary and reasonable costs of compliance will cause residential units to rent at above prevailing market levels.

(3) **Processing guidelines.** (i) Applications for exemption due to hardship will not be granted if the result of self-created hardship.

(ii) Applications for exemption due to hardship will not be granted if compliance can be reasonably achieved through:

(A) alteration of units,

(B) relocation of tenants (residential) or non-residential conforming use) to vacant space within the building,

(C) re-design of space, or

(D) application for a non-use related variance, special permit, minor modification or administrative certification.

Owners filing hardship applications shall be required to make a reasonable attempt to cooperate with the tenants to achieve compliance through the methods listed above.

(iii) In considering such applications, the Loft Board shall require the owner and tenants to consider constructive suggestions for alternatives to the proposed legalization plan, which would allow for the minimum vacating of residential occupancy, without adversely affecting existing non-residential conforming uses.

(c) **Granting of applications.** (1) In resolving applications for exemption due to hardship, the Loft Board shall

grant only the minimum relief necessary to relieve any hardship.

(2) If the Loft Board approves an application for exemption due to hardship, the building or portion thereof for which the application is approved shall be exempt from Article 7-C of the Multiple Dwelling Law and may be converted to non-residential uses which must be in conformance with the zoning resolution and compatible with existing residential use. As a condition of approval of such application, the owner shall file with the Loft Board a certified copy of an irrevocable recorded covenant in form satisfactory to the Loft Board, enforceable by the City of New York for fifteen (15) years from the date of the recording, that the building or portion thereof for which the hardship exemption has been granted will not be re-converted to residential uses during that time.

When the Loft Board approves such an application, the owner will be notified of the Board's intent to approve the application and will be afforded an opportunity of no more than 90 days to file the required covenant. The Loft Board will issue its final order approving the application following receipt of the certified copy of the covenant. If proof of the filing of the required covenant is not filed with the Loft Board within 90 days, the application will be denied and the owner will be required to comply with Article 7-C of the Multiple Dwelling Law.

(3) If the hardship exemption is granted for a portion of the building, the IMD status for such building and the remaining residential units, covered under Article 7-C of the Multiple Dwelling Law in such building, shall not be affected, even if there are less than three qualified units remaining.

(4) In approving an exemption application due to hardship, the Loft Board may fix reasonable terms and conditions regarding the owner's payment to the residential occupant of any reasonable moving costs and the fair market value of any improvements made or purchased by the residential occupant, and a reasonable time period for relocation, not to exceed one year.

HISTORICAL NOTE

Subd. (a) pars (2), (3) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (b) par (2) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The Loft Board has strictly enforced the filing deadlines for the filing of hardship applications, and this policy has been upheld by the courts. Vlachos v. New York City Loft Board, 118 A.D.2d 378, 504 N.Y.S.2d 649 (1st Dept. 1986).

¶ 2. The fact that a building owner's IMD registration had lapsed when the owner filed a hardship application did not constitute a valid defense to the hardship application pursuant to subparagraph (a)(3)(i) of this section, where the Loft Board staff accepted a building owner's hardship application and did not advise the owner that the application was defective in any respect, and the owner cured the lapsed registration by renewal of the registration well before the hardship application was adjudicated. Matter of Prince, OATH Index No. 1506/95 (May 21, 1997), aff'd, Loft Bd. Order No. 2131 (Aug. 28, 1997).

¶ 3. A building owner's failure to file an application for an alteration permit before filing his hardship application did not constitute a defense to the hardship application pursuant to subparagraph (a)(3)(iv) of this section, because the owner asked the Loft Board for a waiver of the requirement of an alteration application and the Board never acted on the request or otherwise instructed the owner to file an alteration application, and the owner filed an alteration application before the hardship application was adjudicated. Matter of Prince, OATH Index No. 1506/95 (May 21, 1997), aff'd, Loft Bd. Order No. 2131 (Aug. 28, 1997).

¶ 4. Where a building owner's commercial use of a portion of an IMD was a moderate hazard as defined by

applicable codes, not a high hazard, legalization of the residential units of the IMD would not require relocation of the commercial use from the IMD, and therefore the hardship application pursuant to subparagraph (b)(1)(i) of this section was denied. Matter of Prince, OATH Index No. 1506/95 (May 21, 1997), aff'd, Loft Bd. Order No. 2131 (Aug. 28, 1997).

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RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-04 Minimum Housing Maintenance Standards.

(a) **Definitions.**

Landlord. As used in these regulations, the term "landlord" shall mean the owner of an interim multiple dwelling, the lessee of a whole building part of which is interim multiple dwelling, or the agent or other person having control of such dwelling.

Residential occupant. As used in these regulations, the term "residential occupant" shall mean an occupant of an interim multiple dwelling eligible for protection under Article 7-C of the New York State Multiple Dwelling Law.

(b) **Basic services.** Landlords of interim multiple dwellings shall provide the following minimum housing maintenance services to residential occupants eligible for the protection of Article 7-C of the Multiple Dwelling Law:

(1) **Water supply and drainage.** The landlord of an interim multiple dwelling (I.M.D.) shall provide and maintain a supply of pure and wholesome water at all times sufficient in quantity and pressure to provide for sanitary maintenance. The landlord shall properly maintain and keep in good repair the plumbing and drainage system. Where water mains are available in the street, every residentially occupied unit shall be supplied with water from such mains. The landlord shall keep the water free from connection to any unsafe water supply or from cross-connections to any drainage system.

Where a landlord of an I.M.D. installed or installs plumbing fixtures to residentially occupied units, (s)he shall maintain same in good working order.

(2) **Heat.** (i) Except as provided below, where there is a central heating system in an I.M.D. every residentially occupied unit shall be provided with heat from the system. During the period from October 1 through May 31, centrally supplied heat shall be provided so as to maintain every portion of the dwelling used or occupied for living purposes, between the hours of 6:00 AM and 10:00 PM at a temperature of at least 68 degrees Fahrenheit whenever the outside temperature falls below 55 degrees Fahrenheit, and between the hours of 10:00 PM and 6:00 AM at a temperature of at least 55 degrees Fahrenheit whenever the outside temperature falls below 40 degrees Fahrenheit.

(ii) Where a system of gas or electric heating has been provided for a residentially occupied unit such a system may be utilized instead of a central heating system where a central heating system is lacking or otherwise may be used to supplement a central heating system. During the period from October 1 through May 31, heat from individual systems of gas or electric heat where the landlord pays for operation shall be provided so as to maintain every portion of the dwelling used or occupied for living purposes, between the hours of 6:00 AM and 10:00 PM, at a temperature of at least 68 degrees Fahrenheit whenever the outside temperature falls below 55 degrees Fahrenheit, and between the hours of 10:00 PM and 6:00 AM at a temperature of at least 55 degrees Fahrenheit whenever the outside temperature falls below 40 degrees Fahrenheit.

(iii) The landlord may install individual heating systems to meet the landlord's obligation to either provide all the heat required pursuant to these regulations or to supplement the heat provided by an existing system, provided that the installation and system are approved for residential use by appropriate City agencies.

(iv) The landlord shall not object to the installation by a residential occupant of an individual heating system, provided that:

(A) such installation does not conflict with landlord's approved alterations plans;

(B) the installation and system are approved for residential use by the appropriate City agencies; and

(C) the residential occupant has requested in writing that the landlord make such an installation and the landlord has refused to comply with any such request within a reasonable time but in no event more than 45 days from the date of such request.

(v) The landlord shall maintain all central heating systems and all gas or electric heating fixtures and systems provided by the landlord to residentially occupied units in proper working order unless the parties otherwise agreed that the residential occupant will be responsible for maintenance of the gas or electric heating fixtures and systems used to heat his/her unit.

(3) **Hot water.** The landlord shall supply every bath, shower, washbasin and sink in all residentially occupied units in an interim multiple dwelling at all times between the hours of 6:00 a.m. and midnight with hot water at a constant minimum temperature of 120 degrees Fahrenheit from a central source of supply or from individual gas or electric hot water heaters except where such individual units have been previously installed and where responsibility for operation has been assumed by the residential occupant.

(4) **Electricity.** The landlord shall maintain electrical service to all residentially occupied units at all times in order to allow said units to obtain electric power. The intention of this standard is to afford electrical service to all residentially occupied units.

(5) **Gas.** Where gas service is currently provided to residentially occupied units the landlord shall cause the said service to be maintained in good working order. The landlord shall not unreasonably withhold his/her cooperation if the residential occupant wishes to install gas service at the residential occupant's cost and expense.

(6) **Smoke detectors.** By no later than March 1, 1983, all residentially occupied units within interim multiple dwellings shall be equipped with operational smoke detecting devices, either battery operated or receiving their primary

power from the building's electrical service, approved by the appropriate city agencies. If smoke detecting devices are not installed by March 1, 1983, residential occupants are authorized to install them on their own.

The residential occupant of a unit in which a battery operated smoke detecting device is provided and installed by the landlord shall reimburse the landlord a maximum of ten dollars for each such device. The residential occupant shall have one year from the date of installation to make such reimbursement. All sections of the Housing Maintenance Code relating to smoke detectors shall apply to interim multiple dwellings.

(7) **Public lighting.** The landlord shall provide and maintain electric lighting fixtures for every public hall, stair, firestair and fire tower on every floor and shall cause such required lights in all such fixtures to be turned on at sunset every day and to remain on until sunrise the following day on a 24-hour a day 7 day a week basis where natural light is not adequate.

(8) **Entrance door security.** The landlord shall properly maintain all existing entrance door security and at a minimum at least one door at each entrance must have a lock. All tenants must be provided with keys to all entrance door locks.

(9) **Elevator service.** The landlord shall not diminish nor permit the diminution of legal freight or passenger elevator service and shall cause said service to be maintained in good working order.

(10) **Window guards.** (i) The owner, lessee, agent or other person who manages or controls an interim multiple dwelling shall provide, install, and maintain, a window guard, of a type deemed acceptable by the Department of Health, installation to be made pursuant to specifications provided by the Department of Health, on the windows of each unit in which a child or children ten (10) years of age and under reside, and on the windows, if any, in the public halls of an interim multiple dwelling in which such children reside, except that this section shall not apply to windows giving access to fire escapes or to a window on the first floor that is a required means of egress from the dwelling unit. It shall be the duty of each such person who manages or controls an interim multiple dwelling to ascertain whether such a child resides therein.

(ii) No residential occupant of an interim multiple dwelling unit, or other person shall obstruct or interfere with the installation of window guards required by subsection (i), nor shall any person remove such window guards.

(iii) No owner, lessee or other person who manages or controls an interim multiple dwelling shall refuse a written request of a residential occupant of an interim multiple dwelling unit, to install window guards regardless of whether such is required by subsection (i), except that this section shall not apply to windows giving access to fire escapes.

(iv) The residential occupant of a unit in which window guards are provided and installed shall reimburse the landlord as follows: the residential occupant's share of the entire costs may be determined by adding:

(A) the residential occupant's pro-rata share of the full cost of window guards in the public areas (obtained by dividing said cost by the total number of residential units in the building); and

(B) the full cost of the window guards (including installation charges) installed within the residential occupant's unit. The cost may not exceed $16.00 per window guard.

(v) The residential occupants of the remaining units in the building shall reimburse the landlord for the remainder of the cost of window guards installed in the public areas based on their pro-rata shares, as defined in subparagraph (i), above. All reimbursement payments shall be payable within (90) days of installation.

(c) **Additional lease agreement services.** In addition to those services mandated by §2-04(b) of this Rule, owners, lessees of whole buildings and agents shall maintain and shall continue to provide to residential occupants services specified in their lease or rental agreement. In the absence of a lease or rental agreement, owners, lessees of whole

buildings and agents shall provide those services to residential occupants which were specified in the lease or rental agreement most recently in effect in addition to those services mandated in §2-04(b). There shall be no diminution of services. Nothing contained in these rules allows reduction in the prior services supplied by mutual agreement where those services exceed the services mandated by §2-04(b). Where the prior services are below those mandated by §2-04(b), the services mandated by §2-04(b) shall be provided.

(d) **Guide for the courts.** The services mandated by subdivisions (b) and (c) of this section shall provide a guide which courts can use as part of their determination as to whether registered parties are meeting their current and future responsibilities to residential loft occupants according to the Warranty of Habitability (Real Property Law §235-b(1)) for the interim multiple dwellings, until such time as this rule is amended or modified by the Loft Board.

(e) **Enforcement and penalties.** (1) **Staff.** The Loft Board authorizes staff hearing examiners or Administrative Law Judges at the Office of Administrative Trials and Hearing ("OATH"), if the Executive Director so determines, to conduct hearings on alleged violations of housing maintenance standards and to impose penalties in accordance with ranges of proposed fines adopted by the Loft Board, where such violations are determined to exist. The Loft Board further authorizes staff to take all steps necessary to enforce the minimum housing maintenance standards.

(2) **Inspections and notices of violation.** Staff employed or assigned to the Loft Board shall be authorized to conduct inspections in response to complaints or at the direction of the Loft Board or appropriate staff supervisors to determine whether violations of the Loft Board Minimum Housing Maintenance Standards exist. Upon a finding of violation, a notice of violation shall be issued to the landlord or his agent, describing the violation and the unit in which it exists, specifying the section of the Minimum Housing Maintenance Regulations violated, and establishing the maximum period of time permissible for cure of such violation. A copy of such notice of violation shall be left with an authorized person in charge at the premises, if such person is present, or posted in a conspicuous public place at the premises. In addition, a second copy of such notice of violation shall be sent by regular mail to the owner of record of the premises, or his designated agent, as indicated on the Interim Multiple Dwelling Registration form filed with the Loft Board. A copy of such notice of violation shall also be sent by regular mail to the tenant or tenants who made the original complaint.

Such notices of violation shall provide a minimum of seven days from the date of mailing to cure the violation.

(3) **Re-Inspections and issuance of notices to appear for a hearing.** A reinspection may be conducted to determine whether a violation has been cured at any time after the period for cure specified in the original notice of violation has elapsed. If the violation has not been cured, a notice to appear at a Loft Board hearing shall be issued. Such notice shall contain:

(i) a clear and concise statement sufficient to inform the respondent of the essential facts concerning the violation and the unit in which it exists;

(ii) specification of the section of the Minimum Housing Code Standards allegedly violated;

(iii) information as to the maximum penalty assessable if the facts are found to be as alleged in whole or in part;

(iv) specification of the time and place of the hearing;

(v) advice that respondent is entitled to be represented by counsel, to present evidence and to examine and cross-examine witnesses;

(vi) advice of respondent's right to file with the Loft Board an answer admitting, denying or admitting the violation with an explanation, prior to or at the hearing.

Such notice of hearing shall be served by leaving a copy with an authorized person in charge at the premises, or, in

the absence of such person, by posting in a conspicuous public place at the premises. In addition, a second copy of such notice of hearing shall be sent by regular mail to the owner of record of the premises, or his designated agent, as indicated on the Interim Multiple Dwelling Registration form filed with the Loft Board.

A copy of the notice of hearing shall also be sent by regular mail to the tenant or tenants of any units where violations which are the subject of such hearing are alleged to have occurred.

(4) **Hearings.** Hearings will be conducted by staff hearing examiners or OATH Administrative Law Judges, who will determine whether each violation alleged is sustained by the evidence, whether the landlord-respondent is responsible for providing the particular service in question, and whether the landlord- respondent has made good faith efforts to provide such service. Formal rules of evidence shall not apply to such hearings. Where a hearing is conducted by an OATH Administrative Law Judge, such hearing shall be conducted in accordance with the procedures governing such hearings before the Loft Board.

When the hearing examiner or OATH Administrative Law Judge makes a finding that the violation exists and that the landlord is responsible, he or she shall impose a penalty in accordance with the recommended range of penalties promulgated by the Loft Board. The hearing examiner shall be authorized to suspend the penalty when a good faith effort to provide services is demonstrated.

The Loft Board shall have the burden of proving the factual allegations contained in the notice of hearing by a fair preponderance of the evidence; however, each notice of hearing shall be maintained by the Board as a record kept in the regular course of business and shall be prima facie proof of the facts contained therein.

Hearings shall be electronically recorded and the original recording shall be part of the record and the sole official transcript of the proceeding.

A written decision sustaining or dismissing each allegation in the notice of hearing shall be rendered by the hearing examiner or OATH Administrative Law Judge promptly after the conclusion thereof. Each decision, a copy of which shall be served forthwith on the respondent by regular mail, shall contain brief findings of fact, conclusions of law, and, where appropriate, an order imposing a civil penalty.

(5) **Appeals to the Board.** An appeal from a determination of a hearing officer issued pursuant to this section 2-04 shall be brought in accordance with the provisions of section 1-07.1 of these rules.

(6) **Willful violations of the standards.** Where a hearing examiner or OATH Administrative Law Judge determines that violations of the Minimum Housing Maintenance Standards are willful on the part of the landlord, the hearing examiner or OATH Administrative Law Judge shall include in any order issued, a finding that the building in which such violations exist shall be deemed not to be in compliance with Article 7-C, for purposes of assertion of the landlord's rights under Multiple Dwelling Law §285(l).

A second finding sustaining a violation for the same condition within a 6-month period, shall be presumed willful for purposes of this paragraph (6).

A finding that a building is not in compliance with Article 7-C because of a willful violation of the Minimum Housing Maintenance Standards may be removed by the landlord coming forward to request a re-inspection to confirm that the violation has been corrected. If the Loft Board staff person conducting such inspection determines that the violation or violations have been corrected, and so certifies, a copy of his or her inspection report shall be filed with the prior order and the building shall be deemed in compliance with Article 7-C for purposes of MDL §285(l).

A finding of a willful violation of Minimum Housing Maintenance Standards will be considered as evidence of harassment of residential tenants by the landlord.

(7) **Outstanding, unpaid fines.** The registration as an IMD shall not be renewed for any building for which fines have been imposed, for violations of the Minimum Housing Maintenance Standards, until such fines are paid in full.

(8) **Range of fines for violations.**

Section	Violation	Range of Fines
2-04(b)(1)	Failure to provide or maintain a safe water supply or plumbing and drainage systems	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(2)	Failure to provide adequate heat	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(3)	Failure to supply hot water	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(4)	Failure to maintain electrical service to residential units	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(5)	Failure to maintain gas service in good working order	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(6)	Failure to provide smoke detectors	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(7)	Failure to provide lighting in public areas of the building	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(8)	Improper maintenance of entrance door security; failure to provide keys	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(9)	Failure to provide or improper maintenance of elevator service	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(b)(10)	Failure to provide window guards	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)
2-04(c)	Failure to provide other minimum housing maintenance services	$750-$1,000 (first finding sustaining a violation)$1,000 (second finding within 12 months)$1,000 (third finding within 12 months)

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (e) amended City Record Dec. 23, 1994 eff. Jan. 22, 1995.

Subd. (e) par (5) repealed and added City Record July 15, 1998 eff. Aug. 14, 1998. [See T29 §1-07.1 Note 1]

Subd. (e) par (8) amended City Record Aug. 21, 2006 §1, eff. Sept. 20, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 21, 2006:

The Loft Law fine schedule, established on the basis of authority granted to the Loft Board by §282 of the Multiple Dwelling Law, has not been updated since the inception of the law (September 30, 1982). The proposed increases in the fine schedule are modest in comparison to similar increases in City, State, and Federal statutes over the same time period.

CASE AND ADMINISTRATIVE NOTES

¶ 1. After trial on one diminution of services application, while the Loft Board's decision on that application was pending, a second diminution of services application, based on allegations that the same conditions remained after trial on the first application, was dismissed without prejudice. Unless the Loft Board decides the first application by issuing an order requiring the landlord to restore services, and until a reasonable time thereafter is afforded for the landlord to comply with that order, the second diminution of services application is premature. Matter of Davies, OATH Index No. 888/97 (Jan. 3, 1997), aff'd, Loft Bd. Order No. 2084 (Mar. 20, 1997).

¶ 2. Because the only relief available in a tenant-initiated diminution of services application is prospective-i.e., an order requiring the landlord to restore services-the relevant issue at trial of a diminution of services application is whether services are diminished as of the time of trial. Past diminution of services that have been restored before trial cannot logically be the subject of a prospective order to restore services. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 3. Because a willfulness finding is not a remedy available in a tenant-initiated diminution of services application, the state of mind of the landlord and the reasons for not providing required services are largely irrelevant. Tenants need not show that the owner intentionally or maliciously failed to provide services required by this section. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 4. This section prohibits the diminution of services that were actually provided after the lease expired, even if the lease did not require the building owner to provide such services. Matter of 29 John Street Tenants' Association, OATH Index No. 1982/96 (Nov. 20, 1996), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2058 (Jan. 30, 1997).

¶ 5. Although the remedies available in a Loft Board-initiated enforcement proceeding may differ from those available in a tenant-initiated diminution of services application, the permissible scope of the two types of proceedings is the same. That is, any item that would constitute a violation in an enforcement proceedings would constitute a tenant-actionable diminution of services. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 6. Building owners are obligated to provide the services enumerated in paragraph (b) of this section, as well as services required by leases, rental agreements or otherwise pursuant to paragraph (c) of this section, including services mandated by the statutory warranty of habitability, which is deemed to be incorporated into any residential lease or rental agreement. Failure to provide any of these services is actionable by a diminution of services application. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 7. The alleged failure of a building owner to comply with provisions of the Loft Board's rules other than this section is not properly the subject of a diminution of services application. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 8. Pursuant to paragraph (a) of this section, a diminution of services application may be brought only by a residential occupant protected by the Loft Law. Matter of 29 John Street Tenants' Association, OATH Index No. 1982/96 (Nov. 20, 1996), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2058 (Jan. 30, 1997).

¶ 9. The Loft Board lacks authority to award a rent reduction to tenants who prevail on a diminution of services application. Matter of 29 John Street Tenants' Association, OATH Index No. 1982/96 (Nov. 20, 1996), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2058 (Jan. 30, 1997).

¶ 10. Whether a building owner could include the costs of installing individual heating units and electrical meters as code compliance costs pursuant to §2-01(i) of this chapter was not determined as part of the tenants' diminution of services application pursuant to this section, but was deferred until the owner applies for a code compliance rent adjustment. Matter of 29 John Street Tenants' Association, OATH Index No. 1982/96 (Nov. 20, 1996), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2058 (Jan. 30, 1997).

¶ 11. The only relief that tenants may obtain in a diminution of services application against their landlord is a Loft Board order requiring the landlord to restore the improperly diminished services. Relief may not include damages, rent abatements, fines, or willfulness findings. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 12. Due in part to the landlord's reliance on a water pump that cannot operate 24 hours a day, water pressure was inadequate under subparagraph (b)(1) of this section, which requires that adequate water pressure be maintained "at all times." Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 13. Inadequate provision for ordinary maintenance and repair constituted a diminution of services. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 14. A landlord-tenant agreement requiring the landlord to restore freight elevator service, without stating a deadline for such restoration, was not a waiver of the tenants' right to such service for any period of time, and was not intended as an open-ended, non-binding commitment by the landlord. Therefore, the landlord's failure to provide freight elevator service constituted a diminution of services pursuant to subparagraph (b)(9) of this section. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 15. Although subparagraph (b)(9) of this section prohibits a landlord from reducing or eliminating only freight elevator service that was legal, clauses in leases and in a landlord-tenant agreement requiring the provision of freight elevator service are presumed to have contemplated the provision of legal elevator service. Therefore, because the landlord in effect had contracted to provide legal freight elevator service, the failure to do so constituted a diminution of services. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 16. Noise from a performance art space in a loft building caused disturbances to the residential tenants in their use of their lofts that were not **de minimis,** but occurred regularly, frequently, and late at night, disturbed the ordinary and reasonable uses of a residential tenancy, and therefore constituted a diminution of services notwithstanding the absence of decibel readings. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 17. The compromise of building security caused by a commercial tenant opening the building doors to the public during performances in the commercial tenant's space constituted a diminution of services pursuant to subparagraph (b)(8) of this section. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 18. Noise and security problems created by a commercial tenant were legally attributable to the building owner, and constituted an actionable diminution of services. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 19. Where freight elevator service was not required by the lease in effect as of the effective date of the Loft Law, and had not actually been provided since before that lease was executed in 1979, failure to provide freight elevator service was not a diminution of services. Matter of Ando, OATH Index No. 1829/96 (Sept. 17, 1996), aff'd, Loft Bd. Order No. 2036 (Nov. 21, 1996).

¶ 20. Although a lease rider arguably required the owner to restore the freight elevator and perform work, at the tenants' expense, the tenants waived their right to have freight elevator service restored when three of the four tenants declined to pay the expenses for the restoration work, and when the tenants took no steps to enforce the lease rider, even after receiving notice that the owner intended to permanently remove the freight elevator. Matter of Ando, OATH Index No. 1829/96 (Sept. 17, 1996), aff'd, Loft Bd. Order No. 2036 (Nov. 21, 1996).

¶ 21. Enforcement proceedings pursuant to paragraph (e) of this section, which may result in imposition of fines against landlords and findings of willful violations of the minimum housing maintenance standards, may only be brought by the Loft Board, and not by tenants. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), aff'd in part and rev'd in part on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 22. A tenant is not a party to a Loft Board-initiated enforcement proceeding pursuant to paragraph (e) of this section, and therefore lacks standing to oppose the Loft Board's motion to withdraw one of the violations underlying the proceeding. Loft Board v. Tekosky, OATH Index No. 470/97 (Apr. 18, 1997).

¶ 23. Breaches of the statutory warranty of habitability constituted violations of the minimum housing maintenance standards pursuant to paragraph (c) of this section. Loft Board v. Difar Realty Corp., OATH Index Nos. 1970-71/96 (Aug. 14, 1996).

¶ 24. Violations of applicable housing codes or other laws constitute breaches of the statutory warranty of habitability, provided that those violations are not **de minimis,** and therefore such violations also constitute violations of the minimum housing maintenance standards pursuant to paragraph (c) of this section. Loft Board v. Difar Realty Corp., OATH Index Nos. 1970-71/96 (Aug. 14, 1996).

¶ 25. Pursuant to paragraph (c) of this section, a building owner is obligated to keep the premises in good repair, except that it is the tenants' obligation to maintain and repair installations made by residential tenants, internal to their lofts, where the tenants leased raw space and did their own renovations. Loft Board v. Difar Realty Corp., OATH Index Nos. 1970-71/96 (Aug. 14, 1996).

¶ 26. For five violations pertaining to maintenance and repair of loft unit windows, the penalty was imposition of the maximum fine of $500 per violation, and the building owners were ordered to cure the violations within 30 days. Loft Board v. Difar Realty Corp., OATH Index Nos. 1970-71/96 (Aug. 14, 1996).

¶ 27. For failure to maintain a fire stairs tread in a safe condition, the owner was fined the maximum of $500, and ordered to cure the violation within 30 days. Loft Board v. Difar Realty Corp., OATH Index Nos. 1970-71/96 (Aug. 14, 1996).

¶ 28. Based on the building owner's many years of failing to supply required elevator service, the violation was found to be willful and the owner was fined the maximum of $500 and was ordered to cure the violation within 30 days. Loft Board v. Bramwill El Corp., OATH Index No. 1967/96 (Sept. 18, 1996).

¶ 29. Settlement of a Loft Board-initiated enforcement proceeding pursuant to paragraph (e) of this section allowed the building owner additional time to cure the 13 violations of the minimum housing maintenance standards at issue and

provided for imposition of penalties for violations not cured within that additional time. Upon expiration of the additional time, six violations remained uncured, five of which concerned defective or inoperable windows in loft units and one of which concerned a damaged wood floor in a loft unit. The maximum penalty of $500 was imposed for each violation, for a total fine of $3,000, based on the lengthy period of time since the violations were issued, the unexplained lack of any work to cure the violations, the seriousness of the neglect of the conditions at issue and their immediate need for attention. Loft Board v. Berger, OATH Index No. 468/97 (Feb. 19, 1997).

¶ 30. Settlement of a Loft Board-initiated enforcement proceeding pursuant to paragraph (e) of this section allowed the building owner additional time to cure the inadequacy of heat provided to one of the loft units. After that additional time, the inadequacy remained, and the penalty imposed was a $500 fine, the maximum pursuant to subparagraph (e)(8) of this section. Loft Board v. BLF Realty Holding Corp., OATH Index No. 1003/97 (July 17, 1997).

¶ 31. The severity of the building owner's continuing failure to provide freight elevator service was not mitigated by the complaining tenant's persistent tampering with the elevator, which caused the elevator to break down, because the tenant's tampering was caused by the owner's installation of a locking device that improperly deprived the tenant of elevator service. The penalty imposed for the violation of minimum housing maintenance standards was $350, pursuant to subparagraph (e)(8) of this section. Loft Board v. BLF Realty Holding Corp., OATH Index No. 1289/97 (June 2, 1997).

¶ 32. In a Loft Board-initiated enforcement proceeding, the maximum penalty pursuant to subparagraph (e)(8) of this section, a $500 fine, was imposed for a building owner's failure to provide heat and hot water to a residential unit during March. Loft Board v. G.J.'s Realty Corp., OATH Index No. 1670/97 (June 30, 1997).

¶ 33. A building owner's failure to replace broken glass in a skylight in a public hallway was penalized by imposition of a $100 fine pursuant to subparagraph (e)(8) of this section. Loft Board v. G.J.'s Realty Corp., OATH Index No. 1670/97 (June 30, 1997).

¶ 34. For two violations of the minimum housing maintenance standards, one pertaining to a defective skylight in a tenant's loft unit, and one pertaining to a roof leak in the same unit, the maximum penalty of $500 per violation was imposed pursuant to subparagraph (e)(8) of this section, because, even after service of the notice of violation and the notice of hearing the building owner had not communicated with the tenant concerning repairs. Loft Board v. Geulah Realty, OATH Index No. 1968/96 (Oct. 4, 1996).

¶ 35. For two violations of the minimum housing maintenance standards, one pertaining to broken glass in a loft unit's skylight and one pertaining to a roof leak in the same unit, each violation being a second offense pursuant to subparagraph (e)(8) of this section, the penalty imposed was the maximum, or $750 per violation, for a total fine of $1,500. Loft Board v. Guelah Realty, OATH Index No. 1287/97 (Apr. 4, 1997).

¶ 36. Two violations of the minimum housing maintenance standards were found to be willful pursuant to subparagraph (e)(6) of this section because each violation was the second finding of the same condition within a six-month period. Loft Board v. Guelah Realty, OATH Index No. 1287/97 (Apr. 4, 1997).

¶ 37. A missing air vent cover in the bathroom of a loft unit was not a violation of the minimum housing maintenance standards pursuant to paragraph (c) of this section, absent proof that the matter had substantial effect on the habitability of the unit and was not **de minimis,** and absent proof that the vent was not installed by the tenant and therefore was not the tenant's responsibility. Loft Board v. Difar Realty Corp., OATH Index Nos. 1970-71/96 (Aug. 14, 1996).

¶ 38. Three violations of Minimum Housing Maintenance Standards were outstanding for more than one year without any effort by owner to cure. Maximum fine of $500 imposed for each. **Loft Bd. v. Evergreen Realty,** OATH Index No. 671/99 (Nov. 2, 1998).

¶ 39. Maximum fine of $500 imposed for each of two serious violations, a leaking roof and defective skylight, and owner ordered to cure conditions. **Loft Bd. v. Geulah Realty,** OATH Index No. 1968/96, mem. dec. (Oct. 4, 1996).

¶ 40. Owner is fined for three outstanding violations of the Minimum Housing Maintenance Standards, including defective plaster wall, defective ceiling tiles and rodent infestation. The maximum fine of $500 is imposed for rodent infestation due to the health hazard posed and owner's failure to adequately address the violation. The other two violations were minor in nature, the owner undertook to repair them and they were not hazardous, thus a $300 fine is imposed for each. **Loft Bd. v. Centry Realty, Inc.,** OATH Index No. 1673/97 (Mar. 30, 1998).

¶ 41. Violations of Minimum Housing Maintenance Standards, a leaking roof and defective skylight, constituted breach of statutory warranty of habitability under Real Property Law section 235-b(1), which extends to residential tenants of interim multiple dwellings pursuant to this section. **Loft Bd. v. Geulah Realty,** OATH Index No. 1968/96, mem. dec. (Oct. 4, 1996).

¶ 42. Once evidence establishes that violations existed, respondent's efforts to cure the violations after the commencement of an enforcement proceeding can only bear upon the fine to be imposed, even if those efforts were successful. **Loft Bd. v. Centry Realty, Inc.,** OATH Index No. 1673/97 (Mar. 30, 1998).

¶ 43. Petitioner established that the owner of loft buildings neglected violations for almost two years. The owner failed to provide window guards as required by subparagraph (b)(10) and failed to repair roof leaks, a violation of the statutory warranty of habitability, thus constituting a diminution of services under subparagraph ;cw). Administrative law judge found that the maximum fine of $500 per violation was appropriate because of the duration and seriousness of the violations. Owner ordered to cure violations within 30 days. **Loft Bd. v. Grand Morgan Realty Corp.**, OATH Index No. 2240/99, mem. dec. (Aug. 19, 1999).

¶ 44. In a default proceeding, owner had leaky and defective boiler in the cellar, in violation of subparagraph (b)(2)(v), which requires that all central heating systems be in proper working order. Owner was fined $400. **Loft Bd. v. Kang**, OATH Index No. 2236/99, mem. dec. (Aug. 18, 1999).

¶ 45. In a default proceeding, respondent owner's building had a leaky roof over the kitchen of a unit, in violation of this section. Testimony established that it was a longstanding problem and owner had made no effort to cure violation upon reinspection. Accordingly, a maximum fine of $500 was imposed. **Loft Bd. v. Song**, OATH Index No. 2237/99, mem. dec. (Aug. 11, 1999).

¶ 46. Violations for broken window glass and erosion of one metal ceiling were not addressed by owner upon reinspection. Because these were first violations by this owner, the administrative law judge found that the infractions were non-willful and assessed a fine of $300 per violation. **Loft Bd. v. Noah Trading Co.**, OATH Index No. 1588/99, mem. dec. (Apr. 27, 1999).

¶ 47. Maximum fine of $500 was imposed for each of six violations: eroded metal cornice, eroded plaster, unpainted ceilings, eroded mortar joints and bricks, eroded flashing, and broken wire glass. Inasmuch as violations were willful, the building was deemed to be out of compliance with Article 7-C for purposes of assertion of the landlord's rights under Multiple Dwelling Law section 285(1), pursuant to paragraph (6) of this rule. **Loft Bd. v. Knickerbocker Paper Recycling**, OATH Index No. 2241/99, mem. dec. (Sept. 17, 1999).

¶ 48. Cracks in glass roof were a violation of the statutory warranty of habitability and the building's proprietary lease where, pursuant to the lease, the owner was responsible for the maintenance of the building's roof. Administrative law judge also found that the violation of the warranty of habitability was more than **de minimus**. Under Real Property Law section 235-b(1), the warranty of habitability has three components: (1) the owner must keep the leased premises and attendant common areas "fit for human habitation"; (2) the owner must keep those areas "fit for the uses reasonably intended by the parties"; and (3) the owner must keep those areas free from "any conditions which would be dangerous, hazardous or detrimental to [the occupant's] life, health or safety." Cracks in a glass roof violate all three elements

enumerated above. Petitioner presented no evidence that violation was willful pursuant to subparagraph (e)(6). Given that the tenant withheld rent and had a history of refusing access to those seeking to make repairs in her unit, a $100 fine was imposed and the owner was ordered to cure the violations. **Loft Bd. v. 85-87 Mercer Street Associates, Inc**., OATH Index No. 2005/99, mem. dec. (Sept. 30, 1999).

¶ 49. In a Board-initiated proceeding to determine which of two sets of proposed legalization plans should be adopted, the owner was required to modify plans to provide for restoration of freight elevator service. Although tenant's lease did not provide for freight elevator service to the tenant, owner was required to provide service where it was continuously provided during the lease period and for several years after its expiration pursuant to subparagraph (b)(9) and ;cw) of this section, which prohibit the diminution of legal freight elevator service. Owner's "conscious unawareness" of tenant use did not shield him from obligation to provide services. **Matter of 24 Harrison Street**, OATH Index No. 1120/96 (Feb. 12, 1999), **aff'd**, Loft Bd. Order No. 2380 (Mar. 23, 1999).

¶ 50. In default proceeding, administrative law judge imposed the maximum fine of $500 for a first time violation of the Loft Board's minimum housing maintenance standards due to owner's failure to provide running water for a three-month duration, and the owners' failure to date to make any effort to remedy the condition or to respond to the tenant, the Loft Board or OATH in regard to the condition. **Loft Board v. Hauser & Arnold Industries,** OATH Index No. 1021/00, mem. dec. (Jan. 28, 2000).

¶ 51. On owner's default, Loft Board proved the amended violations and the owner's willful failure to cure them for more than three months. Inasmuch as violations are willful, building is deemed to be out of compliance with Article 7-C for purposes of assertion of the landlord's rights under Multiple Dwelling Law § 285 (1), pursuant to 2-04 (e)(6). Administrative law judge imposed total fine of $1,000. **Loft Board v. Rahman New York, Inc.,** OATH Index No. 2336/00, (Aug. 31, 2000)

¶ 52. Administrative law judge required IMD owner to continue to supply electricity to tenant without charge where this arrangement continued for the past twelve years. The owner's application to pass along this cost to protected occupant was not supported by the Loft Board's rent adjustment regulations nor by its housing maintenance regulations. **See** Multiple Dwelling Law §286; 29 RCNY §§ 2-04(c)), 2-06 (July 31, 1999). The judge rejected the owner's argument that it could now invoke a provision in a 1995 lease, providing for the right to discontinue supplying electrical services, because it had expired and was no longer enforceable. Moreover, Loft Board precedent has required the continuation of services where those services have been provided after the expiration of the lease under 2-04(c). **Matter of 180 Duane Street, LLC,** OATH Index No. 1468/00 (June 9, 2000), **aff'd,** Loft Bd. Order No. 2534 (June 29, 2000).

¶ 53. New owner's legalization plan, which omitted the roof, unreasonably interfered with tenant's occupancy and constituted a diminution of services where tenant has resided in unit for sixteen years and during that time has had unfettered use of a roof adjoining her apartment. Notwithstanding the leases that governed tenant's tenancy between 1984 and 1996 made no mention of the roof, long-term use in the circumstances of this case requires a finding of diminution of services in violation of 2-04(c). **Matter of McGehee,** OATH Index No. 1306/00 (Dec. 1, 2000), **aff'd,** Loft Bd. Order No. 2599 (Dec. 19, 2000).

¶ 54. Subsection (b)(9) of the Loft Board's minimum housing maintenance standards prohibit an owner from diminishing legal freight or passenger elevator service provided for in the lease. **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 55. Missing window guards, a broken skylight and leaking roof constitute violations of Loft Board's minimum housing maintenance standards, pursuant to subsections (c) and (d) of this section (incorporating warranty of habitability into housing maintenance standards). **Loft Bd. v. Lipkis,** OATH Index No. 1657/01 (Oct. 22, 2001).

¶ 56. Hiring of security guard and adoption of guest sign-in policy was reasonable, given landlord's duty to provide

appropriate controls on public access to residential portions of the building (29 RCNY § 2-04(b)(8)). **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 57. Loft Board failed to prove that legal passenger elevator services were provided to residential occupants on June 21, 1982, and therefore violation alleging improper discontinuance of service was dismissed. **Loft Bd. v. Rudd Realty Management,** OATH Index No. 289/03, mem. dec. (Dec. 11, 2002).

¶ 58. Loft Board failed to show that leases in effect during the window period permitted passenger elevator use by the tenants, and therefore violation alleging improper diminution of lease services pursuant to subsection (c) of this section was dismissed. **Loft Bd. v. Rudd Realty Management,** OATH Index No. 289/03, mem. dec . (Dec. 11, 2002).

¶ 59. For a first finding of a violation under subparagraph (e) of this rule, the maximum penalty which can be imposed is $500 per violation. **Loft Bd. v. Kates,** OATH Index No. 1861/02, mem. dec. (Nov. 4, 2002).

¶ 60. Administrative law judge held that Loft Board rules do not mandate tenant dominion over the thermostat controls to ensure that temperature requirements are carried out. **Matter of Bernstein,** OATH Index No. 1710/02 (Aug. 1, 2003), **aff'd,** Loft Bd. Order No. 2823 (Oct. 6, 2003).

¶ 61. Administrative law judge held that no intercom system required where Loft Board rules only require that the landlord "properly maintain all entrance door security and at a minimum one door at each entrance must have a lock." **Matter of Bernstein,** OATH Index No. 1710/02 (Aug. 1, 2003), **aff'd,** Loft Bd. Order No. 2823 (Oct. 6, 2003).

¶ 62. Administrative law judge held that tenant was not legally entitled to freight elevator service absent an agreement between the owner and the tenants requiring that the landlord provide freight elevator service as of June 21, 1982, the effective date of the Loft Law. **Matter of Bernstein,** OATH Index No. 1710/02 (Aug. 1, 2003), **aff'd,** Loft Bd. Order No. 2823 (Oct. 6, 2003).

¶ 63. Administrative law judge found that the practice of leaving the front door of a loft building open until 9 p.m. every night for the commercial tenant constituted a diminution of services. **Matter of Bernstein,** OATH Index No. 1710/02 (Aug. 1, 2003), **aff'd,** Loft Bd. Order No. 2823 (Oct. 6, 2003).

¶ 64. In consolidated Loft Board diminution of services and harassment applications, administrative law judge found that the current owner diminished elevator services that had been provided by predecessor owner as of the effective date of the Loft Law, June 21, 1982. **Matter of Rebo,** OATH Index Nos. 924/03 & 926/03 (Dec. 18, 2003), **aff'd,** Loft Bd. Order No. 2840 (Jan. 15, 2003).

¶ 65. A fifth floor tenant filed an application with the Loft Board alleging that leaks in his loft unit constituted a diminution of services. A Loft Board enforcement proceeding is not the exclusive remedy for a building maintenance problem; where the problem constitutes a reduction in services which the tenant originally possessed, the tenant may file a diminution of services application under subsections (c) and (d) of this section. Based upon the undisputed evidence presented at the hearing of persistent leaks in the unit, the administrative law judge recommended that the Loft Board grant the tenant's application, and that the condominium be ordered to repair the roof. **Matter of Reginato,** OATH Index No. 750/03 (May 29, 2003), **aff'd,** Loft Bd. Order No. 2806 (June 19, 2003).

¶ 66. Administrative law judge found no diminution of services where building superintendent's knowledge that the tenants had operated the elevators between 1980 and June 21, 1982, could not be imputed to owner because the superintendent lacked authority to grant consent to 24-hour elevator service and because, upon being informed of the tenants' operation of the elevators, the owner promptly locked the elevators so the tenants could no longer use them. **Matter of Hennen,** OATH Index No. 925/03 (Apr. 23, 2003), **aff'd,** Loft Bd. Order No. 2833 (Nov. 13, 2003).

¶ 67. Administrative law judge held that owner's plan to eliminate access to the neighbor's area by erecting a wall

as required for legalization was not a diminution of services under subsection (d)(2)(iv) of this section where owner had no part in providing the space the applicant seeks to have taken from her neighbor. **Matter of Vander Heyden,** OATH Index No. 438/03 (Apr. 22, 2003), **aff'd,** Loft Bd. Order No. 2799 (May 15, 2003).

¶ 68. Administrative law judge held that owner's revised plans met all of the objections raised by the window period tenant in the unreasonable interference and diminution of services applications. **Matter of Vander Heyden,** OATH Index No. 438/03 (Apr. 22, 2003), **aff'd,** Loft Bd. Order No. 2799 (May 15, 2003).

¶ 69. Notwithstanding agreement that provided that the owner may subject the elevator to "reasonable regulation," administrative law judge found that owner diminished freight elevator service in violation of 29 RCNY 2-04(c) when it padlocked elevator which had been available to tenants on a twenty-four hour per day, seven day per week basis since prior to the window period. **9-01 44TH Drive Tenants Association v. Corastor Holding Co., Inc.**, OATH Index No. 224/04 (Jan. 21, 2004), **aff'd**, Loft Bd. Order No. 2851 (Mar. 18, 2004).

¶ 70. The Loft Board has never stated that a diminution of services claim pursuant to subsection (c) of this section must be based on a violation of a lease, building code provision, or Loft Board housing maintenance rule. A diminution claim may be based upon a decline in the quality of a service which had been provided-in this case, damaged windows which were not repaired. **Matter of Tenants of 13 East 17th Street**, Loft Bd. Order No. 3034 (Apr. 20, 2006), **adopting in part, rejecting in part**, OATH Index Nos. 1343/03, 1354/03, 1357/03 (Aug. 17, 2005).

¶ 71. Loft Board rejected ALJ's ruling that the relevant date for determining whether services were provided is May 1, 1987 because the building was covered on that date, pursuant to the 1987 amendments to the Loft Board. Instead the Board holds that the relevant date is June 21, 1982, even for buildings, like this one, which were first eligible for coverage in 1987. **Matter of Maugenest**, Loft Bd. Order No. 3125 (Nov. 16, 2006).

¶ 72. Only the Loft Board may file an application under subsection (e) of this section alleging violations of housing maintenance standards. Tenant-initiated applications concerning housing maintenance standards are limited to diminution of services claims under subsection (c) of this section. **Matter of Ashley**, Loft Bd. Order No. 3350 (Oct. 18, 2007), **adopting in part, rejecting in part**, OATH Index No. 1061/06 (Apr. 16, 2007).

¶ 73. The imposition of a fine is not an available remedy in a tenant-initiated diminution of services application pursuant to subsection (c) of this section. A Loft Board enforcement application for violations of the minimum housing standards and a tenant-initiated diminution of services application have different remedies. The authority to impose fines for violations of the minimum housing standards is derived from subsection (e) of this section, which relates only to Loft Board initiated applications, not tenant initiated ones. **Turner v. M-Raj 114 Franklin Street, LLC**, OATH Index No. 1787/07 (Oct. 17, 2007), **adopted**, Loft Bd. Order No. 3419 (Mar. 20, 2008).

¶ 74. Services provided by the lease terms are presumed legal or are required to be brought up to code. The owner has an obligation to provide legal elevator service regardless of whether the previous use was legal. **Matter of 25 Jay Street Tenants Assoc**., OATH Index No. 1210/07 (July 19, 2007), **adopted**, Loft Bd. Order No. 3418 (Mar. 20, 2008).

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-05 Registration.

(a) **Definitions.**

Landlord. As used in these regulations, the term "landlord" shall mean the owner of an interim multiple dwelling, the lessee of a whole building part of which is an interim multiple dwelling, or the agent or other person having control of such a dwelling.

Residential Occupant. As used in these regulations, the term "residential occupant" shall mean an occupant of an interim multiple dwelling eligible for protection under Article 7-C of the New York State Multiple Dwelling Law.

(b) **Procedure.** The following "Information and Instruction to Owners, Lessees and Agents of Interim Multiple Dwellings" constitute the procedures for registration of Interim Multiple Dwellings pursuant to §284(2) of Article 7-C of the New York State Multiple Dwelling Law. Applications for registration shall be in a form promulgated by the Loft Board.

Instruction-Interim Multiple Dwelling Registration Application-Part A.

(1) Print, using black ink only, all information in completing the registration form. Detach this information and instruction sheet and return copies of the form, when completed to: "I.M.D." REGISTRATION, New York City Loft Board.

Registration forms must be filed for all Interim Multiple Dwellings by January 31, 1983 to avoid payment of an

initial registration fee.

(2) The information requested on the registration form and Rider(s) are required pursuant to §§284(2) and 325 of the New York State Multiple Dwelling Law. Additional information may be required pursuant to rules and regulations which shall be promulgated by the New York City Loft Board.

(3) NO FEE is required if application is filed by January 31, 1983. However, a fee may be imposed if registration forms are filed after January 31, 1983. A renewal registration fee may be established by the Loft Board pursuant to §282 of the Multiple Dwelling Law.

(4) Completion and submission of this application does not constitute a waiver of the applicant's right to contest before the Loft Board the coverage of the premises described herein under Article 7-C of the Multiple Dwelling Law as an interim multiple dwelling. Nor shall the act of filing of the registration application constitute evidence before the Loft Board that the premises described herein are an interim multiple dwelling.

(5) Any and all applications to contest coverage of buildings or individual units under Article 7-C by owners, lessees or agents must be received by the Loft Board within 30 days of the issue date of the IMD registration number or within 30 days after promulgation of coverage regulations by the Loft Board, whichever is later.

Applications, by letter in duplicate, must set forth the extent of coverage being contested and set forth the facts and rationale upon which coverage is being contested. Notice of the filing of the application must be served on ALL residential, commercial and manufacturing occupants of the building and the application to the Loft Board must state that such service has been made. The notice of application must state that copies of the full application are available for inspection at the Loft Board and that a copy of the full application will be furnished by the landlord upon the written request of an occupant. Until the Loft Board determines otherwise by rule or regulation, service shall be effected in the manner prescribed by Real Property Actions and Proceedings Law §735. Failure of an owner, lessee or agent to contest coverage within 30 days of the issuance of an IMD Registration Number or within 30 days of the promulgation of coverage regulations by the Loft Board, whichever is later, precludes said applicant from contesting coverage.

It is the intent of the Loft Board to provide those wishing to contest coverage an opportunity to do so within 30 days after the promulgation of regulations which directly address the issue upon which the coverage dispute or contestation is predicated.

(6) Please be advised that other affected parties may apply for or contest coverage under Article 7-C. Such applications should be made following the procedures set forth in §2-05(b)(5) above except that notice of filing of the application must be served on the landlord not the occupants.

(7) Registration applications, if accepted by the Loft Board, will be effective until such time as determined by the New York City Loft Board.

(8) **Applications must be completed in its entirety.** Legible copies of the current lease, or, where there is no current lease, the most recent lease agreement (including all executed riders, amendments, modifications and extensions) for all residentially occupied units must be attached regardless of the commercial, residential or manufacturing nature of the lease. If no lease exists or existed, attach a signed statement outlining the most recent rental agreement.

For cooperatives, legible copies of one of the proprietary leases and of all coversheets for all units must be attached. If any units are rented, attach copies of those subleases or rental agreements. For condominiums, legible copies of all leases for units that are rented must be attached.

All personal and confidential information on leases (including all information which could lead to the identification of the premises, landlords and occupants) will not be available under the Freedom of Information Act.

An application will not be accepted, and an IMD Registration Number will not be assigned, unless all questions are answered in full and all required leases are attached. If a particular question or piece of information is inapplicable or not available enter Not Applicable, and attach a signed statement explaining the reasons. The content of an application will be reviewed prior to acceptance.

Enter the number of units occupied for residential purposes by families living independently from one another and the number of floors in the building. A family may consist of a person or persons, regardless of whether they are related by marriage or ancestry. Enter the number of residentially occupied units on each floor so occupied. Rider A which specifically identifies each of the units in the building must be completed and returned with the application.

(9) The acceptance of the registration application in no way legalizes the occupancy. If the application is accepted, a copy of the form with the assigned I.M.D. Registration Number will be returned to you. That number must be included on all future correspondence with the office. The Loft Board reserves the right to reject, revoke or amend an I.M.D. Registration Number.

(10) For each building potentially subject to Article 7-C, the owner, the lessee of the whole building and the agent or other person having control of the premises must each file a separate registration application. If the building is known by other addresses, list them on a separate sheet of paper and attach to the application.

If the owner, lessee, agent or other person is a corporation, other than a corporation listed as exempt from the provisions of the Multiple Dwelling Law §325, the names, business and residence addresses and phone numbers of its officers must be listed on the form.

Other officers, including treasurer or chief fiscal officer, and stockholders who own or control at least 10 percent of the corporation's stock must be listed on a separate attachment.

If the owner, lessee, agent or other person is other than an individual or a corporation, the names, business and residential addresses and phone numbers for each general partner or participant in a partnership or joint venture must be listed on a separate attachment.

At least one of the phone numbers entered on the form must be a confidential telephone number where a responsible party can reasonably be expected to be reached at all times for emergencies. Such number(s) must be within 50 miles radius of New York City limits and must be indicated on a separate signed sheet of paper and attached to the application.

(11) All owners, lessees of whole buildings, and agents or other persons having control of the premises who file for I.M.D. Registration Numbers agree to provide the minimum housing maintenance standards established or to be established by the Loft Board to all residentially occupied units for as long as the I.M.D. Registration Number is valid.

(12) The "managing agent" defined as the person in control of and responsible for the maintenance and operation of the dwelling, must be an individual over 21 years of age with a business office or residence in New York City.

(13) An identification sign containing the building address, the I.M.D. Registration Number assigned by the Loft Board for the purpose of identifying the building and the owner and managing agent shall be posted in every interim multiple dwelling with five (5) business days after the issuance of the I.M.D. Registration Number. A sample sign with instructions will be sent to you when the IMD Number is issued.

(14) If additional space is required to respond to any of the questions, attach a signed separate sheet of paper identifying the questions(s) being answered.

(c) **Rent claims.** Landlords of interim multiple dwellings for which an IMD Registration Number has been issued, shall be deemed to be compliance with the registration provisions of Article 7-C and shall be entitled to claim rents

becoming due after the date of issuance of the IMD Registration Number, in summary proceedings, pursuant to §285(1) of Article 7-C of the Multiple Dwelling Law.

Finding that there are a significant number of ongoing disputes between landlords and residential occupants in loft dwellings over payment of past due rents and that Article 7-C did not intend to authorize landlords to recover past due rents from residents occupying premises which may not qualify for coverage under Article 7-C, the Loft Board believes that landlords' right to recover for past due rents pursuant to §285(1) of the Multiple Dwelling Law should be stayed until the question of coverage of an IMD has been resolved.

Landlords who waive their right to contest coverage by executing a written waiver in a form acceptable to the Loft Board or whose coverage dispute has been resolved by a determination that the premises in question are covered by Article 7-C and who have met the requirements of subdivision (b) of this section shall be deemed in full compliance with the registration provisions of Article 7-C in order to claim past due rent payable from residential occupants pursuant to §285(1) of the Multiple Dwelling Law.

(d) **Confidentiality of lease information.** All personal and confidential information in leases submitted with registration applications pursuant to this section (including all information which could lead to the identification of the premises, landlords, and tenants) shall be confidential pursuant to the Freedom of Information Law (Public Officers Law §84, et. seq.). Filed with the City Clerk: August 2, 1983.

(e) Effective July 27, 1987, Article 7-C of the Multiple Dwelling Law was amended, in part, to extend coverage to certain residentially occupied buildings, structures or portions thereof that were excluded from the protections of Article 7-C because they did not meet the zoning requirements of MDL §§281(2)(i), (iii) or (iv). Now, pursuant to MDL §281(4), any building, structure or portion thereof which contains units that were residentially occupied on May 1, 1987, since December 1, 1981, that were used for residential purposes since April 1, 1980, is an interim multiple dwelling covered by Article 7-C regardless of the zoning requirements of MDL §§281(2)(i), (iii) and/or (iv), if the building otherwise meets the criteria set forth in MDL §281(1). MDL §281(1) defines an "interim multiple dwelling" as a building, structure or portion thereof which at any time was occupied for manufacturing, commercial or warehouse purposes; on December 1, 1981 was occupied for residential purposes since April 1, 1980 as the residence or home of any three or more families living independently of one another; lacks a certificate of compliance or occupancy pursuant to MDL §301. Pursuant to MDL §281(4), an interim multiple dwelling shall include any building within the City of New York which meets these qualifications, regardless of whether there are currently three or more qualifying units. Thus, a reduction in the number of occupied residential units in a building after December 1, 1981 since April 1, 1980, shall not result in the elimination of the protections of Article 7-C to any remaining residential occupants qualified for such protection whose units were residentially occupied on May 1, 1987 since April 1, 1980.

(1) The provisions of these rules, §2-05, shall be fully applicable to interim multiple dwellings or additional covered units, which are subject to coverage under Article 7-C pursuant to MDL §281(4), except as provided below:

(i) MDL §284(2) requires registration of all interim multiple dwellings within sixty days of the date of the enactment. Interim multiple dwellings or additional covered units subject to Article 7-C solely pursuant to MDL §281(4) shall be registered on or before September 25, 1987. The initial registration period ends on June 30, 1988. Thereafter, renewal of registration pursuant to §2-11(b)(1)(i)(A) shall be required annually. Prior to the processing of the registration renewal application, the owner, lessee of a whole building and the agent are required to pay all unpaid registration fees for prior registration periods at the rate then established by the Loft Board.

(ii) In addition to the requirements set forth in §2-05(b)(8) of these rules, the landlord shall submit legible copies of all leases (including all executed riders, amendments, modifications and extensions) for residentially occupied units for the period April 1, 1980 through May 1, 1987.

(f) No applications filed by a landlord of an interim multiple dwelling shall be processed by the Loft Board unless

the registration renewal is current on the date of filing of such application.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Open par repealed City Record Oct. 15, 2001 eff. Nov. 14, 2001. [See T29 §1-06.1 Note 1]

Open par added City Record Nov. 4, 1993 eff. Dec. 4, 1993.

Subds. (e), (f) added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. This section does not provide for tenant participation in a building owner's application for IMD registration or renewal of such registration; therefore, tenants lack standing in any administrative tribunal to contest such applications or to challenge the Loft Board staff's approval of such applications. Matter of Barth, OATH Index No. 1574/97 (June 27, 1997), aff'd, Loft Bd. Order No. 2137 (Aug. 28, 1997).

¶ 2. Where a building owner registered the building, including the second floor loft unit, and failed pursuant to subparagraph (b)(5) of this section to file a timely challenge to Loft Law coverage of the building or of the unit, the owner may not contest coverage of the unit as a defense to an application by the tenant of that unit for a rent reduction and overcharge refund. Matter of Katz, OATH Index No. 1648/96 (Sept. 10, 1996), aff'd, Loft Bd. Order No. 2037 (Nov. 21, 1996).

¶ 3. In a coverage case, petitioner made a pre-trial motion to preclude the owner from controverting statements made in initial Loft Board registration, to wit, two units were residentially occupied during the window period. Administrative law judge found that reliance on the registration application as an admission of residential occupancy during the required period to be contrary to subsection (b)(4) of this section. Judge held that owner's statements on coverage application have evidentiary standing with the implication that the owner should be allowed to explain his reasons for making the assertions in his application. **Matter of Wynkoop,** OATH Index No. 354/02, mem. dec. (Jan. 30, 2002).

¶ 4. Upon abandonment finding, residential units remain subject to the annual registration requirements set forth in subsection (e)(1)(i) of this section. **Matter of Tylawsky,** OATH Index No. 601/02 (Feb. 27, 2002), **aff'd in part, rev'd in part,** Loft Bd. Order No. 2723 (Apr. 18, 2002).

¶ 5. Abandonment of interim multiple dwelling annulled where landlord had not registered the loft as an interim multiple dwelling or paid the annual registration fees, as required by 29 RCNY 2-05. **Matter of EPDI Associates**, OATH Index No. 600/02 (Jan. 9, 2002), **aff'd**, Loft Bd. Order No. 2714 (Mar. 14, 2002), **remanded, Conley v. New York City Loft Bd.**, Sup. Ct. N.Y. Co. Index No. 113879/02 (Dec. 9, 2002)(Shafer, J.), **modified**, 5 A.D.3d 175, 772 N.Y.S.2d 519 (1st Dep't 2004).

¶ 6. Voluntary registration is the equivalent of a Loft Board finding of coverage. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-06 Interim Rent Guidelines.

(For time limitations on filing applications for rent overcharges, see §1-06.1 of the Loft Board rules).

(a) **Coverage.** (1) These rent guidelines apply to units of interim multiple dwellings ("IMDs"), as defined in §281 of Article 7-C, with residential occupants qualified for protection pursuant to the article, who

(i) do not have a lease or rental agreement in effect on the date of this order, December 21, 1982 or

(ii) whose leases or rental agreements are in effect on December 21, 1982, but expire prior to the IMD's compliance with the safety and fire protection standards of Article 7-B of the Multiple Dwelling Law. These guidelines apply only to IMD's which have registered with the Loft Board.

(2) "Lease or rental agreement in effect" shall mean

(i) a written lease or rental agreement;

(ii) an oral agreement for a rental period of one year or less, provided that

(A) there has been a change from the previous rent, confirmed by rent checks tendered by the residential occupant and accepted by the landlord within the year prior to this order or

(B) there has been a substantial change in the level of services agreed to be provided within one year prior to this order.

(b) **Effective date.** The effective date of these rent increases for registered IMD's will be the next regular rent payment date following December 21, 1982, or following the expiration of the lease or rental agreement, whichever is later.

If application for registration is received by the Loft Board on or before January 31, 1983, and written request for the increase is made of the residential occupant within 30 days of the issuance of an IMD registration number, such increase shall be retroactive to the effective date of the increase.

If application for registration is received by the Loft Board after January 31, 1983, and written request for the increase is made of the residential occupant within 30 days of the issuance of an IMD registration number, and the lease or rental agreement has expired, such increase shall be retroactive to the first regular rent payment date following submission of the registration application.

At the option of the residential occupant, such retroactive increases may be paid over the same number of months as they accrued. Except as indicated above, the rent increases shall apply prospectively only.

(c) **Amount of increases.** For purposes of these rent guidelines, the following percentages shall be calculated upon the total rent for the residential occupant, including both base rent and escalators. "Escalators" are lease or rental agreement provisions which provide for a residential occupant's payment as rent or additional rent charges based on, but not limited to: real estate taxes; heating fuel; labor; water and sewer; insurance; vault tax; and any cost-of-living increase formulas. Such provisions as relate to gas, electricity and steam charges are excluded from this definition of total rent and these utility escalators, when based on a fair calculation of the occupant's usage, shall be the only escalators permitted following the effective date of the rent increase provided they were part of the lease or rental agreement in effect on December 21, 1982.

Rent levels for units covered by this order shall reflect no more than the following maximum percentage increases, calculated as of the effective date of this order to such unit:

(1) For units where the last increase in total rent or a utility escalator pursuant to a lease or rental agreement tendered by the tenant and accepted by the landlord was:

(i) Subsequent to December 31, 1979: the maximum permissible increase shall be 7 percent of the total rent as defined above.

(ii) Between January 1, 1977 and December 31, 1979: the maximum permissible increase shall be 22 percent of the total rent defined above.

(iii) Before January 1, 1977: the maximum permissible increase shall be 33 percent of the total rent as defined above.

(2) For units which have had no rent increases since the inception of the lease or rental agreement between the residential occupant and landlord, the maximum percentage increases contained in category (i), (ii), and (iii) above shall be based upon the date of inception of the lease or rental agreement.

(3) For units where the current or most recent lease or rental agreement does not contain any escalator provisions and where the last rent increase was not an escalator adjustment, a surcharge of 2 percent for category (i), 4 percent for category (ii), and 6 percent for category (iii) may be added to the percentage increases. These rent increases shall be a permanent part of the rent.

(d) **Vacancy allowance.** The Loft Board reserves the right to address a vacancy allowance when it discusses fixture fee procedures.

(e) **Subtenancy allowance.** The Loft Board reserves the right to address a subtenancy allowance when it discusses coverage procedures.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Open par added City Record Nov. 4, 1993 eff. Dec. 4, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The "Loft Board Interim Rent Guidelines" and "Loft Board Order No. 1" were predecessor versions of this section, which was codified pursuant to the City Administrative Procedure Act. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 2. Where the most recent lease for a loft unit contained escalator provisions, the building owner is not entitled to a rent increase surcharge pursuant to subparagraph (c)(3) of this section, even though the rent escalators provided for in the most recent lease were never enforced. Matter of Longfellow Properties, Inc., OATH Index No. 1780/96 (Nov. 4, 1996), aff'd, Loft Bd. Order No. 2057 (Jan. 30, 1997).

¶ 3. Where available evidence reliably shows the amounts of real estate tax escalators actually billed and paid on a regular basis, the amount of the real estate tax escalator for purposes of paragraph (c) of this section is the first regular payment of real estate tax after the expiration of the last lease. However, where such reliable evidence does not exist, the real estate tax escalator may be calculated by adding the real estate tax escalator payments proved to have been made during the last year of the last lease, and dividing by 12. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 4. Water and sewer escalators pursuant to paragraph (c) of this section may not be fixed based solely on evidence of payments over a three-month period, because water usage may be seasonal to some extent. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 5. Where the available evidence indicated that water and sewer escalators were not reliably and regularly billed, the water and sewer escalator pursuant to paragraph (c) of this section was calculated by adding the amounts actually billed and paid during the last 12 months of the last lease and dividing by 12, not by reference to the greater amounts that could have been billed pursuant to the lease. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 6. Gas escalators are not included in the calculation of total rent, and therefore do not affect the rent increases calculated as a percentage of that total rent, pursuant to paragraph (c) of this section. However, as long as the building owner continues to be billed for gas usage within the tenants' units, the owner is entitled to pass that cost along to the tenants, provided that the pass-along is based on a fair calculation of the occupants' usage. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 7. A rent increase pursuant to this section is due beginning with the next regular rent payment date after a building owner submits a written demand for the rent increase to the tenants. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 8. Pursuant to subparagraph (a)(1)(ii) of this section, a building owner was not entitled to a rent increase under

this section for a unit that was not included in the building owner's IMD registration. Matter of Teitelbaum, OATH Index No. 894/97 (May 30, 1997), aff'd, Loft Bd. Order No. 2133 (Aug. 28, 1997).

¶ 9. This section provides for rent increases for protected occupants of covered loft units regardless whether the occupants are prime lessees pursuant to §2-09(c)(6)(ii)(B) of this chapter or sublessees pursuant to §2-09(c)(6)(i) of this chapter. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 10. Unit registration is a prerequisite to obtaining a rent increase under this section. **Matter of Teitelbaum,** OATH Index No. 894/97 (May 30, 1997), **aff'd,** Loft Bd. Order No. 2133 (Aug. 28, 1997). Exception exists where owner had good faith belief unit was registered and otherwise went forward with compliance under the Loft Law, including procuring a residential certificate of occupancy. **Matter of M.R.A. Realties,** OATH Index No. 1317/98 (Dec. 2, 1998), **aff'd in part, modified on other grounds,** Loft Bd. Order No. 2369 (Feb. 23, 1999).

¶ 11. Calculation of base rent includes the escalators billed and paid during the last month of the lease in effect on December 21, 1982. **Matter of M.R.A. Realties,** OATH Index No. 1317/98 (Dec. 2, 1998), **aff'd in part, modified on other grounds,** Loft Bd. Order No. 2369 (Feb. 23, 1999).

¶ 12. Lapse in registration since 1990 does not bar the owner from taking the allowed rent increase where the two increases which comprised the allowable seven percent increase under Loft Board Order No. 1 were taken while the unit was still registered. **Matter of M.R.A. Realties,** OATH Index No. 1317/98 (Dec. 2, 1998), **aff'd in part, modified on other grounds,** Loft Bd. Order No. 2369 (Feb. 23, 1999).

¶ 13. A construction allowance spread over initial two-year term of lease, which was clearly intended to compensate tenants for up-front construction costs, does not permanently reduce monthly rental in the event of lease renewal. **Matter of 33 Union Square West,** OATH Index No. 732/98 (July 6, 1998), **aff'd,** Loft Bd. Order No. 2286 (Sept. 24, 1998).

¶ 14. The final rent provided for by the lease in effect on December 21, 1982, not the amount actually paid by tenant when tenant returned to unit in February 1983 following a fire, prevails in setting the base rent. **Matter of 33 Union Square West,** OATH Index No. 732/98 (July 6, 1998), **aff'd,** Loft Bd. Order No. 2286 (Sept. 24, 1998).

¶ 15. Actions of receivers in foreclosure, in accepting rent checks from tenants, did not operate to waive mortgagee's or subsequent owner's right to maximum statutory increase under Loft Board Order No. 1, where applicants made no showing of actual knowledge of receiver. **Matter of 33 Union Square West,** OATH Index No. 732/98 (July 6, 1998), **aff'd,** Loft Bd. Order No. 2286 (Sept. 24, 1998).

¶ 16. Owner applied for a Rent Guidelines Board increase pursuant to section 2-01(i) of this title. In calculating the initial legal regulated rent, the percentage increase the owner is entitled to is calculated, pursuant to this section, on the total rent of the IMD unit, which includes the base rent as set forth in a lease agreement and subsequent riders, and escalator payments, here an agreed to percentage of the increase in real estate taxes. **Matter of Sayage,** OATH Index No. 1505/98 (Aug. 28, 1998), **aff'd,** Loft Bd. Order No. 2325 (Oct. 27, 1998).

¶ 17. Current owner is not precluded from asserting Loft Board Order No. 1 increases where prior letter agreement set the base rent and 6% increase under Multiple Dwelling Law section 286(2) but was silent on owner's right to any other increases despite not demanding the LBO No. 1 increase. **Matter of 473-475 Broadway, LLC,** OATH Index No. 761/98, mem. dec. (Apr. 22, 1998) incorporated in OATH Index No. 761/98 (May 22, 1998), **aff'd,** Loft Bd. Order No. 2267 (June 25, 1998).

¶ 18. After Loft Board upheld administrative law judge's determination of coverage and abandonment, matter was remanded for determination of legal regulated rent, and overcharges, if any. Administrative law judge finds that applicants are entitled to overcharges which preceded finding of abandonment, as well as prospective rent regulation,

citing **Matter of White,** Loft Bd. Order No. 2194, 17 Loft Bd. Rptr. 386 (Dec. 18, 1997). Because owner did not register building until April 1998 and unit until August 1998, he is not entitled to section 2-12 increases until September 1998. Because owner has not made demand therefor, he is not entitled to any section 2-06 increases. Administrative law judge calculates the overcharge to be $29,610.00, and rent is set at $127.20. **Matter of DeLong,**, OATH Index No. 1165/00 (Nov. 1, 2000) (Loft Board subsequently dismissed the portion of the application which had been remanded, based upon a settlement executed by the parties).

¶ 19. After Loft Board upheld administrative law judge's determination of coverage and administrative law judge's denial of trial application to set rent, as no notice was given to defaulting owner (OATH Index No.1897/99), protected tenant filed petition for determination of legal regulated rent. Owner again defaulted. Rent is set at $600.00 per month, reflecting two-thirds of the monthly rent of the protected tenant in occupancy on December 21, 1982, for three floors (basement, first and second floors), as coverage here was granted applicant only as to first and second floors. Although sophisticated lease terms, which provide for performance of work and passage of title to fixtures, in exchange for twenty-year lease at a fixed monthly rent, suggests that there has been a waiver of rent regulation, lease term explicitly preserves all rights under the Loft Law to tenant. This includes the right to rent regulation. **Matter of Rolf,** OATH Index No. 135/01 (Nov. 30, 2000), **aff'd,** Loft Bd. Order No. 2598 (Dec. 19, 2000).

¶ 20. A lease included a provision giving the tenants an option to renew for an additional two years at the original rent plus a cost of living adjustment. In December 1983, the tenant exercised the option and began paying a 40% rent increase. The administrative law judge granted the tenant's rent adjustment application, which set the initial base rent of IMD units at "the next regular rent payment date following December 21, 1982, or following the expiration of the lease or other rental agreement, whichever is later." The maximum legal rent was set at $1,676.54 and overcharges of $14,151.18 were awarded. **Matter of Bolotowsky,** OATH Index No. 441/03 (Jan. 16, 2003), **aff'd,** Loft Bd. Order No. 2777 (Feb. 6, 2003), **aff'd sub nom. Matter of Two Spring Associates v. New York City Loft Bd.,** 2 Misc.3d 530, 773 N.Y.S.2d 525 (Sup. Ct. N.Y. Co. 2003).

¶ 21. Tenants filed a rent overcharge application with the Loft Board contending that the owner overcharged them in excess of that allowed by this rule. The administrative law judge set the current legal rent at $664.36, based on the base rent on December 21, 1982, a 9% increase based on Loft Board Order No. 1, and a 6% increase based on filing the alteration application. The judge recommended that the tenants be awarded overcharges in the amount of $24,669. The Loft Board modified the judge's recommended amount to $35,169.40 because the owner was not entitled to an offset of the rent that the tenant collected from the sub-lessee. **Matter of Edidin,** OATH Index No. 1590/03 (Nov. 18, 2003), **aff'd in part, modified in part,** Loft Bd. Order No. 2845 (Feb. 19, 2004).

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-06.1

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-06.1 Interim Rent Guidelines (II).

(a) **Coverage.** (1) These rent guidelines apply to interim multiple dwelling ("IMD") units, as defined in §281 of Article 7-C of the Multiple Dwelling Law, which:

(i) are subject to Article 7-C solely pursuant to MDL §281(4); and

(ii) are registered with the Loft Board; and

(iii) have a residential occupant qualified for protection pursuant to Article 7-C of the Multiple Dwelling Law, who

(A) did not have a lease or rental agreement in effect on July 27, 1987; or

(B) had a lease or rental agreement in effect on July 27, 1987, which expired prior to October 29, 1992 and prior to the IMD unit's compliance with the safety and fire protection standards of Article 7-B of the Multiple Dwelling Law; or

(C) had a lease or rental agreement in effect on July 27, 1987, which is still in effect on October 29, 1992, but which expires prior to the IMD unit's compliance with the safety and fire protection standards of Article 7-B of the Multiple Dwelling Law.

(2) "Lease or rental agreement" shall mean

(i) a written lease or rental agreement; or

(ii) an oral agreement for a rental period of one year or less, provided that

(A) there had been a change from the previous rent, confirmed by rent checks tendered by the residential occupant and accepted by the landlord within the year prior to July 27, 1987, or

(B) there had been a substantial change in the level of services agreed to be provided within the year prior to July 27, 1987.

(b) **Effective date.** The effective date of these rent increases for registered IMDs will be the next regular rent payment date following October 29, 1992.

Where written request for the increase is made of the residential occupant within 30 days of the issuance by the Loft Board of an IMD registration number, such increase shall be retroactive to the first regular rent payment date following the submission of the registration application to the Loft Board. However, any such increase shall not be retroactive to a date earlier than October 29, 1992.

Except as indicated above, the rent increases shall apply prospectively only.

(c) **Amount of increases.** For purposes of these rent guidelines, the following percentages shall be calculated upon the total rent for the residential occupant, including both base rent and escalators. "Escalators" are lease or rental agreement provisions which provided for a residential occupant's payment as rent or additional rent charges based on, but not limited to: real estate taxes; heating fuel; labor; water and sewer; insurance; vault tax; and any cost-of-living increase formulas. Such provisions as relate to gas, electricity and steam charges are excluded from this definition of total rent and these utility escalators, when based on a fair calculation of the occupant's usage, shall be the only escalators permitted following the effective date of the rent increase provided they were part of the last lease or rental agreement in effect on or before July 27, 1987. Total Rent is the amount in base rent and escalators due the landlord from the tenant during the last payment period pursuant to a lease or rental agreement in effect on July 27, 1987, except that the total rent attributable to escalators shall only include the amount demanded by the landlord and paid by the tenant pursuant to said lease or rental agreement. Where no lease or rental agreement was in effect on July 27, 1987, total rent is the rental amount paid by the tenant to the landlord on or before July 27, 1987 pursuant to the last lease or rental agreement in effect.

Rent levels for units covered by this order shall reflect no more than the following maximum percentage increases, calculated as of the effective date of this order to such unit:

(1) For units where the last increase in total rent or a utility escalator pursuant to a lease or rental agreement tendered by the tenant and accepted by the landlord was:

(i) Subsequent to October 29, 1990: there will be no increase permitted above the total rent as defined above.

(ii) Between October 29, 1988 and October 29, 1990: the maximum permissible increase shall be 7 percent of the total rent as defined above.

(iii) Between October 29, 1986 and October 28, 1988: the maximum permissible increase shall be 16 percent of the total rent defined above.

(iv) Between October 29, 1984 and October 28, 1986: the maximum permissible increase shall be 24 percent of the total rent defined above.

(v) Before October 29, 1984: the maximum permissible increase shall be 33 percent of the total rent as defined above.

(2) For units which have had no rent increases since the inception of the last lease or rental agreement between the

residential occupant and landlord, the maximum percentage increases contained in category (ii), (iii), (iv), and (v) above shall be based upon the date of inception of the last lease or rental agreement.

These rent increases shall be a permanent part of the rent.

(d) **Overcharges and Penalties.** Rent payments made prior to the date of adoption of this rule in excess of the amount prescribed by this rule, or §2-06 of these rules, constitute an overcharge, which may be paid at the owner's option either in a lump sum or as a subtraction from the legal monthly rent payments at a rate equal to 20 percent of the legal rent permitted under this rule as of the date of adoption of this rule (October 29, 1992) until payment of the full overcharge is completed. No trebel damages shall be prescribed by this rule or §2-06.

HISTORICAL NOTE

Section added City Record Dec. 4, 1992 eff. Jan. 3, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Although a building owner must ordinarily serve a demand for a rent increase pursuant to §2-06 or this section, the owner is entitled, despite the lack of such demand, to offset the amount of rent that could have been demanded against the amount due to a tenant who filed a rent overcharge application. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 2. Where the rent billed for a loft unit was increased in 1986, 1988, 1989, 1991, 1993, 1995 and 1996, but the tenant succeeded in invalidating those increases by filing a rent overcharge application, the owner was entitled to a 24 percent rent increase pursuant to subparagraph (c)(1)(iv) of this section. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 3. Owner who had not registered the building as an IMD with the Loft Board was not entitled to any rent increases pursuant to this section. **Matter of Tenants of 323-325 W. 37th Street**, OATH Index No. 692/06 (May 18, 2007).

¶ 4. Owner's request for an offset to overcharge for rent paid by roommates is denied. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

¶ 5. Current owner is not entitled to offset overcharges collected by the former owner. He may seek indemnification from his predecessor. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-07 Sales of Improvements.

(a) **Definitions.**

Fair market value. "Fair Market Value" is the value established by a bona fide offer to purchase improvements from a prospective tenant, unless the Loft Board finds, upon application of an owner challenging such offer as not representing fair market value, that the offer does not represent the value of the improvements as determined after the Board's consideration, as further set forth in §2-07(g) herein,

(i) for such improvements as were purchased by the outgoing tenant, of the amount paid by the outgoing tenant, less depreciation for wear and tear and age, to the prior tenant or to the owner, or to both, for purchase of improvements, and

(ii) for such improvements, as were made by the outgoing tenant, of the replacement cost of such improvements, less depreciation for wear and tear and age. If no such offer is made or available, the value shall be established by agreement of the parties or pursuant to an application to the Loft Board, which shall determine the value in accordance with the criteria and procedures set forth herein.

Improvements. "Improvements" are the fixtures, alterations and development of a unit in an interim multiple dwelling which were made or purchased by a residential tenant who is qualified for protection under Article 7-C.

(i) "Fixtures" are defined as that which is fixed or attached to real property permanently as an appendage and shall include, but not be limited to, the following: kitchen installations, including stoves, sinks, counters, and built-in

cabinets; bathroom installations, including sinks, toilets, bathtubs, and showers; other installations, including partitions, ceilings, windows, and floors, including tiling; built-in shelves; plumbing and utility risers; electrical work; heating units; and hot water heaters.

(ii) "Alterations and development" shall include, but not be limited to the following: demolition work, including debris removal; repair (other than normal recurring maintenance) and renovation of ceiling, walls, windows, and floors; design; labor; equipment rental; design including professional fees paid to architects and designers in connection with the improvements; and such removable personal property as was reasonable to establish residential use, such as a refrigerator and dishwasher.

Improvements shall not include other removable household furnishings, such as rugs, tables, and chairs, nor statutory rights pursuant to Article 7-C, neither of which may be the subject of a sale pursuant to §286(6) of the Multiple Dwelling Law ("MDL").

Multiple dwelling unit. A multiple dwelling unit (also, "IMD unit" or "unit") is a residential unit in an interim multiple dwelling as defined by MDL §281 and Loft Board Coverage regulations, which unit is registered with the Loft Board as required by regulations relating to registration of interim multiple dwellings at the time of service on the owner of the Improvement Sales Disclosure Form as required herein. Included are units in multiple dwellings which were formerly registered as IMD's and have subsequently been legalized.

(b) **Notice: form and time requirements.** All notices, requests, responses and stipulations served by owners and tenants pursuant to these regulations shall be in writing, with a copy delivered or mailed to the Loft Board, accompanied by proof of service. Service by the parties shall be effected either (1) by personal delivery or (2) by certified or registered mail, return receipt requested, with an additional copy sent by regular mail. Unless otherwise agreed in writing by the parties, with notice to the Loft Board, these communications shall be delivered or sent to the outgoing tenant and to the prospective tenant at the respective addresses specified on the Improvements Sale Disclosure Form, described herein; and to the owner via the registrant of the IMD unit at the address indicated on the IMD registration form unless the owner informs the Loft Board, in writing, of an alternate party or address, or both, to be contacted regarding a sale of improvements. Proof of service shall be in the form of a verified statement of the person who effected service, setting forth the time, place and other details of service, if service was made personally, or by copies of the return receipt and verified statement of mailing, if service was performed by mail. Communications by the Loft Board pursuant to these regulations will be sent by regular mail to the addresses indicated above.

Service shall be deemed effective upon personal delivery or five days following service by mail. Deadlines provided herein are established pursuant to the effective date of service.

(c) **Modifications on consent, change of address.** Deadlines, herein may be modified, applications may be withdrawn, and disputes may be resolved, by written agreement of the parties, subject to Loft Board approval. Parties may change their address upon service of written notice to the other parties and the Loft Board and such notice shall be effective upon personal delivery or five days following service by mail.

(d) **Parties.** Unless otherwise indicated herein, in cases involving an offer to purchase improvements, parties shall be limited to the owner and the outgoing tenant, except that a prospective tenant tendering an offer to purchase improvements shall be a party to cases involving issues of the **bona fides** of an offer.

(e) **Sales not subject, or partially subject, to these regulations.** These regulations do not apply to IMD units which have never been registered with the Loft Board. Any sales of improvements which take place in such units prior to registration do not constitute sales pursuant to §285(6) of the MDL.

These regulations do not apply to units which the Board has determined not to be covered by Article 7-C of the MDL.

These regulations also do not apply to sales of improvements between co-tenants of an IMD unit, where at least one of the co-tenants is remaining in occupancy and is an occupant qualified for the protection of Article 7-C. Also, compensation to prime lessees by subtenants or assignees who are residential occupants, pursuant to the section of the regulations on Subletting and Similar Matters regarding the prime lessee's right to compensation for costs incurred in developing residential unit(s), shall not constitute sales pursuant to §286(6). After such compensation has been made, where required under such section, the residential occupant shall have the right to sell the improvements in the unit pursuant to §286(6) and these Regulations. (See the section of Subletting and Similar Matters regulations regarding residential occupant's rights to sale of improvements pursuant to §286(6) of the MDL).

In a unit which has been determined by the Loft Board to be covered by Article 7-C, or has previously been registered with the Loft Board, but which is not registered in accordance with §2-07(a) "Interim Multiple Dwelling Unit" above, or with the New York State Division of Housing and Community Renewal (DHCR), a sale of improvements shall constitute the one-time-only sale as provided by §286(6) but it shall not be subject to the owner's right to challenge except on grounds of suitability of the prospective tenant which challenge must take place in a court of competent jurisdiction.

(f) **Applicability.** These rules shall apply to sales which occur on or after March 23, 1985, except as provided in §2-07(e), and except that the definition of the term "fair market value" set forth in subdivision (a) of this section, as amended effective on February 16, 1996, shall apply only to sales of improvements with respect to which a Disclosure of Sale Form was filed with the Loft Board on or after February 16, 1996. For the rules applicable to sales which occurred prior to March 23, 1985, see §2-07(h).

(1) **Right to sell.** The residential occupant of an IMD unit which is qualified for protection under Article 7-C, including such unit which has been legalized and is registered with DHCR, may sell the improvements of the unit to the owner or to a prospective tenant, subject to the procedures established herein. This right to sell may be exercised only once for each IMD unit. Such improvements must be offered to the owner for an amount equal to their fair market value as defined in §2-07(a) "Fair Market Value" above, prior to their sale to a prospective tenant, as provided herein.

(2) **Offers to sell to prospective tenant.** An outgoing tenant in an IMD unit, proposing to sell improvements to a prospective tenant, shall comply with the following procedures at least 30 days in advance of the date of closing or consummation of the proposed sale: (i) (A) The outgoing tenant shall notify the owner of his or her intent to move and to sell improvements, and the identity of the prospective tenant on an Improvements Sale Disclosure Form ("Disclosure Form"), as prescribed by the Loft Board, providing the following information to the owner:

(a) a list and description of the improvements

(1) installed and

(2) purchased by the outgoing tenant, with accompanying proof of payment; **(b)** a written copy of the offer, verified by the prospective tenant, to purchase such improvements, which includes all terms and conditions of the offer;

(c) identification of such prospective tenant by name, current business and home addresses and such other address, if any, as such prospective tenant elects for purposes of delivery of notices and communications, and telephone numbers;

(d) an affirmation by the outgoing tenant that he or she installed or purchased the improvements offered for sale, or if not, that he or she is authorized to sell the improvements on behalf of any other parties having ownership interest in such improvements, accompanied by appropriate evidence of such authorization;

(e) an affirmation by the prospective tenant that he or she has received and reviewed the Disclosure Form;

(f) provision of three reasonable dates and times at which inspection of the improvements by the owner or the

owner's designee, or both, would be available, within 10 days of service of the Disclosure Form

(B) The Disclosure Form shall also include the following advisories to the prospective tenant:

(a) the improvements for sale are limited to those items listed and described by the outgoing tenant;

(b) the prospective tenant is purchasing absolute title to all removable personal property and the use and enjoyment for the duration of the prospective tenancy of all other property deemed improvements pursuant to these regulations; the owner shall be responsible for maintenance of improvements deemed fixtures pursuant to these regulations except that some improvements may be altered or removed pursuant to code compliance and requirements;

(c) the right to sell improvements may be exercised only once for the unit and an incoming tenant cannot re-sell them except for removable personal property;

(d) the prospective tenant, upon consummation of the sale of improvements, assumes the right and obligations of the outgoing tenant as an occupant qualified for protection under Article 7-C;

(e) the amount of the rent and a statement as to the types of further increases which may be applicable to IMD units pursuant to terms of the Loft Board's interim rent guidelines, pass-throughs of costs determined pursuant to Code Compliance regulations, or rent increases pursuant to the Rent Guidelines Board's orders;

(f) if the building has not been issued a residential certificate of occupancy for its IMD units at the time of the offer to purchase, it remains subject to the requirement of Article 7-C and Loft Board Compliance regulations that such units be brought into compliance; **(g)** Article 7-C provides that the costs of legalization as determined by the Loft Board are passed through to the tenants and may result in increased rent above the base rent over a 10 or 15 year period;

(h) the offer is subject to the owner's right to purchase the improvements for an amount equal to their fair market value, to challenge the offer as provided in §2-07(g) of these regulations, and to consent to the prospective tenant, provided that consent may not be unreasonably withheld;

(i) rent regulation as provided for in Article 7-C is scheduled to expire on May 31, 2006, pursuant to section 3 of part T of chapter 61 of the Laws of 2005, and may or may not be renewed or amended by the legislature of the State of New York;

(j) the opportunity for decontrol or market rentals, if an owner purchases improvements, may not be available in a building when an owner has been found guilty by the Loft Board of harassment of tenants subject to regulations to be adopted by the Loft Board.

(ii) The original of the Disclosure Form, completed and executed, shall be filed with the Loft Board, together with proof of service. Within 10 days of receipt of such form, the Loft Board staff shall determine whether a sale for the unit in question has been previously recorded at the Board's offices. If such a sale has been recorded, the parties will be so notified and the proposed sale will not be permitted to proceed.

(3) **Owner's response to offer and proposed tenant.** Within 10 days of service of the Disclosure Form, the owner may request of the outgoing and prospective tenants such additional information as will enable the owner to decide whether or not to purchase the improvements, and to determine the suitability of the prospective tenant. In such response the owner must affirm that the subject unit is currently registered with the Loft Board or DHCR and was registered at the time of service of the Disclosure Form and that he or she either owns the premises or is authorized to act on behalf of the owner in this matter. Any request by the owner for additional information from the outgoing tenant shall not be unduly burdensome. Requests for additional information regarding a decision whether to purchase the improvements must be relevant to the criteria set forth for making such determination in §2-07(g) below. If the owner submits further requests for information regarding the purchase of improvements, determined by the Loft Board to be

unduly burdensome, such owner may forfeit his/her right to purchase the improvements in question.

Within 20 days of service of the Disclosure Form, or of the additional information reasonably requested by the owner, whichever is later, the owner shall notify the outgoing and prospective tenant, of the owner's

(i) acceptance and commitment to purchase at the offered price,

(ii) consent to the proposed tenant and sale or

(iii) rejection of the offer based on one or more of the grounds for challenge enumerated in §2-07(g)(2) herein by service upon the outgoing and prospective tenants of a challenge application and by filing with the Loft Board a copy of said challenge. If one of the grounds for challenge is the unsuitability of the prospective tenant, the owner must initiate any action based on that ground in a court of competent jurisdiction, and shall so inform the Loft Board in writing.

If the owner rejects the offer, the notice shall elaborate the grounds therefor. If the rejection is based on the claim that the offer exceeds the fair market value of these improvements, the rejection shall include the owner's fair market valuation of the improvements and the owner's commitment to purchase if the fair market value is determined to be no greater than such valuation. If the rejection is based on the owner's claim that (s)he made or purchased the improvements, the rejection shall indicate which improvements are so claimed and include proof thereof.

Failure of the owner to file a complete application, including payment of a fee of $800.00 to cover the full cost of an appraiser selected by the Board, with the Loft Board, with copies to the outgoing and prospective tenants, within the time for response prescribed in §2-07(f)(3) above, shall be deemed an acceptance of the proposed sale except if the owner's challenge is on the ground of the unsuitability of the prospective tenant, the owner must initiate any action based on that ground in a court of competent jurisdiction and shall so inform the Loft Board in writing within the time period for response prescribed in §2-07(f)(3).

(4) **Acceptance of prospective tenant through owner's consent to tenant's purchase or through owner's failure to respond.** An owner's failure to send a complete notice of acceptance or rejection within the time provided above, or such other time as mutually agreed upon, shall be deemed an acceptance of the proposed sale and tenant. In such a case, or when the owner consents to the proposed tenant, said tenant shall assume the rights and obligations of the outgoing tenant as an occupant qualified for protection under Article 7-C, upon the consummation of the sale and compliance with the other provisions of these regulations. Such tenant shall be permitted to commence residency, notwithstanding the lack of a residential certificate of occupancy covering the unit. He or she shall pay the rent previously charged to the outgoing tenant, including any applicable pass-throughs determined pursuant to Code Compliance regulations plus:

(i) any increases permissible pursuant to the Loft Board's interim rent guidelines if such increases have not already been imposed; or

(ii) any increases pursuant to the Rent Guidelines Board's orders, if applicable.

(5) **Owner's purchase of improvements.** If the owner elects to purchase the improvements in an IMD unit in accordance with the terms of the offer, the owner shall notify the outgoing tenant and the prospective tenant of such commitment as required in §2-07(f)(3) above, and shall meet the terms of the offer within 30 days of service of such commitment upon the outgoing tenant. Failure by the owner to consummate such a commitment within such 30-day period shall be deemed a waiver of the owner's right to purchase the improvements at an amount equal to their fair market value.

Upon consummation of the purchase by the owner and compliance with the filing provisions of these regulations, any unit subject to rent regulation solely by reason of Article 7-C of the MDL, and not receiving any benefits of real estate tax exemption or tax abatement, shall be exempted from the provisions of Article 7-C requiring rent regu- lation,

(i) if such building had fewer than six residential units on June 21, 1982, and on July 27, 1987; or

(ii) if the unit was purchased by the owner pursuant to these rules before July 27, 1987 and the building had fewer than six residential units on June 21, 1982, but six or more residential units on July 27, 1987.

Otherwise, upon consummation of the purchase by the owner any unit subject to rent regulation solely by reason of Article 7-C of the MDL, and not receiving any benefits of real estate tax exemption or tax abatement, shall be subject to subsequent rent regulation after being rented at market value, if such building had six or more residential units on June 21, 1982 or on July 27, 1987.

These exemptions from rent regulation shall not be available in a building when an owner has been found guilty by the Loft Board of harassment of tenants pursuant to §2-02. This restriction shall apply to any sale of improvements that takes place on or after the date of the order containing the finding of harassment until such time as the order may be terminated by the Loft Board in accordance with §2-02(d)(2).

(g) **Challenges to proposed sales of improvements.** (1) **Procedures.** (i) An owner of an IMD unit who is contesting the proposed sale of improvements shall apply to the Loft Board for a determination within 20 days of service of the Disclosure Form, or within such additional period as provided pursuant to §2-07(f)(3) above, and at such time shall pay the mandated filing fee.

Filing of an application which is found by the Loft Board to be frivolous may constitute harassment, with the consequences provided in §2-07(f)(5) herein. An objection to the sale may be found to be frivolous on grounds including, but not limited to, the following: that it was filed without a good faith intention to purchase the improvements at fair market value or that the owner's valuation of the improvements has no reasonable relationship to the fair market value, as determined by the Loft Board.

(ii) Recognizing the necessity that sales of improvements occur without undue delays, the Loft Board will process challenges to such sales pursuant to the following expedited procedures:

(A) The owner shall serve the outgoing tenant and prospective tenant with a copy of the owner's challenge application, upon such forms as are established by the Loft Board, and shall file two copies of the application at the Loft Board, with proof of service.

(B) Three copies of any written answers from the outgoing and prospective tenants in response to the challenge application must be served on the Loft Board at its offices within five business days of receipt of such challenge application.

The outgoing tenant's answer shall include three available dates and times during regular business hours within 10 days of the date of filing of the answer with the Board during which the improvements will be available to be inspected by a Board-appointed appraiser.

Appraisers shall be appointed by the Loft Board and shall be suitably qualified in valuing improvements and shall be a Registered Architect, a Professional Engineer or a New York State Certified General Real Estate Appraiser. Appraisers shall sign a written statement agreeing to adhere to the appraisal standards and procedures adopted by the Board.

The Loft Board shall serve a copy of the answer on the owner and on the prospective tenant. The Board shall also notify the owner, outgoing tenant and prospective tenant of an inspection date at one of the times designated by the outgoing tenant, or at another time fixed by the Board if none of the proposed dates is mutually convenient. Following such an inspection, a copy of the appraiser's findings shall be mailed to the three parties. A hearing date shall be fixed at a date no fewer than eight days nor more than fifteen days from the mailing by the Loft Board of the answer or, if applicable, the appraiser's report, whichever is later. There shall be no more than one adjournment per party, limited to

seven days, for good cause shown. Except as provided herein, the requirements of the Loft Board's rules and regulations for Internal Board Procedures shall apply.

If a challenge application results in an order by the Loft Board determining that the offer constitutes fair market value, the owner may exercise the right to purchase improvements at that price or, if the determination is that the offer does not constitute fair market value, at the price determined to constitute fair market value. The owner shall notify the outgoing tenant within 10 days of service of the Loft Board's order determining fair market value of the owner's intent to purchase at such price less half the cost of the appraisal and shall consummate the purchase within 10 days of such notice to the outgoing tenant, except that where the fair market value determination is less than the offered price received by the outgoing tenant, the outgoing tenant may decline to sell the improvements. The Loft Board's order determining fair market value shall constitute the price at which the outgoing tenant must first offer to sell the previously offered improvements to the owner for a period of two years from the issuance of the Loft Board order.

(iii) If the owner elects not to purchase at the Board-determined fair market value, the outgoing tenant may sell to a prospective tenant without challenge by the owner to the fair market value of the offer. The owner's failure to consummate a purchase, following notice of intent to purchase, within the period prescribed above, shall be deemed an election not to purchase.

(2) **Grounds for challenge.** A challenge fully setting forth the owner's claims may be filed on the following grounds:

(i) The offer is not a bona fide, arms-length offer which discloses to the owner all its terms and conditions.

(ii) Some or all of the improvements offered for sale were made or purchased by the owner, not the outgoing tenant, with the specificity required in §2-07(f)(3) above.

(iii) The offer exceeds fair market value as determined in accordance with the following standards:

(A) A **bona fide** offer to purchase improvements made or purchased by the outgoing tenant shall be presumed to represent fair market value.

(B) The presumption may be rebutted if the owner establishes that

(a) for such improvements as were purchased by the outgoing tenant, the offer exceeds the amount paid to the owner or to the former tenant, or both, for such improvements; or

(b) for such improvements as were made by the outgoing tenant, the offer exceeds the replacement cost of the improvements less depreciation for wear and tear and age.

(C) Noncompliance of the improvements with the building code or other applicable laws or regulations shall not be considered in diminution of the amount paid or the replacement costs for improvements made or purchased prior to March 23, 1985.

If a basis of a challenge is the unsuitability of the prospective tenant, the owner must initiate any action based on that ground in a court of competent jurisdiction; such challenge will not be entertained by the Loft Board.

(h) **Sales which occurred prior to the effective date of these regulations.** (1) For sales which occurred prior to March 23, 1985, the provisions of this section shall apply as follows:

(i) Where application for registration as an IMD was received on or before January 31, 1983, sales of improvements consummated on or after June 21, 1982 shall be subject to the rights and obligations set forth in paragraphs (2) and (3) of this subdivision (h).

(ii) Where application for registration as an IMD was received after January 31, 1983, sales of improvements consummated after receipt of such application, but prior to March 23, 1985, shall be subject to the rights and obligations set forth in paragraphs (2) and (3) of this subdivision (h).

(iii) Where sales of improvements were consummated for IMD units, prior to application for registration and prior to March 23, 1985, these regulations do not apply and such sales do not constitute the one-time only sales permitted pursuant to §286(6) of the MDL.

(2) **Prior sales without offer to owner or without acceptance.** If the sale of improvements in an IMD unit to an incoming tenant has occurred prior to March 23, 1985, and is subject to the provisions of this subsection (see subparagraphs (1)(i) and (1)(ii) of this subdivision (h)), either without their first having been offered for purchase to the owner, or with the owner having contested the sale in writing, the owner must be afforded the opportunity to purchase the improvements at an amount equal to their fair market value, except that if the owner has accepted rent from the incoming tenant who purchased the improvements, such owner may purchase the improvements at the price paid by such incoming tenant, which shall be deemed to constitute fair market value, and may not challenge that price as in excess of fair market value.

(i) Where the owner has retained his/her right to purchase pursuant to this paragraph (2), and may wish to purchase the improvements, and the unit is registered with the Loft Board or with DHCR the owner must serve the purchasing tenant with a notice of his/her interest in purchasing the improvements no later than 90 days from the effective date of this regulation. The tenant must serve the owner with a notice describing the improvements purchased together with proof of payment of the amount paid to the outgoing tenant, within 15 days of service of notice by the owner. Within 30 days of receipt of this information, the owner shall send a notice to the tenant of the owner's

(A) commitment to purchase at such price,

(B) challenge to the fair market value of the improvements, unless such challenge is barred by the owner's acceptance of rent from the incoming tenant, or

(C) acceptance of the sale and tenancy, and such notice or failure to respond shall be of the same form, effect and consequences as if provided pursuant to §§2-07(f)(3)-(5) above.

(ii) Where the owner consummates a purchase of improvements pursuant to this section,

(A) the tenant shall have the right to remain in occupancy at the rent previously paid and accepted by the owner for 120 days, commencing on the first rent payment date following owner purchase, after which such tenant must either vacate the premises or agree to pay the rent set by the owner, with subsequent rent regulation, if applicable; or

(B) if the owner has not been accepting rent from such tenants, the tenant shall have the right to remain for 60 days commencing on the first rent payment date following owner purchase, provided that use and occupancy is tendered by the tenant in the amount of rent paid by the last tenant, after which such tenant must vacate the premises or agree to pay the rent set by the owner, with subsequent rent regulation, if applicable.

(3) **Prior sales of improvements with offer to owner.** (i) If the sale of improvements in an IMD unit has occurred prior to March 23, 1985, and is subject to the provisions of this section (see §§2-07(h)(1)(i) and (ii) above), either

(A) to the owner, or

(B) to a prospective tenant where the owner has declined to purchase but did not claim in writing that the purchase price was in excess of the fair market value, a Loft-Board-approved Sales Record shall be filed with the Loft Board within 30 days of the effective date of this regulation. Any transaction which is the subject of a Record filed in compliance with this section shall be deemed valid and shall constitute the one-time-only sale authorized by §286(6) of

the Multiple Dwelling Law, regardless of whether it was conducted in accordance with the procedures for sales of improvements described herein.

(ii) If a tenant claims that a sale of improvements prior to March 23, 1985 did not yield fair market value and that tenant was denied rights under the statute, such a challenge must be brought in a court of competent jurisdiction and will not be entertained by the Loft Board except that if such tenant claims harassment the Loft Board may entertain such claim pursuant to Loft Board regulations on harassment.

(i) **Fair market value of improvements; hardship exemptions, vacate orders, owner occupancy.** In the event that the failure of an owner to comply with the legalization deadlines mandated by MDL §284(1)(i) or MDL §284(1)(ii) results in a municipal vacate order pursuant to MDL §284(1)(iv), or in the event of the granting by the Loft Board of a hardship exemption pursuant to MDL §285(2), or in the event that the owner successfully obtains the right to occupy former IMD units under the provisions of the Rent Stabilization Law and the Rent Stabilization Code §§2524.4(a) and 2525.6, an occupant qualified for Article 7-C protections may apply to the Loft Board for a determination of fair market value of improvements and reasonable moving expenses. As further provided in MDL §284(1)(iv), any such vacate order is to be deemed an order to correct the non-compliant conditions, subject to the provisions of Article 7-C, and the occupant shall have the right to reoccupy the unit when the condition has been corrected and shall be entitled to all applicable protections of Article 7-C. The Board shall determine fair market value in accordance with this section except that the tenant shall be the applicant, affected parties shall be limited to the owner and tenant, and the tenant shall offer proof of reasonable moving expenses as well as both parties offering proof as to the value of the improvements. Upon a finding by the Board of the fair market value of the improvements and of reasonable moving expenses, it shall order the owner to pay such amounts to the tenant plus an amount equal to the application fee.

(j) **Filing of sale record.** (1) Except as provided in paragraph (2) below, within 30 days of the sale of improvements in a unit pursuant to Multiple Dwelling Law §286(6) or of March 23, 1985, whichever is later, the owner, if such owner purchased the improvements shall file a Loft Board-approved Sale Record, which provides the following information: address of IMD and location of unit; name and telephone number of incoming tenant; description of improvements conveyed; purchase price and purchaser; and rent. Failure by the owner to file the required Sale Record within 30 days of the sale of improvements will subject the owner to a civil penalty up to $1,000 as determined by the Loft Board.

(2) If a tenant purchases improvements subsequent to March 23, 1985, no further filing is required. Unless the Loft Board is otherwise informed, receipt by the Loft Board of a Disclosure Form shall be presumed to be notice that a sale to the prospective tenant identified therein has taken place, 60 days following receipt of such Disclosure Form, or 60 days following the last deadline modification approved by the Loft Board. If no sale has occurred, the outgoing tenant shall so inform the Board within 60 days of such time. If the outgoing tenant fails to advise the Board within the prescribed 60 days that no sale has taken place, such tenant may nevertheless rebut the presumption by filing an application for improvement sales consisting of another Disclosure Form, the filing fee for a sale of improvements application of $800.00, and an affirmation by the outgoing tenant that the prior proposed sale did not occur, that the tenant has remained in occupancy of the unit and that no sale of improvements in the unit has occurred.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) "Fair Market Value", pars (i)-(ii) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996.

[See Note 1]

Subd. (e) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

Subd. (f) amended City Record May 8, 1997 eff. June 7, 1997. [See T29 §2-01 Note 2]

Subd. (f) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996.

Subd. (f) par (2) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

Subd. (f) par (2) subpar (i) clause (B) subclause (i) amended City Record Nov. 3, 2005 §4, eff. Dec. 3, 2005. [See T29 §2-01 Note 6]

Subd. (f) par (2) subpar (i) clause (B) subclause (i) amended City Record Aug. 22, 2003 eff. Sept. 21, 2003. [See T29 §2-01 Note 5]

Subd. (f) par (2) subpar (i)(B)(i) amended City Record Jan. 14, 2000 eff. Feb. 13, 2000. [See T29 §2-01 Note 2]

Subd. (f) par (2) subpar (i)(B)(i) amended City Record May 8, 1997 eff. June 7, 1997. [See T29 §2-01 Note 2]

Subd. (f) par (3) amended City Record jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

Subd. (f) par (5) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (g) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

Subd. (h) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

Subd. (i) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

Subd. (j) amended City Record Jan. 17, 1996 eff. Feb. 16, 1996. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 17, 1996:

Section 282(d) of the Multiple Dwelling Law ("MDL") provides, in pertinent part, that the New York City Loft Board has the authority to issue and enforce rules and regulations on the hearing of complaints and applications made to it and on rules and regulations governing compliance with MDL Article 7-C, the "Loft Law". Pursuant to this authority, the Loft Board has previously issued rules relating to Sales of Improvements, 29 RCNY §2-07.

The Loft Board is amending its rules regarding sales of improvements to address issues that have arisen since these rules were enacted in 1985. The most significant issue is the depreciation of these improvements due to wear, and tear and age. In 1985 many of the improvements that were installed were relatively new. In 1995 they are considerably older and the Board recognizes that depreciation has had a significant impact upon value.

The Board also added language to acknowledge the validity of sales of improvements that occur after a unit has been legalized and registered at the New York State Division of Housing and Community Renewal and for instances where a tenant is evicted pursuant to principal vacate orders or owner occupancy proceedings.

Pursuant to the above-cited authority, the proposed amendments to rules relating to Sales of Improvements, 29 RCNY §2-07, will further the goals of MDL Article 7-C insofar as they clarify the rights of owners and tenants in an increasing number of IMD units that are becoming legalized and registered with DHCR.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The owner's failure to act within 20 days to either match the offer made by the incoming tenant or to challenge the fair market value before the Loft Board or the suitability of the incoming tenant in court, results in the owner's acceptance of the incoming tenant and the sale of improvements to them. Ross v. Wolfe, 641 N.Y.S.2d 303 (App.Div. 1st Dept. 1996); accord, Mark-Holli Realty, Inc. v. New York City Loft Board, 205 A.D.2d 399, 613 N.Y.S.2d 588 (1st Dept. 1994).

¶ 2. Pursuant to subparagraph (h)(1)(iii) of this section, an alleged sale of improvements during July or August 1982 did not constitute the one-time sale permitted by §286(6) of the Multiple Dwelling Law, because the sale was consummated before application for registration and before March 23, 1985. Matter of Perkins, OATH Index No. 1988/96 (May 1, 1997), aff'd, Loft Bd. Order No. 2122 (June 26, 1997).

¶ 3. Where the prime tenant purchased the fixtures of one of his subtenants in October 1982, and the building owner registered the building as an IMD by registration dated January 31, 1983 but received by the Loft Board on February 2, 1983, the sale of improvements was governed by subparagraph (h)(1)(iii) of this section, and therefore the sale of improvements did not constitute the one-time sale permitted pursuant to §286(6) of the Multiple Dwelling Law. Matter of Longfellow Properties, Inc., OATH Index No. 1780/96 (Nov. 4, 1996), aff'd, Loft Bd. Order No. 2057 (Jan. 30, 1997).

¶ 4. Where improvements to a loft unit were made by an earlier tenant, and were neither made by nor purchased by the subsequent tenant of the unit, the subsequent tenant is not entitled under this section to sell the improvements. Matter of Sansone, OATH Index No. 1125/96 (Mar. 27, 1996), aff'd, Loft Bd. Order No. 1955 (Apr. 25, 1996).

¶ 5. Applicant's express sale of rights pursuant to Multiple Dwelling Law section 286(12) and sale of fixtures pursuant to Multiple Dwelling Law section 286(6) to prior landlord operated to deregulate the entire third floor of premises, pursuant to paragraph (5) of this section. **Matter of Fergusson**, OATH Index No. 923/99 (June 11, 1999), **aff'd**, Loft Bd. Order No. 2440 (Nov. 1, 1999).

¶ 6. Multiple Dwelling Law section 286(6) and this rule provide that an outgoing residential tenant qualified for protection under the Loft Law may sell improvements to the incoming tenant, subject to the owner's right of first refusal. However, neither the law nor rule extend such right to the estate of a deceased tenant. Thus, the protected occupant's estate was not entitled to the value of improvements. **Matter of 595 Broadway Associates,** OATH Index No. 1083/02 (Nov. 7, 2002), **aff'd,** Loft Bd. Order No. 2770 (Jan. 9, 2003).

¶ 7. Sale of fixtures between outgoing and incoming tenants found invalid where co-owner had delivered a valid notice exercising its right to purchase unit's rights and improvements pursuant to subdivision (f)(5) of this section and the statutory right of owners to purchase improvements. **Matter of 79 Warren Street Associates**, LLC OATH Index Nos. 749/03, 1523/03 (Jan. 13, 2004), **aff'd**, Loft Bd. Order No. 2852 (Mar. 18, 2004).

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Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-08 Coverage and Issues of Status.

Registration as an interim multiple dwelling (hereinafter IMD) with the New York City Loft Board (hereinafter Loft Board) shall be required when a building, structure or portion thereof meets the criteria for an IMD set forth in §281 of Article 7-C of the Multiple Dwelling Law as further delineated in the following regulations.

(a) **Definitions.**

Building.

(i) As defined in §12-10 of the Zoning Resolution, a building is any structure which:

(A) is permanently affixed to the land

(B) has one or more floors and a roof

(C) is bounded by either open area or the lot lines of a zoning lot

(D) may be a row of structures and have one or more structures on a single zoning lot.

(ii) In deciding whether a structure is a single building, as distinguished from more than one building for purposes of IMD determination, the Loft Board shall employ the definition set forth above and consider **inter alia** the following factors:

(A) whether the structure is under common ownership;

(B) whether contiguous portions of the structure

within the same zoning lot are separated by individual load-bearing walls, without openings for the full length of their contiguity, as distinguished from non-loadbearing partitions;

(C) whether the structure has been operated as a single entity, having one or more of the following:

(a) a common boiler;

(b) a common sprinkler system;

(c) internal passageways;

(d) other indicia of operation as a single entity.

(D) whether the owner or a predecessor has at any time represented in applications or other official papers that the structure was a single building;

(E) whether a single certificate of occupancy has been requested or issued for the structure; the pattern of usage of the building during the period from April 1, 1980, to December 1, 1981.

Grandfathering. For purposes of these regulations, "grandfathering" means the administrative process by which a residential unit, located where residential use is not otherwise permitted by the Zoning Resolution, is determined by the agency designated in the Zoning Resolution, to have been residentially occupied on a specified date, and is therefore a legal residential use as of right, eligible for Article 7-C coverage.*3 Grandfathering may also be accomplished by a special permit process defined in subdivision (ii) below, which requires a further discretionary approval in addition to determination of occupancy on a specified date.

(i) **Minor modification and an administrative certification.** A "minor modification" and an "administrative certification" as found in §281(2)(i) of the Multiple Dwelling Law are terms which refer to various procedures which may be specified in the Zoning Resolution in addition to the grandfathering determinations of occupancy, concerning non-discretionary actions by the agency to which an application must be made.

(ii) **Special permit.** A "special permit" as found in §281(2)(iv) of the Multiple Dwelling Law is a term referring to a grandfathering procedure specified in the Zoning Resolution which involves a discretionary determination and approval by the City Planning Commission, to which the application must initially be made, and by the Board of Estimate.**4

Residential unit. For purposes of these regulations the residence or home of a "family" as defined in Multiple Dwelling Law §4(5)***5 shall be deemed a residential unit.

In order to qualify as a residential unit, the unit must have attributes of independent living such as:

A separate entrance providing direct access to the unit from a street or public area, such as a hallway, elevator or stairway within a building;

One or more rooms arranged to be occupied by the members of a family, which room or rooms are separated and set apart from all other rooms within a building; and

Such other indicia of independent living which demonstrate the unit's use as a residence of a family.

Study area. A study area as found in §281(2)(iii) of the Multiple Dwelling Law is a term referring to an area, defined in §42-02 of the Zoning Resolution, which is currently zoned as manufacturing and under study by the City Planning Commission for a determination of the appropriateness of the zoning.

(b) **Certificate of occupancy.** (1) Registration as an IMD of any building, structure or portion thereof for which a final, as distinguished from a temporary, residential certificate of occupancy was issued pursuant to §301 of the Multiple Dwelling Law prior to June 21, 1982, shall not be required for such units designated as residential on the certificate of occupancy. Such units shall be exempt from Article 7-C coverage unless the certificate of occupancy is revoked.

(2) Registration as an IMD with the Loft Board shall be required of:

(i) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in §281 of the Multiple Dwelling Law and these regulations, for all residentially-occupied units which lacked a final residential certificate of occupancy issued pursuant to §301 of the Multiple Dwelling Law prior to June 21, 1982. Issuance of a residential certificate of occupancy for such units on or after June 21, 1982, will not be the basis for exemption from Article 7-C coverage;

(ii) Any building, structure or portion thereof which meets the criteria for an IMD set forth in §281 of the Multiple Dwelling Law and these regulations, for all residentially occupied units which obtained a temporary, but not final, residential certificate of occupancy issued pursuant to §301 of the Multiple Dwelling Law prior to June 21, 1982. Issuance of a temporary residential certificate of occupancy for such units prior to June 21, 1982, will not be the basis for exemption from Article 7-C coverage if on or after June 21, 1982 a period of time of any length existed for whatever reason whatsoever during which a temporary or final certificate of occupancy issued pursuant to §301 of the Multiple Dwelling Law was not in effect for such units.

(iii) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in §281 of the Multiple Dwelling Law and these regulations, for all residentially occupied units for which a temporary or final residential certificate of occupancy has been revoked. The prior issuance of a temporary or final certificate of occupancy which has been revoked for such units will not be the basis for exemption from Article 7-C coverage.

(c) **Qualifying period of occupancy.** (1) Registration as an IMD with the Loft Board shall be required of any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in §281 of the Multiple Dwelling Law and these regulations, and had at least three units residentially occupied on December 1, 1981, since April 1, 1980. If the building, structure or portion thereof contained three units so occupied on December 1, 1981, and on April 1, 1980, and such residential use is permissible under the Zoning Resolution as of right, or through grandfathering, or the units are in a study area as defined in §2-08(a) "Study area" of these regulations, there shall be a presumption that the building is an IMD and that such units are covered under Article 7-C. However, if there is a determination by the Loft Board that there was a bona fide change to exclusively non-residential use in a unit between April 1, 1980, and December 1, 1981, such unit shall not be counted for purposes of determining whether the building is an IMD. The occupant of any unit which changed to a bona fide exclusively non-residential use, must have been a party distinct and independent of the owner of the building for the presumption of IMD coverage to be rebutted.

(2) Registration as an IMD with the Loft Board shall also be required of any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in MDL §281 and these rules, that had one or more units residentially occupied on May 1, 1987, since December 1, 1981, that was occupied for residential purposes since April 1, 1980, regardless of whether residential use is permitted under the Zoning Resolution as of right, or through grandfathering as defined in §2-08(a) "Grandfathering" of these rules, or because the building is located in a study area as defined in §2-08(a) "Study area" of these rules. Residential occupancy of one or more units of the building, structure or portion thereof, as described in this paragraph, on May 1, 1987, on December 1, 1981 and on April 1, 1980, shall create a presumption that the building is an IMD or that such unit or units are covered under Article 7-C. However, if

there is a determination by the Loft Board that there was a bona fide change to exclusively non-residential use in a unit between April 1, 1980, and December 1, 1981 or between December 1, 1981 and May 1, 1987, such unit shall not be counted for purposes of determining whether the building is an IMD. The occupant of any unit which changed to a bona fide exclusively non-residential use must have been a party distinct and independent of the owner of the building for the presumption of IMD coverage to be rebutted.

(3) Neither vacancies of any duration for units residentially occupied on December 1, 1981, and on April 1, 1980 as set forth in §2-08(c)(1), or for units occupied on May 1, 1987, on December 1, 1981 and on April 1, 1980 as set forth in §2-08(c)(2), nor a change or changes or residential occupants in such units during the intervening period(s) will be the basis for exemption from Article 7-C coverage.

(d) **Calculation of residential units.** (1) Registration as an IMD with the Loft Board shall be required of any building, structure or portion thereof which has a minimum of three residential units, except as provided in subparagraph (v) of paragraph 1 of this subdivision, and which otherwise meets the criteria for an IMD set forth in §281 of the Multiple Dwelling Law and these regulations. For purposes of counting to determine whether a building qualifies as an IMD and must be registered, the term "residential unit" shall include:

(i) Any unit which meets the criteria of §281(1) of the Multiple Dwelling Law in that:

(A) a portion of the building or structure within which the unit is located was occupied at any time for manufacturing, commercial or warehouse purposes;

(B) it lacked a residential certificate of occupancy pursuant to §301 of the Multiple Dwelling Law as further delineated in §§2-08(b)(1) and (2) of these regulations;

(C) it was occupied for residential purposes on December 1, 1981, since April 1, 1980, as further delineated in §2-08(c) of these regulations; and

(D) it is located in a geographical area in which the Zoning Resolution permits residential use as of right or in which the residential use may become a use as of right as a result of approval of a grandfathering application, in accordance with §281(2)(i) or (iv) of the Multiple Dwelling Law as defined in §2-08 (a) "Grandfathering" of these regulations; or is located in a study area designated by the Zoning Resolution for possible rezoning to permit residential use, in accordance with §281(2)(iii) of the Multiple Dwelling Law, as defined in §2-08(a) "Study area" of these regulations;

(ii) Any unit designated as "Artist in Residence"

(A.I.R.) pursuant to directives of the Department of Buildings, creating such status;

(iii) Any unit designated as "joint living work quarters for artists" pursuant to the Zoning Resolution;

(iv) Any unit residentially-occupied by a subtenant or assignee of the prime tenant of such unit.

(v) Registration as an IMD with the Loft Board shall also be required of any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in MDL §281, which has one or more residential units that were residentially occupied on May 1, 1987, since December 1, 1981, that were occupied for residential purposes since April 1, 1980, as further delineated in §2-08(c)(2) of these rules, regardless of whether the building is located in a geographical area in which the Zoning Resolution permits residential use as of right, or through grandfathering as defined in §2-08(a) "Grandfathering" of these rules or because the building is located in a study area as defined in §2-08(a) "Study area" of these rules. However, for a unit to qualify as a "residential unit" pursuant to this subparagraph, the building in which it is located must meet the criteria of MDL §§281(1) and 282(2)(ii) in that: (A) a portion of the building or structure was occupied at any time for manufacturing, commercial or warehouse purposes; (B) the building

lacked a residential certificate of occupancy pursuant to MDL §301 as further delineated in §§2-08(b)(1) and (2) of these rules; (C) it contained at least three units residentially occupied on December 1, 1981, since April 1, 1980; and (D) it is not municipally owned.

(2) For purposes of counting to determine whether a building qualifies as an IMD and is covered under Article 7-C, residential units described as follows shall not be included: (i) Any units designated as residential on a final certification of occupancy issued pursuant to §301 of the Multiple Dwelling Law prior to June 21, 1982;

(ii) Any units designated as "joint living work quarters for artists" on a final certificate of occupancy issued prior to June 21, 1982;

(iii) Any units designated for a commercial use with an accessory residential use on a final certificate of occupancy issued prior to June 21, 1982.

(e) **Zoning regulations.** (1) Registration as an IMD shall be required of any building, structure or portion thereof, which meets the criteria for an IMD as set forth in §281(1) of the Multiple Dwelling Law and the regulations issued pursuant thereto, except that any building located in a zoning district designated as manufacturing in the Zoning Resolution, for which district there are no "grandfathering" provisions as defined in these regulations shall not qualify as an IMD. This exception, however, shall not apply to buildings, structures or portions thereof which otherwise meet the criteria of §281(1) for an IMD, if such building is located in a "Study area" as defined in §2-08(a)&#34§udy area" of these regulations and the registration of such building shall be required. This exception shall also not apply to buildings, structures or portions thereof which otherwise meet the criteria of MDL §281(1), if such building also meets the requirements of MDL §281(4) and the rules issued pursuant thereto. Except for a building or structure or portion thereof which qualifies for coverage under Article 7-C solely by reason of MDL §281(4), the zoning regulations and the grandfathering provisions for the district in which a building or structure is located will determine whether and when the owner of such building, which otherwise meets the criteria for an IMD set forth in §281(1) and the regulations issued pursuant thereto, is mandated to meet the compliance requirements for legalization set forth in ;st284(1).

(2) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in §281(1) of the Multiple Dwelling Law and these regulations and is located in an area which permits residential use as of right, shall be obligated to meet the compliance requirements for legalization by the dates designated in §284(1), except as provided in §§2-08(e)(4)(i) and (iii) infra and as further delineated in §2-01(a) of these rules. The term "residential use as of right" as employed in §281(2) of Article 7-C means that the zoning regulations permit residential use without requiring further approvals pursuant to the Zoning Resolution.

(3) Any unit designated as "joint living work quarters for artists" in a zoning district which does not otherwise permit residential use as of right and which is currently occupied by a resident or residents who cannot qualify as certified artists, as defined in 7-C, if the building in which such unit is contained, otherwise meets the criteria for an IMD set forth in §281(1) of the Multiple Dwelling Law and these regulations. The non-artist status of the current occupant shall not be the basis for exemption from Article 7-C coverage including the legalization requirements of §284(1). At the time of issuance of the final certificate of occupancy, the occupant of such a unit must be in compliance with the Zoning Resolution or the unit must be vacant.

(4) **Legalization compliance timetable.**

(i) For any building, structure or portion thereof, which contains fewer than three residential units as of right and one or more units eligible for coverage by employing one of the grandfathering procedures set forth in §§281(2)(i) or (iv) of the Multiple Dwelling Law and defined in §2-08(a) "Grandfathering" (i) and (ii) of these regulations, the timing of the compliance requirements of §284(1) of the Multiple Dwelling Law shall commence upon approval of the grandfathering application of the unit which becomes the third eligible residential unit for purposes of calculation of units qualifying the building as an IMD.

(ii) For any registered building in the category described in §2-08 (e)(4)(i) of these regulations, for which denial of a grandfathering application reduces the number of qualifying residential units below three, IMD status for such building expires and the other residential units in such building cease to be covered by Article 7-C, unless the building qualifies for coverage under Article 7-C pursuant to MDL §281(4) and the rules issued pursuant thereto.

(iii) Any building, structure or portion thereof which contains three or more residential units as of right, and one or more additional units eligible for coverage by employing one of the grandfathering provisions of §§281(2)(i) or (iv) of the Multiple Dwelling Law, shall be obligated to meet the compliance requirements for legalization by the dates designated in §284(1) of the Multiple Dwelling Law, as further delineated in §2-01(a) issued pursuant thereto, for such as of right residential units. The timing of the compliance requirements for the other eligible units shall commence as follows:

(A) Where an application for grandfathering for such unit is made pursuant to one of the procedures designated as a "minor modification" or "administrative certification" in §281(2)(i) of the Multiple Dwelling Law, upon a determination of residential occupancy on the date designated in the particular grandfathering provision of the Zoning Resolution;

(B) Where an application for grandfathering for such unit is made pursuant to a "special permit application as designated in §281(2)(iv) of the Multiple Dwelling Law, upon the granting of such special permit.

(iv) For any unit eligible for coverage by employment of one of the grandfathering procedures set forth in §§281(2)(i) or (iv) of the Multiple Dwelling Law and defined in §§2-08(a) "Grandfathering" (i) and (ii), the final denial of a grandfathering application or the failure to apply for grandfathering within the time period specified in the Zoning Resolution will terminate coverage for such unit unless such unit qualifies for coverage under Article 7-C pursuant to MDL §281(4).

(v) For any building, structure or portion thereof, which otherwise meets the criteria for an IMD set forth in §281(1) of the Multiple Dwelling Law and these regulations, but is located in an area designated by the Zoning Resolution as a study area, the timing of the compliance requirements of §284(1) shall commence upon rezoning of such study area to permit residential use as of right. If the rezoning permits residential use only through grandfathering procedures, the timing of the compliance requirements of §284(1) and the rules issued pursuant thereto shall commence upon the approval of the grandfathering application of the unit which becomes the third eligible residential unit for purposes of calculation of units qualifying the building as an IMD.

For any registered building in a study area as described in §2-08(a) "Study area" of these regulations, for which the City Planning Commission has approved neither rezoning nor grandfathering by December 31, 1983, IMD status for such building expires and all of the units in such building cease to be covered by Article 7-C, unless there is a recommended extension of such deadline by the City Planning Commission. If the Board of Estimate disapproves rezoning for residential use or grandfathering or the extension of such deadline, IMD status for such building expires and all the units in such building cease to be covered by Article 7-C.

However any building, structure or portion thereof which ceased to be covered under Article 7-C as a result of the failure to rezone the study area, permit grandfathering or to extend the deadlines as set forth in the foregoing paragraph shall be covered by Article 7-C if it meets the criteria of MDL §281(4) of the Multiple Dwelling Law.

(f) **Municipally owned buildings.** (1) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD as set forth in §2-09(1) of the Multiple Dwelling Law and these regulations, but is municipally owned, shall be exempt from coverage of Article 7-C.

(2) Any building, structure or portion thereof, which otherwise meets the criteria for an IMD as set forth in §281(1) of the Multiple Dwelling Law and these regulations, formerly municipally owned, but for which title passed to a private owner, shall be required to register as an IMD. The former ownership by the municipality shall not be the basis for

exemption from Article 7-C coverage.

(g) **Accreted units.** (1) In a building, structure or portion thereof which meets the criteria of §§281(1) and 281(2) or 281(4) of the Multiple Dwelling Law and these regulations, thereby qualifying as an IMD, the occupant or occupants of any additional unit residentially occupied for the first time after April 1, 1980 but prior to April 1,1981 in such IMD may also be covered under Article 7-C.

In order to qualify for coverage, the occupancy of such unit must be permissible under the Zoning Resolution. For purposes of §2-09(3) of the Multiple Dwelling Law, occupancy of such additional units shall be deemed permissible if:

(i) the unit is located in a zoning district where residential use as of right is permitted under the Zoning Resolution; or

(ii) the unit is designated as "joint living work quarters for artist" in a zoning district which does not otherwise permit residential use as of right, regardless of whether the occupant or occupants qualify as "certified artists" as defined in §12-10 of the Zoning Resolution; or

(iii) the unit can qualify as having a legal residential use pursuant to one of the grandfathering provisions of the Zoning Resolution, as defined in §2-08(a)"Grandfathering" of these regulations; or

(iv) the unit is in a study area, as defined in §2-08(a) "Study area" of these regulations, for which the City Planning Commission has approved either rezoning for residential use or grandfathering by December 31, 1983.

(2) Registration of such accreted units as part of the IMD shall be required for all units that qualify for Article 7-C coverage.

(3) Where a building, structure or portion thereof meets the criteria of §§281(1) and 281(2) or 281(4) of the Multiple Dwelling Law and these regulations, thereby qualifying as an IMD, it must be registered with the Loft Board. A decrease in the number of residentially occupied units in a building which qualifies for coverage pursuant to §§281(1) and 281(2) to fewer than three after December 1, 1981 will not be the basis for exemption from IMD coverage. However, the discontinuance of residential occupancy after December 1, 1981, but prior to May 1, 1987, of a unit which qualifies for coverage under Article 7-C solely by reason of MDL §281(4) will result in such unit being exempt from IMD coverage. Remaining residentially occupied units, limited to units in existence during the qualifying period of occupancy, set forth in §281(1)(iii) or 281(4) of the Multiple Dwelling Law, as further delineated in §2-08(c) of these regulations, and accreted units as defined in §281(3) of the Multiple Dwelling Law and §2-08(g)(1) of these regulations, shall be entitled to the protections of Article 7-C, including the legalization requirements of §284(1) of the Multiple Dwelling Law.

(h) **Non-covered units in an IMD.** (1) Any space in an IMD which was not previously occupied residentially on or before June 21, 1982, and is subsequently converted to residential use, is not covered by Article 7-C, and the owner of such space must obtain a residential certificate of occupancy before permitting the commencement of such occupancy.

(2) Notwithstanding that a building qualifies as an IMD, any unit first occupied residentially on or after April 1, 1981, is not covered under Article 7-C. Occupants of any such unit are not entitled to the protections of Article 7-C. Residential occupancy of such unit shall not be permitted unless a residential certificate of occupancy is obtained.

(i) **De facto multiple dwellings.** Registration as an IMD with the Loft Board shall be required of any building, structure or portion thereof judicially determined to be a **de facto** multiple dwelling, which otherwise meets the criteria for an IMD, as set forth in §281 of the Multiple Dwelling Law and these regulations. Such prior judicial determination will not be the basis for exemption from Article 7-C coverage.

(j) Reserved.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Open par amended City Record Mar. 30, 2001 eff. Apr. 29, 2001. [See T29 §2-08.1 Note 1]

Subd. (c) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (d) par (1) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (e) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (g) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (j) redesignated §2-08.1 City Record Mar. 30, 2001 eff. Apr. 29, 2001. [See T29 §2-08.1 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Apparently, the loft law and regulations do not mandate the eviction of a loft tenant who has been overcharging subtenants. The court decided that, in any event, the alleged overcharge was not such an egregious act as to warrant eviction of the tenant. Ariel Assocs. v. Brown, N.Y.L.J., Sept. 18, 1997, page 29, col. 6 (Civ.Ct. New York Co.).

¶ 2. At trial in a tenant's coverage application pursuant to this section, evidence in support of the building owner's position that a loft unit was too small to be legalized and that the unit could not be configured to comply with building and fire codes was precluded, and those issues were deferred to subsequent legalization proceedings. Matter of DeGraw, OATH Index No. 625/96 (Jan. 17, 1996), report and recommendation (Apr. 25, 1997), remanded on other grounds, Loft Bd. Order No. 2114 (May 22, 1997), supplemental report and recommendation (June 17, 1997), aff'd, Loft Bd. Order No. 2126 (Aug. 28, 1997).

¶ 3. Where a loft unit was subdivided into two separate units by the original prime tenants in 1979, and each of the two units had its own kitchen, bathroom and elevator access, the two units were separate residential units pursuant to paragraph (a) of this section, even though the units were registered with the Loft Board as a single unit, they shared utility accounts, one mailbox, and one hot water heater, and one of the units lacked separate access to the stairway and fire escape. Matter of DeGraw, OATH Index No. 625/96 (Apr. 25, 1997), remanded on other grounds, Loft Bd. Order No. 2114 (May 22, 1997), supplemental report and recommendation (June 17, 1997), aff'd, Loft Bd. Order No. 2126 (Aug. 28, 1997).

¶ 4. Installation of a bedroom in a loft unit used primarily for an art studio was not sufficient to create a residential unit pursuant to paragraph (a) of this section, where the unit lacked a bathroom, kitchen, running water, appliances or fixtures. Matter of Wada, OATH Index No. 1519/96 (July 25, 1997), aff'd, Loft Bd. Order No. 2156 (Oct. 10, 1997).

¶ 5. Where a loft unit in a building otherwise covered by the Loft Law was first occupied residentially in the fall of 1980, and that unit was divided in half and one half was sublet on July 21, 1981, to a residential occupant who lived there continuously thereafter, that occupant's portion of the original unit was covered by the Loft Law as an accreted unit pursuant to paragraph (g) of this section, and the occupant was protected pursuant to §2-09(b) of this chapter. Matter of Jemison, OATH Index No. 618/96 (Feb. 23, 1996), aff'd, Loft Bd. Order No. 1942 (Mar. 28, 1996).

¶ 6. Unit was abandoned pursuant to section 2-10(f) of this title when tenant was evicted due to non-payment of rent, but under subparagraph (j)(2) of this section the unit remains subject to all the requirements of Article 7-C,

including rent regulation, unless and until owner complies with the conditions for deregulation under this section. **Matter of Freiman Coated Fabric Corp.,** OATH Index No. 988/98, amended report (Apr. 7, 1998), **aff'd,** Loft Bd. Order No. 2281 (Sept. 24, 1998).

¶ 7. Where a tenant, who was a professional artist, obtained employment in the Woodstock, New York area, registered her car from the upstate address and represented to the insurance company that the car would be garaged upstate (thus obtaining less expensive insurance), and subscribed to an internet service in the Woodstock area but not in New York City, the court held that the tenant did not maintain the loft apartment as a primary residence. Prince v. Brisson, N.Y.L.J., Oct. 17, 2001, page 23, col. 5 (Civ.Ct. Kings Co.).

¶ 8. Tenant's application for protected occupant status as to three floors of the premises was granted in part and denied in part, where tenant failed to show that one floor, the basement, was occupied during the window period. The Loft Board, in a prior case, had found window period occupancy as to the other units on the first and second floors. **Matter of Rolf**, OATH Index No. 1897/99 (July 1, 1999), **aff'd**, Loft Bd. Order No. 2431 (Oct. 1, 1999).

¶ 9. Successor tenants' coverage application was denied where they took occupancy pursuant to a commercial lease after the owner had decovered the unit by filing with the Loft Board and the Department of City Planning a restrictive declaration pursuant to section 2-08.1 (formerly section 2-08(j)) following the eviction of the previous residential tenant. **Matter of Fahrer**, OATH Index No. 1405/99 (Oct. 26, 1999), **aff'd**, Loft Bd. Order No. 2484 (Feb. 22, 2000).

¶ 10. Determination of coverage involves a case by case analysis of the sufficiency of the indicia of residential use as a whole. No one factor is dispositive. Administrative law judge found sufficient indicia of conversion of the loft to residential use during such period, where tenant built a loft bed; erected L-shaped sheet rock walls and hung a heavy curtain to enclose his living area; had residential phone service; had various personalty in the loft including, a table, chairs, hot plates, refrigerator, and stereo; installed a mail slot to receive mail; installed a bathtub for his exclusive use; entertained guests in the loft; used a separate door from the one used by the commercial tenant to enter the loft; and produced documentary evidence such as W-2 forms, bank statements and telephone receipt, to establish the loft as his primary residence. Fact that tenant had to share a bathroom with the commercial tenant in the larger commercial space, had to walk through the factory space to exit the loft, occupied only a third of the loft, cooked on a hot plate, had no hot water, no stove, no shower, and had no separate gas or plumbing lines in his living cubicle, did not preclude finding of residential use. **Matter of South 11th Street Tenants' Association**, OATH Index Nos. 1242-44/96 (Mar. 30, 1999), **aff'd**, Loft Bd. Order No. 2397 (Apr. 29, 1999).

¶ 11. Administrative law judge directed grant of decoverage application where applicant demonstrated that all formerly residential units at the premises were no longer residentially occupied and that there have been no findings of harassment against the landlord. **Matter of Bradley Acquisition, LLC,** OATH Index No. 1712/02 (Aug. 22, 2002), **aff'd,** Loft Bd. Order No. 2754 (Oct. 2, 2002).

¶ 12. Administrative law judge rejected owner's motion to dismiss petition based on laches and estoppel as the Loft Law does not contain a limitation period for applications to add an accreted unit to a previously registered Interim Multiple Dwelling pursuant to subsection (g) of this section. **Matter of Van Derbeek,** OATH Index No. 1972/01 (Feb. 13, 2002), **aff'd,** Loft Bd. Order No. 2717 (Mar. 14, 2002).

¶ 13. Administrative law judge dismissed an application to add petitioner's unit to the covered units in the building as an accreted unit pursuant to subsection (g)(1) of this section where petitioner could present no documentary evidence to corroborate his claim that the unit was residentially occupied after April 1, 1980 but prior to December 1, 1981. **Matter of Maio,** OATH Index No. 1294/02 (July 12, 2002), **aff'd,** Loft Bd. Order No. 2755 (Oct. 2, 2002).

¶ 14. Voluntary registration is the equivalent of a Loft Board finding of coverage. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

FOOTNOTES

3

[Footnote 3]: *** Grandfathering procedures in this classification are designated in the Zoning Resolution and include, but are not limited to §§11-27, 11-28, 15-021(c), 15-021(d), 15-215, 41-141, 42-111D(1)(f), 111-201(a), and 111-201(b); as of April 7, 1983. As well as other sections that will be adopted in the future.

4

[Footnote 4]: *** Grandfathering procedures in this classification are designated in the Zoning Resolution and include, but are not limited to §74-782; as of April 7, 1983. As well as other sections that will be adopted in the future.

5

[Footnote 5]: *** A "family" is either a person occupying a dwelling and maintaining a household, with two or more persons living together and maintaining a common household; not to exceed four boarders, roomers or lodgers; or a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers, or lodgers. See §4(5).

Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-08.1 Eviction of Residential Occupants.

(a) **Grounds for eviction.** The landlord of an IMD registered with the Loft Board may bring eviction proceedings against the residential occupant of a unit in a court of competent jurisdiction on any of the following grounds:

(1) that the unit is not the primary residence of such residential occupant, except that where a lease or rental agreement is in effect between the landlord and such residential occupant, the landlord may not seek to evict such occupant until such lease or rental agreement is no longer in effect; or

(2) that the residential occupant is committing or permitting a nuisance in such unit; or is maliciously or by reason of gross negligence substantially damaging the building; or his or her conduct is such as to interfere substantially with the comfort and safety of the landlord or of the other occupants of the same building or of adjacent buildings or structures; or

(3) any of the grounds for eviction specified in the Real Property Law or the Real Property Actions and Proceedings Law, to the extent that such grounds are not inconsistent with Article 7-C and any regulations promulgated by the Loft Board.

(b) **Effect of eviction.** Any unit which becomes vacant as a result of the eviction of a protected occupant or occupants pursuant to §2-08.1(a), supra, of these rules shall remain subject to all the requirements of Article 7-C, and rules and orders of the Loft Board, including the legalization requirements of §284 of the Multiple Dwelling Law and rent guidelines issued by the Loft Board, except that the landlord may convert such unit to a non-residential conforming use, provided that the landlord file with the Loft Board a certified copy of an irrevocable recorded covenant in form

satisfactory to the Loft Board, enforceable by the City of New York for fifteen (15) years from the date of recording, that the unit will not be re-converted to residential use during such time. When the conversion of such unit to a non-residential conforming use reduces the number of qualifying units below three, however, IMD status for such building and the remaining residential units covered under Article 7-C in such building, shall not be affected.

(c) **Succession rights.** (1) Any family member, as defined in paragraph (3) of this subdivision, shall not be evicted under subparagraph (a) of §2-08.1 where the protected occupant has permanently vacated the IMD unit and such family member has resided with the protected occupant in the unit as a primary residence for a period of no less than two years, or where such person is a "senior citizen" or a "disabled person," as defined in paragraph (3) of this subdivision, for a period of no less than one year, immediately prior to the permanent vacating of the unit by the protected occupant, or from the inception of the occupancy or commencement of the relationship, if for less than such periods. The minimum periods of required residency set forth in this subdivision shall not be deemed to be interrupted by any period during which the "family member" temporarily relocates because he or she:

(i) is engaged in active military duty;

(ii) is enrolled as a full time student;

(iii) is not in residence at the unit pursuant to a court order not involving any term or provision of the lease, and not involving any grounds specified in the Real Property Actions and Proceedings Law;

(iv) is engaged in employment requiring temporary relocation from the housing unit; (v) is hospitalized for medical treatment; or

(vi) has such other reasonable grounds that shall be determined by the Loft Board upon application by such person.

(2) On a form prescribed by the Loft Board, a protected occupant may, at any time, advise the landlord of, or a landlord may at any time, request from the protected occupant, the information required in subparagraphs (i) through (iv) of this paragraph (2). Failure of the protected occupant to provide such information to the landlord, regardless of whether the landlord requests the information, shall place upon all such persons not so made known to the landlord, who seek to exercise the right to protection from eviction as provided for in this subdivision, the affirmative obligation to establish such right. Such required information is as follows:

(i) the names of all persons other than the protected occupant who are residing in the unit; and

(ii) if such other person is a "family member" as defined in paragraph (3) of this subdivision; and

(iii) if such other person is, or upon the passage of the applicable minimum period of required residency, may become a person entitled to protection from eviction pursuant to paragraph (1) of this subdivision, and the date of the commencement of such person's primary residence with the protected occupant; and

(iv) if such other person is a "senior citizen" or a "disabled person" as defined in paragraph (3) of this subdivision.

(3) For the purposes of this subdivision:

(i) "family member" is defined as a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the protected occupant; or any other person residing with the protected occupant in the IMD unit as a primary residence who can prove emotional and financial commitment, and interdependence between such person and the protected occupant. Although no single factor shall be solely determinative, evidence which is to be considered in determining whether such emotional and financial commitment and interdependence existed, may include, without limitation, such factors as listed below. In no event would evidence of a sexual relationship between

such persons be required or considered.

(A) longevity of the relationship;

(B) sharing of or relying upon each other for payment of household or family expenses, and/or other common necessities of life;

(C) intermingling of finances as evidenced by, among other things, joint ownership of bank accounts, personal and real property, credit cards, loan obligations, sharing a household budget for purposes of receiving government benefits, etc.;

(D) engaging in family-type activities by jointly attending family functions, holidays and celebrations, social and recreational activities, etc.;

(E) formalizing of legal obligations, intentions, and responsibilities to each other by such means as executing wills naming each other as executor and/or beneficiary, conferring upon each other a power of attorney and/or authority to make health care decisions each for the other, entering into a personal relationship contract, making a domestic partnership declaration, or serving as a representative payee for purposes of public benefits, etc.;

(F) holding themselves out as family members to other family members, friends, members of the community or religious institutions, or society in general, through their words or actions;

(G) regularly performing family functions, such as caring for each other or each other's extended family members, and/or relying upon each other for daily family services;

(H) engaging in any other pattern of behavior, agreement, or other action which evidences the intention of creating a long-term, emotionally committed relationship;

(ii) a "senior citizen" is defined as a person who is sixty-two years of age or older;

(iii) a "disabled person" is defined as a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which substantially limit one or more of such person's major life activities.

(4) Any persons in occupancy of an IMD unit on or after the effective date of this rule who has then been in occupancy for the minimum periods of required residency set forth in this subdivision shall have the benefits of succession rights.

HISTORICAL NOTE

Section amendment republished City Record Apr. 4, 2001 to correct a typographical error in City

Record Mar. 30, 2001.

Section designated (formerly §2-08(j)) and amended City Record Mar. 30, 2001 eff. Apr. 29, 2001.

[See Note]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 4, 2001 and Mar. 30, 2001:

This rule codifies the Loft Board's position, previously set forth in Board decisions, that the family members who

live with a protected occupant in the two years preceding a protected occupant's permanent vacancy from the IMD unit shall be protected from eviction. In addition, senior citizens and disabled persons who live with a protected occupancy in the one year preceding the protected occupant's permanent vacancy from the IMD unit are protected from eviction. The rule tracks the tenant succession law as it applies to rent stabilized units.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where a loft unit was abandoned pursuant to §2-10(f) of this chapter eight months before the landlord obtained a Civil Court judgment of possession, paragraph (j) (now §2.08.1) of this section, which applies to loft vacancies which occur due to eviction, was inapplicable. Matter of Kangs Heritage Management Corp., OATH Index No. 762/98 (Dec. 19, 1997), aff'd, Loft Bd. Order No. 2221 (Feb. 26, 1998).

¶ 2. Successor tenants' coverage application was denied where they took occupancy pursuant to a commercial lease after the owner had decovered the unit by filing with the Loft Board and the Department of City Planning a restrictive declaration pursuant to this section following the eviction of the previous residential tenant. **Matter of Fahrer**, OATH Index No. 1405/99 (Oct. 26, 1999), **aff'd**, Loft Bd. Order No. 2484 (Feb. 22, 2000).

¶ 3. Generally, abandonment cannot be found based on an eviction due to the lack of a voluntary relinquishment of possession. However, administrative law judge found abandonment based on petitioner's sufficient, reliable and unrebutted evidence establishing that the subject unit was abandoned by two of three sequential residential occupants following the eviction of the window period residential occupant by the former landlord of the building. **Matter of Mervin,**OATH Index No. 1965/01 (Nov. 8, 2001), **aff'd,** Loft Bd. Order No. 2689 (Nov. 29, 2001).

¶ 4. To qualify as a residential unit under this section, the unit must have attributes of "independent living". Coverage application where the contested issue was whether a particular unit was residentially occupied during the window period. Application was denied based on finding that tenant only proved, at most, that he resided in the loft a few days per month during the window period, thus falling short of establishing the unit had the attributes of "independent living" necessary to support a finding of coverage. **Matter of Addis**, OATH Index No. 1574-75/02 (Nov. 25, 2002), **aff'd**, Loft Bd. Order No. 2772 (Jan. 9, 2003), **reconsideration denied**, Loft Bd. Order No. 2954 (Sept. 15, 2005).

¶ 5. Wife of protected occupant, who was not named on lease, was not entitled to protected status, but she may have succession rights which would protect her from eviction. **Matter of Tenants of 323-325 W. 37th Street**, OATH Index No. 692/06 (May 18, 2007).

¶ 6. Once an IMD unit becomes vacant following an eviction, the owner can choose to lease the unit to a new residential tenant or it may convert the property to conforming non-residential use and file a restrictive covenant. Where the owner did not file the restrictive covenant until well after leasing the unit to new tenants, who took occupancy and paid rent (at a higher rate), the unit was not removed from regulation when the restrictive declaration was filed. **Rader v. Grand Morgan Realty Corp**., OATH Index Nos. 207/08 & 208/08 (Jan. 4, 2008).

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RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-09 Subletting and Similar Matters.

(a) **Definitions.**

Prime lessee. As used in these regulations, the term "prime lessee" shall mean the party with whom the landlord entered into a lease or rental agreement for use and occupancy of a portion of an IMD, which is being used residentially, regardless of whether such lessee is currently in occupancy or whether such lease remains in effect.

Privity. As used in these regulations, the term "privity" shall mean a direct contractual relationship between two parties, which may be established explicitly, implicitly or by operation of law.

Tenant. Where the term "tenant" is used in Article 7-C of the Multiple Dwelling Law, to refer directly or implicitly to a residential tenant, it is deemed interchangeable with the use of the word "occupant" in Article 7-C.

(b) **Occupant qualified for possession of residential unit and protection of Article 7-C.**

(1) Except as otherwise provided herein, the occupant qualified for protection under Article 7-C shall be the residential occupant in possession of a residential unit, covered as part of an IMD.

(2) If the residential occupant in possession of a covered residential unit is not the prime lessee, the lack of consent of the landlord to a sublet, assignment or subdivision establishing such occupancy shall not affect the rights of such occupant to the protections of Article 7-C, provided that such occupant was in possession of such unit prior to June 21, 1982, or prior to July 27, 1987 for an IMD unit subject to Article 7-C solely by reason of MDL §281(4) and the rules

issued pursuant thereto.

(3) When a residential occupant took possession of a residential unit covered as part of an IMD, on or after June 21, 1982, or on or after July 27, 1987 for an IMD unit subject to Article 7-C solely by reason of MDL §281(4) and the rules issued pursuant thereto, such occupant shall be qualified for the protection of Article 7-C if:

(i) he/she is a prime lessee with a lease currently in effect or, if he/she took possession, with the consent of the landlord, as a statutory tenant pursuant to Article 7-C, without the issuance of a new lease; or

(ii) he/she is the assignee of a prime lessee and such assignment was consented to by the landlord; or

(iii) prior to establishment of such occupancy, the landlord was offered the opportunity to purchase improvements pursuant to §286(6) of the MDL and regulations promulgated pursuant thereto.

(4) The prime lessee, or sublessor who is not the prime lessee, shall be deemed the residential occupant qualified for the protection of Article 7-C, if he/she can prove that the residential unit covered as part of an IMD is his/her primary residence, even if another person is in possession. If the prime lessee or sublessor fails to prove that such unit is his or her primary residence, the rights of such person to recover such a unit are extinguished. The prime lessee or sublessor must exercise, in a court of competent jurisdiction, his/her right to recover such unit upon expiration or termination of the sublease under the terms of which he/she is the immediate overtenant or where such sublease is no longer in effect, on or before December 24, 1983, whichever is later, except that, for IMD units that are subject to Article 7-C solely by reason of MDL §281(4) and the rules issued pursuant thereto, the primary lessee or sublessor must exercise his/her right upon expiration or termination of the sublease or where such sublease is no longer in effect, on or before February 21, 1993, whichever is later.

(5) In an IMD where a prime lessee is in possession of a portion of the space which he or she leased from the landlord, such prime lessee shall be entitled to remain in possession, and be qualified for the protections of Article 7-C, only with respect to the portion of such space which he or she occupied as a residential unit (including any portion thereof used for home occupations or as the working portion of a joint-living-working quarters for artists), and shall not be entitled to claim any of the remaining space as a primary residence against the occupant of any other residential unit within such space, except to the extent provided for in §2-09(c)(5) of these regulations, below, of these regulations and not withstanding the provisions of §§2-09(b)(3) and (b)(4) above. The current residential occupants of the remaining units created through subdivision shall be qualified for protection under Article 7-C with regard to their respective residential units covered by Article 7-C, except as provided in §§2-09(b)(3) and (b)(4), above, of these regulations.

(c) **Rights, obligations and legal relationships among the parties.**

(1) **Legalization and cost of legalization.** The landlord of an IMD is responsible for legalization pursuant to §284 of the MDL, for all covered residential units, regardless of whether the occupant is the prime lessee or a person or persons with whom the prime lessee entered into an agreement permitting such persons to occupy units in space covered by the prime lease. The costs of legalization as reflected in rent adjustments made pursuant to §286(5) of the MDL, apportioned among covered residential units, shall be borne directly by the residential occupants qualified for protection of such units.

(2) **Privity.**

(i) The residential occupant qualified for protection, if other than the prime lessee, shall be deemed to be in privity with the prime lessee if either:

(A) there is a lease or rental agreement in effect regarding the residential unit between the prime lessee and the residential occupant; or

(B) there is a lease or rental agreement in effect regarding the residential unit or the space in which it is located, between the landlord and the prime lessee. No lease or rental agreement between the prime lessee and the residential occupant, shall have any force or effect beyond the term of the lease or rental agreement between the prime lessee and the landlord except as provided in §§2-09(c)(6) or (c)(7) herein of these regulations.

(ii) The prime lessee and the landlord shall be deemed in privity when there is a lease or rental agreement in effect between them.

(iii) The residential occupant and the landlord shall be deemed in privity when the residential occupant is the prime lessee; or when the lease or rental agreement between the prime lessee and the landlord, covering the residential occupant's unit or the space in which it is located, is no longer in effect. All leases or rental agreements (except subleases entered into pursuant to §226-b of the RPL and §2-09(c)(4), below, of these regulations promulgated pursuant thereto), which have not expired shall be deemed to be no longer in effect upon certification by the Department of Buildings of the landlord's compliance with the fire and safety protection standards of Article 7-B, and at that time a residential lease subject to the emergency tenant protection act of nineteen seventy-four must be offered to the residential occupant, pursuant to §286(3) of the MDL.

(3) **Services.**

(i) When the landlord and residential occupant are in privity, the landlord shall be responsible for meeting the minimum housing maintenance standards established by the Loft Board.

(ii) When the prime lessee and the residential occupant are in privity there shall be no diminution of services from the prime lessee to the residential occupant. The prime lessee shall be responsible for meeting the minimum housing maintenance standards established by the Loft Board to the extent such standards are required pursuant to lease or rental agreement and to the extent such services are within the control of the prime lessee. Otherwise, such services shall be provided by the landlord.

(4) **Subletting rights of occupants qualified for protection under Article 7-C.**

(i) All occupants qualified for protection under Article 7-C shall have the right to sublet their units pursuant to and in accordance with the procedures specified in §226-b of the Real Property Law, notwithstanding that such occupants may reside in an interim multiple dwelling (IMD) having fewer than 4 residential units, and that such occupants may not have a current lease or rental agreement in effect. The residential occupant of a unit in a subdivided space, who is not in privity with the landlord, must obtain the consent of both the prime lessee of such space and the landlord to a proposed sublet of such unit, which may not be unreasonably withheld in accordance with §226-b of the Real Property Law.

(ii) In addition, the right to sublet shall be subject to the following provisions:

(A) The rental charged to the subtenant may not exceed the legal rent, as established pursuant to Article 7-C and these regulations, plus a ten percent surcharge payable to the residential occupant if the unit sublet is furnished with the residential occupant's furniture;

(B) The residential occupant must be able to establish that the residential unit is his/her primary residence;

(C) The residential occupant may not sublet the unit for more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease;

(D) The term of the proposed sublease may extend beyond the term of the residential occupant's lease, if such a lease is in effect, or beyond the date of the Department of Buildings certification of the landlord's compliance with Article 7-B of the Multiple Dwelling Law. In such event, such sublease shall be subject to the residential occupant's

right to continued occupancy pursuant to Article 7-C of the Multiple Dwelling Law or the right of such residential occupant to issuance of a lease upon Article 7-B compliance. It shall be unreasonable for a landlord to refuse to consent to a sublease solely because the residential occupant has no lease or rental agreement in effect or because such sublease extends beyond the residential occupant's lease or beyond the anticipated date of 7-B compliance.

(E) Where a residential occupant violates the provisions of subparagraph (i) of this paragraph, the subtenant shall be entitled to damages of three times the overcharge and may also be awarded attorney's fees and interest from the date of the overcharge at the rate of interest payable on a judgment pursuant to §5004 of the CPLR.

(F) The provisions in subparagraphs (ii)(A) through (E) of this paragraph (4) shall apply to all subleases commencing on or after the effective date of these regulations. Subleases entered into on or after June 21, 1982, but prior to the effective date of these regulations, shall not be subject to subparagraphs (ii)(A), (C) and (E) of this paragraph (4), but shall be subject to subparagraphs (ii)(B) and (D) of this paragraph (4) and the provisions of Section 226-b of the Real Property Law, in effect at the time of the commencement of the sublease.

(G) Notwithstanding the provisions of subparagraph (ii)(F) of this paragraph (4), the provisions in subparagraphs (ii)(A) through (E) of this paragraph (4) shall apply to all subleases for IMD units which are subject to Article 7-C solely by reason of MDL §281(4) commencing on or after November 23, 1992. Subleases for such units entered into on or after July 27, 1987, but before November 23, 1992, shall not be subject to subparagraphs (ii)(A), (C) and (E) of this paragraph (4), but shall be subject to subparagraphs (ii)(B) and (D) of this paragraph (4) and the provisions of §226-b of the Real Property Law, in effect at the commencement of the sublease.

(iii) If any clause, sentence, paragraph, subdivision or part of this §2-09(c)(4) of these regulations shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall render invalid this entire section on subletting rights of residential occupants.

(5) **Prime lessee's right to recover subdivided space.**

(i) Where the prime lessee is the residential occupant of a portion of the space he/she has leased from the landlord and the lease or rental agreement between the prime lessee and the landlord is in effect, the prime lessee may recover for his/her own personal use a residential unit located within such space voluntarily vacated by the residential occupant prior to the establishment of privity between such residential occupant and the landlord. The right to recover space pursuant to this regulation shall not be available to a prime lessee found by the Loft Board to be guilty of harassment of any residential occupant(s). The recovered space shall be deemed part of the prime lessee's residential unit, and in no event shall the prime lessee relet such space for any purposes whatsoever, except that he/she shall have the same rights to sublet his/her entire residential unit as provided in §2-09(c)(4) of these regulations.

Where a prime lessee waives his/her right to recover a residential unit in space leased by a prime lessee and vacated by the residential occupant, the prime lessee may sell improvements to the unit made or purchased by him/her to an incoming tenant, provided that the prime lessee shall first offer the improvements to the landlord for an amount equal to their fair market value pursuant to §286(6) of the MDL and regulations promulgated pursuant thereto. The incoming tenant shall be in privity with the landlord, and the initial maximum rent shall be determined in accordance with §2-09(c)(6)(ii)(A) of these regulations, if the incoming tenant purchases the improvements; or the rent due shall be the initial market rental (subject to subsequent rent regulation if the IMD has six or more residential units) if the landlord purchases the improvements.

(ii) Where the prime lessee is the residential occupant of a portion of the space he/she has leased from the landlord and the lease or rental agreement between the prime lessee and the landlord is in effect, the prime lessee may recover for his/her own personal use a residential unit located within such space, if the residential occupant of such unit agrees to the purchase by the prime lessee of such occupant's rights in the unit. The recovered space shall be deemed part of the prime lessee's residential unit, and in no event shall the prime lessee relet such space for any purpose whatsoever,

except that he/she shall have the same rights to sublet his/her entire residential unit as provided in §2-09(c)(4) of these regulations. Where the lease or rental agreement between the prime lessee and the landlord is no longer in effect, the prime lessee's right to recover space pursuant to this subsection shall expire on July 5, 1988 or, for an IMD unit subject to Article 7-C solely by reason of MDL §281(4), on January 22, 1993.

(iii) Where the prime lessee is the residential occupant of a portion of subdivided space as his/her primary residence, which he/she rented from the landlord, the prime lessee shall be entitled to recover as part of his/her primary residence a residential unit, located within the space, occupied by another person or persons, if such prime lessee can establish that:

(A) there was an express written agreement between the prime lessee and the occupant of such space, other than the mere expiration of the lease, entitling the prime lessee to recover such space, and that the prime lessee has not taken actions inconsistent with exercising the option entitling him/her to recover such space;

(B) the prime lessee has occupied the entire demised premises as his/her own primary residence for at least one year prior to the subdivision and subletting of the unit;

(C) the prime lessee has a compelling need to recover such space; and

(D) the prime lessee has not been guilty of harassment of residential occupants.

Space recovered pursuant to this provision shall be deemed part of the prime lessee's residential unit, and in no event shall the prime lessee relet such recovered space for any purpose whatsoever, except that he/she shall have the same rights to sublet his/her entire residential unit as provided in §2-09(c)(4) above, of these regulations, provided, however, that no such sublet shall be permitted for the first two years after recovery. The prime lessee shall have the right to make a claim to recover space pursuant to this provision, before the Loft Board, where there is a lease or rental agreement in effect between him/her and the landlord, or, where such an agreement is no longer in effect, on or before July 5, 1988 or, for an IMD unit subject to Article 7-C solely by reason of MDL §281(4), on or before January 22, 1993.

(6) **Rent.**

(i) When the residential occupant is in privity with the prime lessee, the maximum permissible rent payable by such occupant to the prime lessee shall be the rent established in such occupant's lease or rental agreement, subject to the limitations in applicable Loft Board Interim Rent Guidelines or, if such lease or rental agreement is no longer in effect, in accordance with §2-06 or, for an IMD unit subject to Article 7-C solely by reason of MDL §281(4), in accordance with §2-06.1.

(ii) When the residential occupant is in privity with the landlord, such occupant shall pay rent as follows:

(A) if the residential occupant is other than the prime lessee, the maximum rent shall be the amount last regularly paid under the terms of the lease or rental agreement with the prime lessee, or the sublessor, if other than the prime lessee, plus any increases permissible and subject to any limitations under §2-06 or, for an IMD unit subject to Article 7-C solely by reason of MDL §281(4), under §2-06.1, and any other relevant orders of the Loft Board.

(B) if the prime lessee is the residential occupant of the entire space leased from the landlord, the maximum rent shall be the amount specified in the lease or rental agreement, subject to any limitations in applicable Loft Board Interim Rent Guidelines or, if the lease or rental agreement is no longer in effect, the amount permissible pursuant to §2-06 or, for an IMD unit subject to Article 7-C solely by reason of MDL §281(4), the amount permissible pursuant to §2-06.1, and any other relevant orders of the Loft Board.

(C) **(a)** if the prime lessee is the residential occupant of a portion of the space leased from the landlord and the lease or rental agreement between the prime lessee and the landlord is in effect for the entire space, the maximum rent

shall be the amount specified in the lease or rental agreement for the entire space and any permissible increases pursuant to any relevant orders of the Loft Board.

(b) if the prime lessee is the residential occupant of a portion of the space leased from the landlord and the lease or rental agreement between the prime lessee and the landlord is no longer in effect for a residential unit or units located in a portion of such space, because privity has been established between the residential occupant(s) of such unit or unit(s) and the landlord pursuant to §2-09(c)(5)(i), above, of these regulations, the rent due shall be based on the rent paid by the prime lessee to the landlord under the most recent rental agreement for the entire space plus any increases permissible under §2-06 or, for any IMD unit(s) subject to Article 7-C solely by reason of MDL §281(4), under §2-06.1, and any other relevant orders of the Loft Board. The maximum rent from the prime lessee to the landlord shall be an amount equal to the percentage of the rent so calculated, equivalent to a fraction, the numerator of which is the square footage of

(1) the leased space occupied by the prime lessee's unit plus

(2) any other unit regarding which he/she remains in privity with the residential occupant, and the denominator of which is the square footage leased from the landlord.

(D) **(a)** if the prime lessee is the residential occupant of a portion of the space leased from the landlord, but the lease or rental agreement for all other units within the space is no longer in effect because the occupants of such units have entered into privity with the landlord, the maximum rent shall be based on the rent paid by the prime lessee to the landlord under the most recent rental agreement for the entire space plus any increases permissible under §2-06 or, for any IMD unit(s) subject to Article 7-C solely by reason of MDL §281(4), under §2-06.1, and any other relevant orders of the Loft Board. The maximum legal rent from the prime lessee to the landlord shall be an amount equal to the percentage of the rent so calculated, equivalent to a fraction, the numerator of which is the square footage of the leased space which his or her unit occupies and the denominator of which is the entire space leased from the landlord.

(b) where the rent paid by the residential occupant(s) of such space who were in privity with the prime lessee to the prime lessee and the prime lessee's proportionate share of the rent as calculated under §2-09(c)(6)(ii)(D)(**a**) above (without inclusion of any increases permissible under Loft Board Interim Rent Guidelines or other relevant orders of the Loft Board), are greater than the amount of rent specified in the most recent lease or rental agreement for the entire space between the prime lessee and the landlord or, if applicable, the amount of rent as calculated under §2-09(c)(6)(ii)(C)(**b**), the excess amount shall be treated as follows:

It shall be the landlord's option to either:

(1) reduce the monthly legal rent due from the prime lessee by one-half of such excess amount as calculated on a monthly basis, but in no event shall the monthly legal rent be less than $100; or

(2) make a single lump sum payment to the prime lessee equal to one-half of the monthly excess amount multiplied by 36. The landlord may exercise his/her option to make a single, lump sum payment at any point. If the landlord chooses the option of a single lump sum payment, at a point after the prime lessee has commenced paying a rent calculated under subparagraph (**1**) above, the single payment due the prime lessee from the landlord shall not be diminished by the amount of the prior reductions in rent. Upon payment of the single lump sum payment the landlord may increase the prime lessee's monthly rent to the maximum amount allowable under §2-09(c)(6)(ii) (D)(**a**), above. Any prime lessee found guilty of harassment of any residential occupant shall not be entitled to the rent reduction or single lump sum payment provided for in subparagraphs (1) and (2) above.

(3) The rent adjustments of this subparagraph (D) and subparagraph (A) shall apply to the next regular rent payment due on or after July 5, 1988, or the next regular rent payment due on or after January 22, 1993 for IMD units subject to Article 7-C solely pursuant to MDL §281(4), if the lease or rental agreement between the prime lessee and the landlord is no longer in effect. Otherwise the rent adjustments shall apply to the next regular rent payment due after

such lease or rental agreement, or portion thereof, is no longer in effect, but in no event earlier than July 5, 1988, or, for IMD units subject to Article 7-C solely by reason of MDL §281(4), no earlier than January 22, 1993.

(7) **Prime lessee's or sublessor's right to compensation for costs incurred in developing residential unit(s).**

(i) Where a prime lessee or sublessor who is not the prime lessee has incurred costs for improvements made or purchased in developing residential unit(s) in any space for which he/she had or has a lease or rental agreement and for which he/she is not the residential occupant qualified for protection under Article 7-C, such prime lessee or sublessor shall be entitled to recover from the residential occupant(s) compensation for the prime lessee's or sublessor's actual costs incurred in developing the residential unit in question.

(ii) The prime lessee or sublessor and the residential occupant may agree to payment of such compensation upon any terms that are mutually acceptable, at any time prior to the deadline for the filing of an application as described in subdivision (iii) below. All such agreements shall be submitted to the Loft Board within 90 days of their execution.

(iii) If the parties are unable to agree upon the amount and terms of compensation prior to the establishment of privity between the residential occupant and the landlord, as defined in §2-09(c)(2) of these regulations, the prime lessee or sublessor or the residential occupant may apply to the Loft Board for resolution of any dispute over compensation of the prime lessee or sublessor any time after the residential unit has been registered with the Loft Board without timely contest of coverage or determined to be covered by the Loft Board or a court of competent jurisdiction, but no later than 180 days after:

(A) the establishment of privity between the residential occupant and the landlord, or

(B) May 6, 1988, or

(C) the landlord's registration of the residential unit without timely contest of coverage or the determination of coverage of the residential unit by the Loft Board or a court of competent jurisdiction, or

(D) for any IMD unit(s) subject to Article 7-C solely by reason of MDL §281(4), November 23, 1992, whichever is the latest. The application shall comply with the regulations of the Board governing applications, except that, for purposes of §l-06(a) of such regulations, the affected parties shall be limited to the prime lessee or sublessor, the residential occupant, and the owner. The application shall also comply with the regulations of the Board governing fees.

(iv) The Loft Board shall first determine whether any compensation is due the prime lessee or sublessor, based on consideration of the following factors:

(A) whether the prime lessee or sublessor incurred any costs as defined below in subdivision (v)(A), allocable to the particular unit in question; and

(B) whether the prime lessee or sublessor has already been compensated in accordance with the terms of a prior agreement. The amount of rent paid to the prime lessee or sublessor in excess of the amount which would represent a proportionate share of the rent paid by the prime lessee to the landlord, based on the percentage of the total floor space occupied, shall not be credited towards such compensation of the prime lessee or sublessor, in the absence of a specific agreement.

(v) If it is determined that the prime lessee or sublessor did incur costs for improvements for which he or she has not yet been compensated, the Board shall determine the amount due in accordance with the following criteria:

(A) all improvements as defined in the Board's regulations on Sales of Improvements shall be compensable;

(B) the Board shall establish the value of such improvements by determining the actual costs incurred for the improvements;

(C) compensation determined to be due shall be made in accordance with a payment schedule agreed to by the prime lessee or sublessor and the residential occupant, or, if no agreement is reached, a payment schedule not to exceed 6 months set by the Board, contained in the Board's order.

(vi) Compensation made pursuant to this paragraph (7) shall provide residential occupants the opportunity to purchase improvements but shall not constitute the sale of improvements pursuant to §286(6) of the MDL.

(vii) (A) A residential occupant may offer the landlord the opportunity to compensate the prime lessee or sublessor for costs incurred for improvements made or purchased in developing a residential unit. The compensation to be paid is the amount determined by agreement of the prime lessee or sublessor, and the residential occupant, pursuant to subparagraph (7)(ii) above or as determined by the Loft Board pursuant to subparagraph (7)(v) above. If the landlord chooses to pay this compensation to the prime lessee or sublessor, the residential occupant remains the occupant qualified for Article 7-C protection, except that he/she forfeits the right to sell improvements pursuant to §286(6) of the MDL. Compensation of the prime lessee or sublessor by the landlord shall not affect the rent due from the residential occupant;

(B) if the landlord compensates the prime lessee or sublessor pursuant to this subdivision, the prime lessee or sublessor shall have no right to recover the unit for his/her own personal use pursuant to §§2-09(b)(4) and (c)(5) of these regulations. When the residential occupant vacates the unit, the landlord shall be entitled to lease the unit at market rent, absent a finding by the Loft Board of harassment by the landlord of occupants; (C) if the landlord declines the opportunity to compensate the prime lessee or sublessor, the residential occupant remains responsible for the compensation payment established by agreement of the prime lessee or sublessor and the residential occupant pursuant to subparagraph (7)(ii) above or as determined by the Loft Board pursuant to subparagraph (7)(v) above.

(8) **Residential occupant's right to sale of improvements pursuant to §286(6) of the MDL.** The residential occupant shall be entitled to sell pursuant to §286(6) of the MDL and Loft Board regulations on Sales of Improvements all improvements to his/her unit made or purchased by him/her:

(i) upon the filing of an agreement pursuant to §2-09(c)(7)(ii), or

(ii) following a Board determination of an application filed pursuant to §2-09(c)(7)(iii), or

(iii) upon the expiration of the deadline for filing such application, if none has been filed.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (c) par (4) subpar (ii) clause (G) added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (c) pars (5), (6), (7) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The NYC Loft Boards administrative decision that petitioner did not establish by credible evidence that he was the residential occupant in possession prior to June 21, 1982 and thus was not a protected residential occupant of the unit under Loft Law, RCNY 2-09(b)(2), was supported by the evidence. Infrequent occasional use is not a residency under Loft Law protection. Matter of Elliot v. NYC Loft Board, 205 AD2d 460 [1994], 613 NYS2d 907.

¶ 2. The regulation provides coverage for a residential occupant in possession of a covered residential unit, even if the occupant is not a prime tenant, and even if the landlord did not consent to a sublet, assignment or subdivision, so

long as the occupant was in possession prior to July 27, 1987. The regulation applies whether or not the landlord had knowledge of the facts and whether or not there was a formal assignment or sublease. 545 Eighth Avenue Associates v. New York City Loft Board, 647 N.Y.S.2d 223 (App.Div. 1st Dept. 1996).

¶ 3. Where a landlord leased a loft unit to a residential tenant after June 21, 1982, and the tenant's brother took occupancy along with the tenant but without the landlord's consent, the tenant's brother was not a prime lessee and was not a protected occupant pursuant to subparagraph (b)(3) of this section. **Matter of Zabari,** OATH Index No. 419/96 (Oct. 16, 1995), **aff'd,** Loft Bd. Order No. 1899 (Jan. 4, 1996), **aff'd,** Index No. 107964/96 (Sup. Ct. N.Y. Co. Feb. 11, 1997).

¶ 4. A residential occupant who moved into a loft unit in 1986 without the building owner's consent was not a protected occupant pursuant to this section notwithstanding the owner's knowledge that she was living in the unit and notwithstanding the occupant's alteration and improvement of the unit at her own expense. Matter of McLean, OATH Index No. 105/96 (June 25, 1996), aff'd, Loft Bd. Order No. 2000 (Sept. 26, 1996).

¶ 5. Acceptance by the receiver of a building in foreclosure of nine monthly rent payments from a loft unit subtenant did not constitute consent by the building owner to possession of the loft unit by the subtenant pursuant to subparagraph (b)(3)(i) of this section, because the receiver accepted the rent as an accommodation to the prime tenant, and because the receiver's interest was in maintaining a steady cash flow to service the building. Matter of DeGraw, OATH Index No. 625/96 (Apr. 25, 1997), remanded on other grounds, Loft Bd. Order No. 2114 (May 22, 1997), supplemental report and recommendation (June 17, 1997), aff'd, Loft Bd. Order No. 2126 (Aug. 28, 1997).

¶ 6. A loft unit was subdivided into two separate units before the effective date of the Loft Law, and the smaller of those units was used commercially from then until 1992, when a tenant took occupancy pursuant to a commercial lease and used the unit both commercially and residentially. However, because the building owner did not know of and had not consented to the residential use of the smaller unit, the occupant of the smaller unit was not a protected residential occupant pursuant to subparagraph (b)(3)(i) of this section. Matter of Wada, OATH Index No. 1519/96 (July 25, 1997), aff'd, Loft Bd. Order No. 2156 (Oct. 10, 1997).

¶ 7. A building owner's consent to occupancy as a subtenancy does not confer protected occupancy on the subtenant pursuant to subparagraph (b)(3)(i) of this section, which requires either a prime lease or the owner's consent to a statutory tenancy. Matter of Nolan, OATH Index No. 1730/97 (Sept. 2, 1997), aff'd, Loft Bd. Order No. 2161 (Oct. 10, 1997).

¶ 8. Where a prime lessee of a loft unit remained in possession of a portion of the original unit after the unit was subdivided into two units, and the prime lessee assigned her rights in the original unit, the assignee took rights only to the portion of the original unit that the assignor had occupied, because the assignor had no right of possession in the other portion of the original unit, and thus could not assign such rights to a new occupant pursuant to subparagraph (b)(3) of this section. Matter of DeGraw, OATH Index No. 625/96 (Apr. 25, 1997), remanded on other grounds, Loft Bd. Order No. 2114 (May 22, 1997), supplemental report and recommendation (June 17, 1997), aff'd, Loft Bd. Order No. 2126 (Aug. 28, 1997).

¶ 9. In the case of a loft building owned by a cooperative corporation, the proprietary lessee of a loft unit is the prime lessee, and the cooperative corporation is the building owner, for purposes of subparagraph (b)(3) of this section. Matter of Nolan, OATH Index No. 1730/97 (Sept. 2, 1997), aff'd, Loft Bd. Order No. 2161 (Oct. 10, 1997).

¶ 10. Where a prime lease covering three units of a loft building expired before the effective date of the Loft Law, the building owner came into privity, pursuant to paragraph (a) of this section, with each of the three occupants of the three units by operation of law upon the effective date of the Loft Law. Matter of Longfellow Properties, Inc., OATH Index No. 1780/96 (Nov. 4, 1996), aff'd, Loft Bd. Order No. 2057 (Jan. 30, 1997).

¶ 11. Pursuant to subparagraph (c)(5)(ii), a former prime lessee enjoyed the right to buy improvements from his

former subtenant occupying a portion of the prime lease space and take possession of the formerly sublet unit at any time until July 5, 1988, provided that he combined the formerly sublet unit with his own portion of the prime lease space and used the combined units thereafter as a single residential unit. Matter of Longfellow Properties, Inc., OATH Index No. 1780/96 (Nov. 4, 1996), aff'd, Loft Bd. Order No. 2057 (Jan. 30, 1997).

¶ 12. Where the two residential occupants of a loft unit asserted that they were subtenants of a partnership in which they were the sole partners, the alleged prime tenancy of the partnership was illusory. Therefore, the residential occupants were prime tenants with base rent calculated pursuant to subparagraph (c)(6)(ii)(D)(a) of this section, not subtenants with base rent calculated pursuant to subparagraph (c)(6)(i) of this section. Matter of Seril, OATH Index No. 1821/96 (Feb. 10, 1997), aff'd, Loft Bd. Order No. 2088 (Mar. 20, 1997).

¶ 13. Where an owner leased a loft unit to a residential tenant after June 21, 1982, and the tenant's brother took occupancy along with the tenant but without the owner's consent, the tenant's brother was not a prime lessee and was not a protected occupant pursuant to subparagraph (b)(3) of this section. Matter of Zabari, OATH Index No. 419/96 (Oct. 16, 1995), aff'd, Loft Bd. Order No. 1899 (Jan. 4, 1996), aff'd sub nom. Zabari v. New York City Loft Board, Index No. 107964/96 (Sup. Ct. N.Y. Co., Feb. 11, 1997), rev'd in part on other grounds, _____ AD2d _____, 666 NYS2d 599 (1st Dept. 1997).

¶ 14. The Loft Board regulations do not provide for eviction of a prime tenant in the case of an overcharge of a subtenant. However, the subtenant can maintain an action for damages against the prime tenant. Prince v. Brisson, N.Y.L.J., Oct. 17, 2001, page 23, col. 5 (Civ.Ct. Kings Co.).

¶ 15. An application for protected occupant status as to three floors of the premises was granted in part and denied in part where applicant failed to show as to one floor, the basement, that the unit was occupied during the window period. The Loft Board, in a prior case, had found window period occupancy as to the other units on the first and second floors. **Matter of Rolf**, OATH Index No. 1897/99 (July 1, 1999), **aff'd**, Loft Bd. Order No. 2431 (Oct. 1, 1999).

¶ 16. Administrative law judge summarily grants tenant's application for coverage pursuant to subparagraph (b)(2) of this section, where owner's answer conceded that the tenant, while not a prime lessee, took residential occupancy of the unit prior to June 21, 1982. The owner, over the opposition of the tenant and the prime lessee, sought a hearing to determine the rights, if any, of the prime lessee. Administrative law judge rejected the owner's request, ruling the prime lessee's rights, if any, were not a proper subject of the application and should be determined in a different proceeding. **Matter of Krukowski**, OATH Index No. 924/99 (Feb. 4, 1999), **aff'd**, Loft Bd. Order No. 2382 (Mar. 23, 1999).

¶ 17. Tenants' coverage application granted where owner and tenants orally agreed that tenancy would be for one year, after which they would discuss the tenants continued rental of the unit and rent payment and the owner accepted the rent until the tenants began withholding rent. Absent a prior finding of abandonment, the residential occupancy of a unit continues to afford potential protected occupancy pursuant to subparagraph (b)(3) of this section. **Matter of DeLong**, OATH Index No. 266 & 518/99 (Oct. 4, 1999), **aff'd and remanded**, Loft Bd. Order No. 2457 (Dec. 13, 1999), **application for reconsideration denied**, Loft Bd. Order No. 2500 (Mar. 30, 2000), **on remand**, OATH Index No. 1165/00 (Nov. 1, 2000).

¶ 18. An uncontested application for protected occupant status demonstrated tenant resided in loft unit since 1980 with her "significant other," who was the lessee of record of the premises. Administrative law judge finds that petitioner resided in the unit prior to June 21, 1982, as part of a nontraditional family and, thus, is entitled to the protection of Article 7-C. **Matter of Lagmon**, OATH Index No. 539/00 (Dec. 8, 1999), **aff'd**, Loft Bd. Order No. 2473 (Jan. 25, 2000).

¶ 19. In a default proceeding, administrative law judge determines that residential occupant is not entitled to protected occupant status based upon the Loft Board's 1994 determination that the unit had been abandoned. **Matter of Dubbeldam,** OATH Index No. 529/00 (Jan. 24, 2000), **aff'd,** Loft Bd. Order No. 2490 (Feb. 22, 2000).

¶ 20. A loft tenant who charges a subtenant a rent in excess of the legal regulated rent can be evicted for unlawful profiteering. BLF Realty Holding Co. v. Kasher, 299 A.D.2d 87, 747 N.Y.S.2d 457 (1st Dept. 2002).

¶ 21. Administrative law judge found that occupants, who are not prime lessees, established their protected occupant claim through testimony and corroborating documentary evidence that they have occupied the unit residentially throughout the window period and up through the present. **Matter of Van Derbeek,** OATH Index No. 1972/01 (Feb. 13, 2002), **aff'd,** Loft Bd. Order No. 2717 (Mar. 14, 2002).

¶ 22. Pursuant to subsection (b)(3)(i) of this section, a tenant, like petitioner, who takes occupancy after June 21, 1982, must show s/he did so with the owner's consent. Where an owner rents out an IMD unit with its attributes of independent living intact and the tenant actually uses the unit as a residence, section 2-09(b)(3) does not require the owner's explicit consent to that residential use to confer Loft Law coverage; consent to the occupancy alone is sufficient. **Matter of McIntosh,** OATH Index No. 604/02 (Oct. 15, 2002), **aff'd,** Loft Bd. Order No. 2763 (Nov. 19, 2002).

¶ 23. In default proceeding, administrative law judge applied formula set forth under subsections (c)(6)(ii)(D)(b)(1), (2) of this section to determine petitioner's rent after he sublet 52% of the space he originally leased. **Matter of Blakeley,** OATH Index No. 753/03 (Feb. 7, 2003), **aff'd in part, modified in part,** Loft Bd. Order No. 2786 (Mar. 7, 2003).

¶ 24. A loft building owner sought to have the second floor unit removed from Loft Law coverage. The administrative law judge found that second floor tenants were protected occupants because a post-June1982 lease was issued to the tenants, and that the unit had not been deregulated by virtue of a sale of rights, sale of fixtures, or abandonment of the unit by the prior protected tenants. Thus, the tenants were entitled to protected status and regulated rent. **Matter of Andrew Bradfield, LLC,** OATH Index No. 1345/03 (Nov. 18, 2003), **aff'd in part, modified in part,** Loft Bd. Order No. 2845 (Feb. 19, 2004).

¶ 25. In one case, there was evidence that the prime tenants of three loft units engaged in rent profiteering after long ago vacating the premises and that the owner dealt directly with the occupants (nominally subtenants) over the last decade, billing for and collecting electricity charges from at least one of the occupants and designating one of the occupants as a fire marshal on his or her respective floor. Under those facts, the court found that there was a sufficient basis for further discovery as to whether the subtenancies were illusory and thus whether the occupants were entitled to protection under Article 7C of the Multiple Dwelling Law. 545 Eighth Ave. Assocs., L.P. v. Shanaman, 12 Misc.3d 66, 819 N.Y.S.2d 813 (App.Term 1st Dept. 2006).

¶ 26. Wife of protected occupant, who was not named on lease, was not entitled to protected status, but she may have succession rights which would protect her from eviction. **Matter of Tenants of 323-325 W. 37th Street**, OATH Index No. 692/06 (May 18, 2007).

¶ 27. Pursuant to subsection (b)(3)(i) of this section, tenants who took possession of a covered residential unit after the relevant window period were protected occupants as they took possession with consent of the landlord. **Rader v. Grand Morgan Realty Corp**., OATH Index Nos. 207/08 & 208/08 (Jan. 4, 2008).

¶ 28. Pursuant to subsection (b)(3) (i) of this section, tenants who took occupancy of a covered residential unit after the relevant window period were protected occupants as they took possession pursuant to a lease agreement. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

¶ 29. In a building covered by section 281(4) of the Multiple Dwelling Law, occupants of covered units who had post-window period (July 27, 1987) leases issued to them by the owner are qualified for protection pursuant to subsection (b)(3)(i) of this section. **Matter of Tenants of 325 West 37th Street**, OATH Index No. 692/06 (May 18, 2007), **adopted in relevant part, modified in part**, Loft Board Order No. 3457 (Sept. 18, 2008).

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-10 Sales of Rights.

(a) **Right to sell.** The residential occupant of an IMD unit may sell the rights afforded such occupant pursuant to Article 7-C to the owner of the IMD or the owner's authorized representative, which shall include a net lessee provided that, with respect to sales which occur on or after March 16, 1990, or with respect to sales in units subject to Article 7-C solely pursuant to MDL §281(4), which occur on or after November 23, 1992, the authorized representative files with the Loft Board written proof of authorization from the owner for such sale on a form issued by the Loft Board. Except as provided in §2-10(c) and (d) herein, a sale pursuant to §286(12) of Article 7-C of the Multiple Dwelling Law shall constitute a sale of all rights in the unit.

(b) **Filing requirement for sales which occur on or after the effective date of these regulations.** For sales which occur on or after the effective date of these regulations, the owner or its authorized representative must file with the Loft Board a record of such sale, on a form issued by the Loft Board, and executed by the owner or its authorized representative and the occupant or the occupant's attorney. Failure by the owner or the owner's authorized representative to file a record of sale within 30 days of the date of the sale may subject the owner to a civil penalty up to $1,000, as determined by the Board.

(c) **Effect of sales.** (1) **Non-Residential use.**

(i) If the unit to be used for non-residential purposes, the owner is relieved of its obligations to comply with the requirements of Article 7-C of the Multiple Dwelling Law regarding such unit. The non-residential use must conform with applicable provisions of the Zoning Resolution and the Administrative Code, and with any existing Certificate of Occupancy for the unit, or other source of legal authorization for such use. The unit may not be converted to

non-residential use if there is a harassment finding by the Loft Board as to any occupant(s) of the unit which the Board has not terminated pursuant to §2-02(d)(2) of the Board's Harassment Regulations.

(ii) Prior to such change of use, the owner or its authorized representative must file with the Loft Board a declaration of intent on a form issued by the Loft Board stating that the unit will only be occupied for a conforming non-residential use. Within 30 days of the Board's receipt of such filing, the Loft Board shall conduct or cause to be conducted an inspection of the premises to verify that all fixtures, as defined in §2-06(a) "Improvements" of the Board's Sales of Improvements Regulations, which were constructed or installed without necessary approvals by appropriate government agencies and for which such approvals have not been secured, or which are intended primarily for residential occupancy, have been removed or approved. The results of this inspection shall be reported to the owner or its authorized representative within 30 days of the inspection, and approval of the non-residential conversion shall be granted promptly when the removal of these fixtures has been verified. Disputes shall be resolved by application to the Loft Board.

(iii) Prior to approval by the Loft Board, as set forth in §2-10(c)(1)(i), the owner remains subject to all the requirements of Article 7-C, and regulations and orders of the Board, including the legalization requirements of Multiple Dwelling Law §284, as set forth in §2-10(c)(2) herein.

(iv) When the conversion of such unit to a non-residential conforming use reduces the number of IMD units below three, the IMD status for such building and for the remaining IMD units in such building, and the protections afforded protected occupants thereof, shall not be eliminated.

(v) Notwithstanding the provisions of §2-01(l) of the Board's Code Compliance Regulations, if conversion of such a unit to a non-residential conforming use increases the costs of legalization under Multiple Dwelling Law §284 for the remaining IMD units, such increased costs shall be borne by the owner and may not be passed through remaining residential occupants pursuant to Article 7-C and the Board's Code Compliance Regulations.

(2) **Residential use.** If the unit is to remain residential, the owner remains subject to all the requirements of Article 7-C, and regulations and orders of the Board, including the legalization requirements of Multiple Dwelling Law §284, except that the unit is no longer subject to rent regulation where coverage under Article 7-C was the sole basis for such rent regulation, provided that there is no finding by the Loft Board of harassment as to any occupant(s) of the unit which has not been terminated pursuant to §2-02(d)(2) of the Board's Harassment Regulations. During the period of its IMD status, the IMD unit may be converted to non-residential use, as set forth in §2-10(c)(1) of these regulations, except that a harassment finding made after a sale shall not bar conversion of the unit to non-residential use.

(3) **Terminations of harassment.** As provided in §2-02(d) (2)(ii) of the Board's Harassment Regulations for sales of improvements, an order terminating a Loft Board finding of harassment shall apply prospectively only. The owner shall not be relieved of the requirements of Article 7-C, including rent regulation, nor may the owner convert the unit to non- residential use, when a sale of rights pursuant to §286(12) for the unit has taken place during the period from the date of the order finding harassment as to any occupant(s) of the unit to the date of the order terminating such finding.

(d) **Sales which occurred prior to the effective date of these regulations.**

(1) No sale or agreement made prior to June 21, 1982, or prior to July 27, 1987 for units subject to Article 7-C solely pursuant to MDL §281(4), in which an occupant purported to waive rights under the statute shall be accorded any force or effect.

(2) By June 14, 1990, the current owner or its authorized representative shall file with the Loft Board a record of any sale pursuant to §286(12) which occurred prior to March 16, 1990 and after June 21, 1982, on a form issued by the Loft Board. Except that for sales pursuant to MDL §286(12) of units subject to Article 7-C solely pursuant to MDL §281(4) which occurred after July 27, 1987, but before November 23, 1992, the current owner or its authorized representative shall file a record of such sale with the Loft Board on the prescribed form on or before February 21,

1993. Such form shall be executed by the current owner or its authorized representative and the occupant who sold such rights. If the occupant fails or refuses to execute such form, the owner or its authorized representative shall file such form and submit a sworn statement identifying the occupant, describing the efforts to locate the occupant or the reasons given by such occupant for refusal to execute the form. Such record of sale shall also contain a sworn statement by the owner or its authorized representative, on a form issued by the Loft Board, as to the current use and occupancy of the unit, and if such record discloses that a unit is being used non-residentially, it shall also contain a sworn declaration by the owner or its authorized representative that the current use is consistent with applicable provisions of the Zoning Resolution and the Administrative Code, and in conformity with any existing Certificate of Occupancy, or other source of legal authorization for such use. Any unit identified in such record as being used non-residentially is subject to inspection to determine its compliance with the requirements set forth in §2-10(c)(1)(ii) of these regulations, except that such inspection shall take place within 90 days of the Loft Board's receipt of such filing.

(3) Failure by the owner or the owner's authorized representative to file a record of sale by June 14, 1990, or by February 21, 1993 for sales of units subject to Article 7-C solely pursuant to MDL §281(4), may subject the owner to a civil penalty up to $1,000, as determined by the Board. The Loft Board shall also cause units to be inspected for which a sale of rights has occurred prior to the effective date of these regulations and a Board-issued record of sale has not been timely filed to determine the current space.

(4) During the period of IMD status units used residentially may be converted to non-residential use, as set forth in §2-10(c)(1) of these regulations, except that a harassment finding made after a sale shall not bar conversion of the unit to non-residential use. Prior to such conversion, the owner remains subject to all the requirements of Article 7-C, and regulations and orders of the Board, including the legalization requirements of Multiple Dwelling Law §284, except that the unit is no longer subject to rent regulation where coverage under Article 7-C was the sole basis for such rent regulation. Units used non-residentially must conform with applicable provisions of the Zoning Resolution and the Administrative Code, and with any existing Certificate of Occupancy for the unit, or other source of legal authorization for such use.

(e) **No right to sale of improvements or rights after a sale pursuant to §286(12) has occurred.** For any sale pursuant to §286(12), the unit subject to such sale may not be the subject of another sale pursuant to §286(12); nor may such unit be the subject of a subsequent sale of improvements pursuant to §286(6) of the MDL.

(f) **Abandonment of IMD unit.** (1) An owner or its authorized representative may apply to the Loft Board for a determination that the occupant of an IMD unit has abandoned the unit and no sale of rights pursuant to Multiple Dwelling Law §286(12) or sale of fixtures pursuant to Multiple Dwelling Law §286(6) has been executed, provided there has been no finding of harassment as to any occupant(s) of the unit which has not been terminated pursuant to §2-02(d)(2) of the Board's Harassment Regulations.

(2) Abandonment shall be defined as the relinquishment of possession of a unit and all rights relating to a unit either (i) voluntarily, with the intention of never resuming possession or reclaiming the rights surrendered, or (ii) by the death of the IMD tenant, provided no family member, as defined in 29 RCNY §2-08.1(c)(3), is denied the benefits of succession rights in accordance with 29 RCNY §2-08.1.

(3) To be considered timely, an owner's application alleging abandonment must be filed with the Loft Board within one year of the date the owner knew or should have known that the IMD tenant vacated the unit.

(4) In deciding whether a unit has been abandoned pursuant to subparagraph (i) of paragraph (2) above, the Loft Board may consider, inter alia, the following factors:

(i) the length of time since the occupant allegedly abandoned the unit;

(ii) whether the occupant owed rent as of the time the occupant allegedly abandoned the unit and whether court proceedings to attempt to collect this rent have been installed;

(iii) whether the occupant's lease for the unit has expired;

(iv) whether the occupant provided notice of an intent to vacate or requested permission to sublet the unit for a specific period of time;

(v) whether the unit contained improvements which were made or purchased by the occupant and whether the occupant was reimbursed for those improvements;

(vi) whether any prior harassment findings have been made by the Loft Board concerning the occupant(s) of the unit or whether any harassment application remains pending;

(vii) whether any violations or notices to appear pursuant to the Loft Board's Minimum Housing Maintenance Standards have been issued;

(viii) whether the owner has made affirmative efforts to locate the occupant to attempt to purchase rights pursuant to Multiple Dwelling Law §286(12) or improvements pursuant to Multiple Dwelling Law §286(6); and

(ix) whether an inspection of the unit by the Loft Board staff indicates that the unit is presently vacant.

(5) In determining whether abandonment has occurred as a result of the death of an IMD tenant as set forth in subparagraph (ii) of paragraph (2) above, proof of the death of such tenant of an IMD unit shall be made by the presentation of a death certificate, the testimony of a relative of the occupant alleged to be dead, or any other trustworthy evidence.

(6) If the owner's application alleging abandonment is granted by the Loft Board and if the unit is to be used for non-residential purposes, the owner or its authorized representative must comply with §2-10(c)(1) of these regulations.

(7) (i) Upon compliance with these specified provisions of §2-10(c)(1) with regard to units to be used for non-residential purposes, the legal effect of the Loft Board's determination of abandonment shall be the same as that of a sale of rights as provided in §2-10(c) of these regulations.

(ii) Upon the Loft Board's granting of the owner's application alleging abandonment with regard to units to remain residential, the legal effect of the Loft Board's determination of abandonment shall be the same as that of a sale of rights as provided in §2-10(c) of these regulations but only if and when:

(A) on or prior to the date of the Loft Board's granting of the owner's application alleging abandonment, the owner has obtained a certificate of occupancy for the affected building and filed an application seeking a final rent order and/or removal from the Loft Board's jurisdiction; or

(B) within one year after the date of the Loft Board's granting of the owner's application alleging abandonment, or prior to the expiration of the code compliance deadline for obtaining a certificate of occupancy in effect on the date of the Loft Board's granting of such application (as such code compliance deadline may be extended pursuant to 29 RCNY §2-01(b)), whichever is earlier, the owner has obtained a certificate of occupancy for the affected building and has filed an application seeking a final rent order and/or removal from the Loft Board's jurisdiction.

(8) If, whenever an IMD unit becomes vacant without a prior sale of rights or improvements and subparagraph (i) of paragraph (7) does not apply, an owner fails to meet either the criteria set forth in §2-10(f)(7)(ii)(A) or the criteria set forth in §2-10(f)(7)(ii)(B), the unit shall remain residential and the owner shall not be permitted to re-rent the unit at a market rate. Additionally, the owner shall provide any incoming tenant(s) with written notice that the rent for the IMD unit may increase to a market rate if and when the owner complies with the criteria set forth in §2-10(f)(7)(ii)(A) or §2-10(f)(7)(ii)(B). Such written notice to an incoming tenant or tenants shall include a copy of this subdivision (f) and a copy of the Loft Board order granting the abandonment application, (if any). If an owner re-rents the unit at a market

rate in violation of this provision, the in-coming tenant(s) may challenge such rent by filing an application alleging a rent overcharge with the Loft Board.

(9) New paragraphs (3) and (8), and the amendments to paragraph (7) made by the rulemaking that added this paragraph, shall apply only to those IMD units for which applications alleging abandonment are filed more than six (6) months after the effective date of this paragraph.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (d) amended City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (f) amended City Record Sept. 8, 2006 §1, eff. Oct. 8, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 8, 2006:

The abandonment provisions set forth in 29 RCNY §2-10(f) are being amended to further encourage owners of interim multiple dwellings ("IMD") to comply with the legalization requirements of the Loft Law.

One of the main purposes of the Loft Law is to require owners to bring their buildings up to the minimum standards of the New York City residential building code. This purpose is not served by allowing owners to rent abandoned IMD units at a market rent without also requiring them to obtain a residential certificate of occupancy. The proposed rule would prohibit owners from enjoying the benefits of a deregulated IMD unit as a result of abandonment without undertaking the necessary and reasonable steps to legalize their buildings in accordance with the Multiple Dwelling Law §284(1). Until such steps are taken, owners also would be required to provide notice to new tenants that rents for the relevant units may increase to market rate if the abandonment determination becomes effective.

The proposed rule also would codify Loft Board precedent defining the death of an IMD tenant as an abandonment of the IMD unit. Further, it would establish a deadline for the filing of an abandonment application to prevent the loss of witnesses and other evidence relevant to the resolution of the application.

Finally, the proposed rule would in effect require the Loft Board to make two determinations in processing abandonment applications. First, the Loft Board would determine whether sufficient proof had been offered to conclude that an IMD tenant abandoned a unit. Second, the Loft Board would determine, in those instances where the abandonment application is granted, whether the effect of the abandonment finding will be the deregulation of the unit based on the owner's actual completion of the necessary legalization work in the affected building.

By conditioning the benefit of a deregulated IMD unit on the fulfillment of the obligation to legalize the building in question, the proposed rule will serve as a valuable tool for furthering the goals of the Loft Law.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where the Loft Law was the sole basis for rent regulation of a loft unit, the unit was found by the Loft Board to be abandoned pursuant to paragraph (f) of this section, and the unit was leased after the abandonment for residential use, the sole legal effect of the abandonment finding was termination of rent regulation of the unit, and all other statutory and regulatory requirements under the Loft Law remained applicable. **Matter of Zabari,** OATH Index No. 419/96 (Oct. 16, 1995), **aff'd,** Loft Bd. Order No. 1899 (Jan. 4, 1996), **aff'd,** Index No. 107964/96 (Sup. Ct. N.Y. Co. Feb. 11, 1997).

¶ 2. Pursuant to subparagraph (f)(5) of this section, the Loft Board's finding that a loft unit had been abandoned terminated rent regulation as to that unit as of the date of the Board's finding, not retroactively to the date of the actual abandonment. Matter of Zabari, OATH Index No. 419/96 (Oct. 16, 1995), aff'd, Loft Bd. Order No. 1899 (Jan. 4, 1996), aff'd sub nom. Zabari v. New York City Loft Board, Index No. 107964/96 (Sup. Ct. N.Y. Co., Feb. 11, 1997), rev'd in part on other grounds, _____ AD2d _____, 666 NYS2d 599 (1st Dept. 1997).

¶ 3. Failure of the Loft Board to conduct an inspection of a loft unit following a sale of rights pursuant to subparagraph (d)(2) of this section did not alter the effect of the sale of rights. Matter of Perry, OATH Index No. 583/97 (Oct. 20, 1997), aff'd, Loft Bd. Order No. 2193 (Dec. 18, 1997).

¶ 4. Following a sale of rights by a residential tenant of a loft unit, the next two tenants of the unit were commercial. The third tenant took occupancy pursuant to a commercial lease, but brought an application for a declaration that he was a protected residential occupant of the unit. Pursuant to subparagraph (c)(1) of this section, the unit was exempt from coverage by the Loft Law, and the current tenant was not entitled to the protections of the Loft Law, including rent regulation. Matter of Perry, OATH Index No. 583/97 (Oct. 20, 1997), aff'd, Loft Bd. Order No. 2193 (Dec. 18, 1997).

¶ 5. Following the Loft Board's adoption of abandonment rules (paragraph (f) of this section), an abandonment is no longer to be construed as a constructive sale of fixtures, with the sale price deemed to be paid from the unpaid rent. Matter of Sansone, OATH Index No. 1125/96 (Mar. 27, 1996), aff'd, Loft Bd. Order No. 1955 (Apr. 25, 1996).

¶ 6. Where a loft unit remains in residential use after a finding of abandonment, the effect of the abandonment finding is the same as the effect of a sale of rights: the rent is deregulated. Matter of Knickerbocker Paper Recycling Co., OATH Index No. 1729/97 (Oct. 6, 1997), aff'd, Loft Bd. Order No. 2181 (Oct. 30, 1997); see also Matter of Sansone, OATH Index No. 1125/96 (Mar. 27, 1996), aff'd, Loft Bd. Order No. 1955 (Apr. 25, 1996).

¶ 7. In the case of an abandonment pursuant to paragraph (f) of this section, rent deregulation became effective on the Loft Board's determination of abandonment, not retroactively, on the date of the abandonment itself. Matter of Sansone, OATH Index No. 1125/96 (Mar. 27, 1996), aff'd, Loft Bd. Order No. 1955 (Apr. 25, 1996).

¶ 8. Use of a loft unit as a joint living/work quarters does not constitute non-residential use exempting the unit from legalization requirements pursuant to paragraph (c) of this section. Matter of Rava, OATH Index No. 1237/96 (Apr. 17, 1996), aff'd, Loft Bd. Order No. 1998 (Sept. 26, 1996).

¶ 9. A building owner's abandonment application was not rendered moot by the owner's entry into a residential lease with a new tenant during the pendency of the application. Matter of O'Connell, OATH Index No. 393/97 (Nov. 12, 1996), aff'd, Loft Bd. Order No. 2050 (Jan. 9, 1997); Matter of Rava, OATH Index No. 1237/97 (Apr. 17, 1996), aff'd, Loft Bd. Order No. 1998 (Sept. 26, 1996).

¶ 10. A covered unit was abandoned pursuant to paragraph (f) of this section, when, after the death of the protected occupant in 1991, the daughter of the deceased removed her mother's possessions from the unit and surrendered the unit by turning over the keys to the landlord. Matter of 303 Park Avenue South Associates, OATH Index Nos. 1727-28/97 (July 30, 1997), aff'd, Loft Bd. Order No. 2157 (Oct. 10, 1997).

¶ 11. The death in 1993 of the sole occupant of a covered unit, and the absence of any claim on the unit after his death, constituted an abandonment of the unit. Matter of 303 Park Avenue South Associates, OATH Index Nos. 1727-28/97 (July 30, 1997), aff'd, Loft Bd. Order No. 2157 (Oct. 10, 1997).

¶ 12. Loft unit was abandoned pursuant to paragraph (f) of this section upon the death of the protected occupant in 1993, followed by the return of the unit key from the occupant's estate to the owner. Matter of Knickerbocker Paper Recycling Co., OATH Index No. 1729/97 (Oct. 6, 1997), aff'd, Loft Bd. Order No. 2182 (Oct. 30, 1997).

¶ 13. Where the window period occupant of a loft unit died in or about 1983, and the subsequent residential occupant of the unit has been adjudicated not to be a protected occupant of the unit, the unit was abandoned pursuant to paragraph (f) of this section. Matter of BLF Realty Holding Corp., OATH Index No. 990/97 (May 7, 1997), aff'd, Loft Bd. Order No. 2120 (June 26, 1997).

¶ 14. Upon the death in 1988 of a covered unit's protected occupant, the administrator of the occupant's estate stated his intention to forego any claim concerning the unit, thereby abandoning the unit pursuant to paragraph (f) of this section. Matter of Ebbetts Partners, OATH Index No. 1460/97 (May 30, 1997), aff'd, Loft Bd. Order No. 2140 (Aug. 28, 1997).

¶ 15. The death of the tenant of a loft unit, after which no other person claimed the right to occupy the unit, constituted an abandonment of the unit pursuant to paragraph (f) of this section. Matter of O'Connell, OATH Index No. 393/97 (Nov. 12, 1996), aff'd, Loft Bd. Order No. 2050 (Jan. 9, 1997).

¶ 16. The death of the residential occupant of a loft unit, followed by the grant of permission by the father of the deceased tenant to the building owner to take possession of the unit, constituted an abandonment of the unit pursuant to paragraph (f) of this section. Matter of Ayala, OATH Index No. 760/96 (Jan. 29, 1996), aff'd, Loft Bd. Order No. 1915 (Feb. 29, 1996).

¶ 17. The protected occupant of a covered unit abandoned the unit, pursuant to paragraph (f) of this section, by leaving without notice in 1982, after which he was not seen or heard from. Matter of Ebbetts Partners, OATH Index No. 1460/97 (May 30, 1997), aff'd, Loft Bd. Order No. 2140 (Aug. 28, 1997).

¶ 18. The two window period residents of a loft unit having moved out, and one having agreed with the landlord to hold each other harmless and go their separate ways, and the residents having not been seen since 1988, the unit was abandoned pursuant to paragraph (f) of this section. Matter of Ebbetts Partners, OATH Index No. 1460/97 (May 30, 1997), aff'd, Loft Bd. Order No. 2140 (Aug. 28, 1997).

¶ 19. The window period residential occupant of a loft unit, who lived rent-free in exchange for superintendent services to the owner of the building, moved out when the owner sold the building in 1988, and thereby abandoned the unit pursuant to paragraph (f) of this section. Matter of Ebbetts Partners, OATH Index No. 1460/97 (May 30, 1997), aff'd, Loft Bd. Order No. 2140 (Aug. 28, 1997).

¶ 20. Where a building was vacated after a fire in or about 1988, and, after rehabilitation of the building, commercial and residential tenants were permitted to return, the failure of one tenant to return to his unit or otherwise to communicate with the owner constituted an abandonment of that unit pursuant to paragraph (f) of this section. Matter of Cika Realty Co., OATH Index No. 1123/96 (Mar. 13, 1996), aff'd, Loft Bd. Order No. 1943 (Mar. 28, 1996).

¶ 21. The departure in 1993 of the protected occupant of a loft unit, leaving the unit in poor condition and owing rent, constituted an abandonment of the unit pursuant to paragraph (f) of this section. Matter of Ovid, LLC, OATH Index No. 586/97 (Jan. 16, 1996), aff'd, Loft Bd. Order No. 2079 (Feb. 27, 1997).

¶ 22. A residential occupant's voluntary conduct of criminal and dangerous activities constituting a public nuisance in his loft unit, his failure to appear in a Supreme Court action brought by the City of New York seeking closure of the loft unit due to the illegal use of the unit, and the Supreme Court's issuance of a temporary order of closure, constituted an abandonment of the unit. Matter of Kangs Heritage Management Corp., OATH Index No. 762/98 (Dec. 19, 1997), aff'd, Loft Bd. Order No. 2221 (Feb. 26, 1998).

¶ 23. A tenant who moved out of his loft unit during a rent dispute with the building owner, and whose attorney wrote to the owner's attorney unequivocally stating that the tenant was relinquishing possession of the unit with no intention of resuming possession, thereby abandoned the unit pursuant to paragraph (f) of this section. Matter of Sansone, OATH Index No. 1125/96 (Mar. 27, 1996), aff'd, Loft Bd. Order No. 1955 (Apr. 25, 1996).

¶ 24. Absent proof that no finding of harassment had been made against the owner as to the unit for which the abandonment determination was sought, and absent proof that no sale of rights or fixtures had been executed for the unit, the abandonment application was denied pursuant to subparagraph (f)(1) of this section. Matter of Amalgamated Union Local 5, OATH Index No. 1127/96 (Mar. 19, 1996), aff'd, Loft Bd. Order No. 1957 (Apr. 25, 1996).

¶ 25. Because a Civil Court disposition of a non-payment action against the current residential occupants of a loft unit, finding that a prior occupant of the unit had not abandoned the premises, precluded re-litigation of the identical abandonment issue in an application to the Loft Board pursuant to paragraph (f) of this section, the current occupants' defense of collateral estoppel was sustained, and the abandonment application was denied. Matter of M.R.A. Realties, Inc., OATH Index No. 991/97 (Oct. 20, 1997), aff'd, Loft Bd. Order No. 2192 (Dec. 18, 1997).

¶ 26. The scope of a waiver of Loft Law rights is determined by the intention of the parties to the waiver agreement, as manifested in the contract language. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 27. If a waiver agreement indicates, either by its express language or by its clear import, that the parties to the agreement intended that the waiver include rights that were unknown at the time of the agreement, or even rights that had not accrued at the time of the agreement, that waiver agreement will be honored. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 28. The prohibition contained in subparagraph (d)(1) of this section, against pre-1987 waivers of rights for units covered by the Loft Law solely due to the 1987 amendments to that law, was a valid exercise of the Loft Board's broad rule-making authority. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 29. A 1985 landlord-tenant agreement providing for rent regulation pursuant to the Rent Stabilization Law rather than the Loft Law, in the event that the building were declared to be covered by the Loft Law, clearly indicated an intention by the parties to the agreement to waive rent regulation pursuant to the 1982 Loft Law, but did not clearly indicate an intention to waive rent regulation pursuant to the 1987 amendments to the Loft Law. Moreover, even had the parties intended to waive Loft Law rent regulation pursuant to future amendments to the Loft Law, the waiver would have been invalid pursuant to subparagraph (d)(1) of this section. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 30. Although a tenant waited nine years to assert the right to rent regulation conferred by the 1987 amendments to the Loft Law, during which time she entered into a series of leases for rental amounts more than the regulated rent would have been, the tenant did not thereby waive her right to rent regulation pursuant to this section. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997), adhered to in supplemental report and recommendation (June 24, 1997), aff'd, Loft Bd. Order No. 2154 (Oct. 10, 1997).

¶ 31. A tenant's voluntary payment of rents billed by the building owner did not constitute a waiver of the tenant's right to rent regulation under the Loft Law, and therefore the tenant's rent overcharge application was granted. Matter of Teitelbaum, OATH Index No. 894/97 (May 30, 1997), aff'd, Loft Bd. Order No. 2133 (Aug. 28, 1997).

¶ 32. Where a 1991 settlement of coverage litigation between the building owner and certain tenants provided for specified rental amounts for the period from April 1991 to March 1994, and provided for rental amounts thereafter at the March 1994 rate "subject to further order of the Loft Board," the settlement did not operate as a waiver of the tenants' right to rent regulation altogether, but a waiver of the tenants' right to seek a lower base rent than the rental amounts provided in the settlement. Matter of Bordes, OATH Index No. 1143/97 (June 23, 1997), aff'd, Loft Bd. Order No. 2134 (Aug. 28, 1997).

¶ 33. A tenant's representation as part of a 1987 settlement of coverage litigation that he would interpose no claim in any forum that he uses his loft unit for residential purposes constituted a waiver of the tenant's right to seek protected occupancy status or rent regulation for his loft unit. Matter of Muntadas, OATH Index No. 1180/95 (May 29, 1996), aff'd, Loft Bd. Order No. 2030 (Nov. 21, 1996), reconsideration denied, Loft Bd. Order No. 2170 (Oct. 30, 1997).

¶ 34. Where a loft unit was found by the Loft Board to have been abandoned pursuant to paragraph (f) of this section, and the unit was leased after the abandonment for residential use, the sole legal effect of the abandonment finding was the termination of rent regulation of the unit, and all other statutory and regulatory requirements under the Loft Law remained applicable. Matter of Zabari, OATH Index No. 419/96 (Oct. 16, 1995), aff'd, Loft Bd. Order No. 1899 (Jan. 4, 1996), aff'd sub nom. Zabari v. New York City Loft Board, Index No. 107964/96 (Sup. Ct. N.Y. Co., Feb. 11, 1997), rev'd in part on other grounds, _____ AD2d _____, 666 NYS2d 599 (1st Dept. 1997).

¶ 35. Administrative law judge grants owner's application to amend the Loft Board registration and remove IMD unit from coverage, where residential occupants of unit sold their rights to the owner in the interim, the owner filed a sales record and declaration of intent with the Loft Board in accordance with Multiple Dwelling Law section 286, and the Loft Board's inspection report indicated the unit was converted to non-residential use. **Matter of 303 Park Avenue South Associates,** OATH Index No. 128/98 (Nov. 12, 1997), **aff'd in part, modified in part, and remanded,** Loft Bd. Order No. 2209 (Jan. 22, 1998), **on remand,** OATH Index No. 1093/98 (May 12, 1998), **aff'd,** Loft Bd. Order No. 2266 (June 25, 1998).

¶ 36. Prior sale of rights to owner precludes rent overcharge claim by subsequent tenant because such a sale of rights in an interim multiple dwelling, which remains residential, removes the unit from rent regulation pursuant to Multiple Dwelling Law section 286(12) and subparagraph (c)(2) of this section. **Matter of Block,** OATH Index No. 434/98 (Mar. 11, 1998), **aff'd,** Loft Bd. Order No. 2247 (May 28, 1998).

¶ 37. Abandonment applications granted where evidence established that empty fourth floor unit was last occupied by a now deceased tenant. **Matter of 645-647 Broadway Realty, LLC,** OATH Index No. 1501/98 (July 22, 1998), **aff'd,** Loft Bd. Order No. 2294 (Sept. 24, 1998).

¶ 38. Abandonment applications granted for that portion of space not previously the subject of a sale of rights. **Matter of 291 Seventh Avenue, LLC,** Loft Bd. Order No. 2360 (Jan. 28, 1999), **aff'g on other grounds** OATH Index Nos. 730-31/99 (Dec. 7, 1998).

¶ 39. A landlord argued that under 29 RCNY Sec. 2-10(c)(2), once the fixtures of a loft unit were sold, the unit was removed from the rent stabilization system once and for all. The court, however, held that even though the unit might no longer be stabilized under the provisions of the Loft Law, it might still qualify for stabilization under the Emergency Protection Act of 1974. 182 Fifth Ave. LLC v. Design Development Concepts, N.Y.L.J., Dec. 12, 2001, page 18, col. 2, Sup.Ct. New York Co.

¶ 40. The failure to comply with 29 RCNY Sec. 2-10(d), which requires registration with the Loft Board of a sale of improvements, will result in a civil penalty imposed by the Loft Law, but will not result in nullification of the sale. 182 Fifth Ave. LLC v. Design Development Concepts, N.Y.L.J., Dec. 12, 2001, page 18, col. 2 (Sup.Ct. New York Co.).

¶ 41. Abandonment application established that the unit was abandoned by the death of the prior residential tenant. **Matter of Marcus**, OATH Index No. 2123/99 (Oct. 26, 1999), **aff'd**, Loft Bd. Order No. 2456 (Dec. 13, 1999).

¶ 42. Abandonment application granted where the owner's evidence showed that the unit had been vacant since the death of the previous residential tenant and there were no harassment findings or housing maintenance violations. **Matter of 458 West Broadway, LLC**, OATH Index No. 273/00 (Oct. 8, 1999), **aff'd**, Loft Bd. Order No. 2445 (Nov. 1, 1999).

¶ 43. Abandonment found where the evidence indicated that the occupant of a fourth floor unit died and unit was vacant when petitioner purchased the building. **Matter of Bahia Mehmet Bin Chambi**, OATH Index No. 1126/98 (May 5, 1998), **aff'd**, Loft Bd. Order No. 2265 (June 25, 1998). ¶ 44. Upon the protected occupant's default, an application for abandonment of residential unit was granted where the owner established that occupant/tenant had been gone from the premises since sometime in 1996; left owing $12,000 in rent; there was no indication that tenant intended to return; there had been no attempt to buy fixtures or improvements from the tenant; there were no outstanding harassment complaints pertaining to this building; and there were no outstanding violations of minimum housing maintenance standards. **Matter of Hyung-Hyang Realty Corp**., OATH Index No. 2124/99 (Sept. 22, 1999), **aff'd**, Loft Bd. Order No. 2124/99 (Nov. 1, 1999).

¶ 45. Abandonment application granted where no valid sale of rights was found. Whether a pre-registration sale of rights (29 RCNY § 2-10(d)), as opposed to a sale of improvements (29 RCNY §§ 2-07(e), 2-07(h)(1)(iii)), qualifies to de-regulate a unit, need not be determined since there was insufficient proof that the parties intended a sale of rights. **Matter of 103 West 27th Street Realty Corp**., OATH Index No. 1409/99 (May 21, 1999), **aff'd**, Loft Bd. Order No. 2420 (June 25, 1999).

¶ 46. Abandonment application granted on default, where the tenant of record had left without notice three years earlier, left nothing of value behind and current whereabouts were unknown. **Matter of OVID, LLC**, OATH Index No. 586/97 (Jan. 16, 1997), **aff'd**, Loft Bd. Order No. 2079 (Feb. 27, 1997).

¶ 47. Abandonment found where the occupant/tenant had been gone from the premises, there was no indication that the tenant intended to return, tenant vacated before finalizing buy-out, no fixtures were left in the unit, there was no evidence of outstanding harassment complaints pertaining to the building, and there were no outstanding violations of minimum housing standards. **Matter of Big Greene, LLC**, OATH Index No. 274/00 (Dec. 22, 1999), **aff'd**, Loft Bd. Order No. 2505 (Mar. 30, 2000).

¶ 48. Where an owner filed an abandonment application but argued, in the alternative, that a sale of rights had occurred, the administrative law judge found that an estate of a deceased tenant cannot sell rights. However, an abandonment was proven and the application was granted. **Matter of 107 West 26th** Street Owners Corp., OATH Index No. 716/00 (Dec. 17, 1999), **aff'd**, Loft Bd. Order No. 2485 (Feb. 22, 2000).

¶ 49. Abandonment found where the evidence indicated that the second floor unit was previously occupied by a residential tenant, but at the time petitioner assumed ownership the unit was vacant. **Matter of 42 West 29th** Street, OATH Index No. 1206/99 (Apr. 14, 1999), **aff'd**, Loft Bd. Order No. 2401 (May 25, 1999).

¶ 50. Tenants filed coverage and rent adjustment applications and the owner filed a cross-application for abandonment. Administrative law judge granted the coverage application finding that the tenants took occupancy of a covered IMD unit with the consent of the owner. Administrative law judge found that previous protected occupant had abandoned the unit before petitioners took occupancy, but the unit remained residentially occupied and subject to the Loft Law, because the owner had failed to take the steps required by section 2-10(c)(1)(ii) to convert the unit to non-residential use. Pursuant to subparagraph (f)(5) of this section, removal from rent regulation occurs upon the Loft Board's granting of an owner's abandonment application, **i.e**., a finding of abandonment is not given retroactive effect; therefore, tenants retained a viable overcharge claim. Although a finding of abandonment by the Loft Board usually removes a unit from rent regulation, relying on **Matter of White**, Loft Bd. Order No. 2194 (Dec. 18, 1997), the administrative law judge ruled that should not occur here, where the abandonment application was filed years after the fact and only in response to petitioners' overcharge application. **Matter of DeLong**, OATH Index No. 266/99, **aff'd and remanded**, Loft Bd. Order No. 2457 (Dec. 13, 1999), **application for reconsideration denied**, Loft Bd. Order No. 2500 (Mar. 30, 2000), **on remand**, OATH Index No. 1165/00 (Nov. 1, 2000).

¶ 51. Administrative law judge found insufficient evidence that former tenant had sold his rights to the former owner. The sale occurred before the building was registered as an IMD and the brief written agreement merely provided

that the tenant would vacate the premises by a certain date in exchange for $14,000, without mention of the Loft Law or Loft Law rights. **Matter of 103 West 27th Street Realty Corp**., OATH Index No. 1409/99 (May 21, 1999), **aff'd**, Loft Bd. Order No. 2420 (June 25, 1999).

¶ 52. Administrative law judge denied tenant's application for protected occupancy rights to the entire third floor of an IMD, finding the applicant and two former co-occupants of the floor had sold their rights and fixtures to the former landlord, and the sales operated to deregulate the entire third floor of premises. **Matter of Fergusson**, OATH Index No. 923/99 (June 11, 1999), **aff'd**, Loft Bd. Order No. 2440 (Nov. 1, 1999).

¶ 53. Whether a pre-registration sale of rights (29 RCNY § 2-10(d)), as opposed to a sale of improvements (29 RCNY §§ 2-07(e), 2-07(h)(1)(iii)), qualifies to de-regulate a unit, did not have to be determined since there was insufficient proof that the parties intended a sale of rights. Where no valid sale of rights was found, the abandonment application was granted. Matter of 103 West 27th Street Realty Corp., OATH Index No. 1409/99 (May 21, 1999), **aff'd**, Loft Bd. Order No. 2420 (June 25, 1999).

¶ 54. Owner filed an abandonment application but argued, in the alternative, that a sale of rights had occurred. Administrative law judge found that an estate of a deceased tenant cannot sell rights. However, an abandonment was proven, and therefore, the application was granted. **Matter of 107 West 26th Street Owners Corp.,** OATH Index No. 716/00 (Dec. 17, 1999), **aff'd**, Loft Bd. Order No. 2485 (Feb. 22, 2000).

¶ 55. A finding of abandonment removes the unit from rent regulation. **Matter of Dubbeldam,** OATH Index No. 529/00 (Jan. 24, 2000), **aff'd,** Loft Bd. Order No. 2490 (Feb. 22, 2000).

¶ 56. Administrative law judge found evidence sufficient to grant the abandonment application for all four units where evidence indicated that one tenant had departed in the face of an eviction, that one tenant had departed after being hospitalized, and that the last residential tenant of the other currently vacant units had died before the current owner purchased the premises. None of the units contained improvements. There were also no harassment findings against the owner and no housing maintenance violations. **Matter of Dadon,** OATH Index No. 2014/00 (Dec. 27, 2000), **aff'd,** Loft Bd. Order No. 2612 (Mar. 9, 2001).

¶ 57. Owner provided sufficient basis for granting of abandonment application based upon death of protected occupant of IMD unit. **Matter of Mak (JSM Properties Inc.),** OATH Index No. 531/00 (Jan. 10, 2000), **aff'd,** Loft Bd. Order No. 2491 (Feb. 22, 2000).

¶ 58. Administrative law judge recommends finding of abandonment based upon evidence, which established that occupant/tenant had been gone from the premises since 1991 and indicated that he would not return. **Matter of 315 Church Street Corp.,** OATH Index No. 934/00 (Mar. 13, 2000), **aff'd,** Loft Bd. Order No. 2522 (Apr. 27, 2000).

¶ 59. Notice was mailed to the affected tenant with an instruction that failure to answer would result in a declaration of default. Envelope was returned by the postal service marked, "Forwarding Order Expired." Tenant filed no answer and made no appearance and was declared in default. Administrative law judge found that credible evidence from building manager established that occupant/tenants had been gone from the premises since mid-1995; there was no indication that tenants intended to return; tenants vacated before finalizing buy-out that had been discussed; no fixtures were left in the unit; there was no evidence of outstanding harassment complaints pertaining to this building; and there were no outstanding notices of violation of minimum maintenance standards. **Matter of Big Greene, LLC.,** OATH Index No. 274/00 (Feb. 10, 2000), **aff'd,** Loft Bd. Order No. 2505 (Mar. 30, 2000).

¶ 60. Administrative law judge denies application filed by current owner, which sought a finding that former owner-occupants had abandoned their units. The Multiple Dwelling Law does not extend its protection to owner-occupants. **Matter of 70 W. 38th St. Co.,** OATH Index No. 933/00 (May 18, 2000), **aff'd,** Loft Bd. Order No. 2533 (July 18, 2000).

¶ 61. Administrative law judge found that owner did not convert the residential IMD unit to a non-residential unit by filing a declaration of intent with the Loft Board. Administrative law judge did not give effect to the declaration because the owner did not remove all of the fixtures, as required by 29 RCNY § 2-10(c)(1)(ii), and because he had acted contrary to the declaration by continuing to acquiesce to residential use. **Matter of Dubbeldam,** OATH Index No. 529/00 (Jan. 24, 2000), **aff'd,** Loft Bd. Order No. 2490 (Feb. 22, 2000).

¶ 62. Loft Board rule 2-10(f)(1) does not permit an abandonment finding where a sale of rights agreement has been executed. **Matter of Vitale,** 1467/00, supp. rep. (Apr. 3, 2000), **aff'd,** Loft Bd. Order No. 2531 (June 29, 2000).

¶ 63. A tenant ceased occupying the unit as a primary residence and sublet the unit without permission. Owner brought holdover proceeding in housing court against the protected tenant and subtenant. Owner obtained a default judgment against the tenant and executed stipulation with subtenant, whereby subtenant agreed to surrender possession to the owner within nine months, the judge recommended that the abandonment application be granted. Because protected tenant had vacated the unit before a warrant of eviction was executed, abandonment regulation (29 RCNY § 2-10(f)) applied, not regulation governing eviction of residential occupants (29 RCNY § 2-08(j)(2)). Therefore, if the owner elects to let the unit residentially, all of the requirements of the Loft Law will apply, except the unit will be removed from rent regulation. 29 RCNY § 2-10(f)(5); 29 RCNY § 2-10(c)(2). **Matter of Twenty-Nine Second, LLC,** OATH Index No. 1431/01 (Apr. 3, 2001).

¶ 64. Seven units were found to have been abandoned as defined by section 2-10(f) where the entire building has been vacant for years. Past inspections by the building architect and the Loft Board's Director of Enforcement noted the building's dilapidated condition and lack of indicia of any residential use. **Matter of Greenwich Associates, LLC,** OATH Index No. 1193/01 (Mar. 1, 2001).

¶ 65. An abandonment application was granted where first floor unit of premises had been occupied commercially for some twenty years and where testimony of owner and tenants established that it had never been occupied residentially. **Matter of Noah Trading Co.,**, OATH Index No. 1675/01 (June 25, 2001), **aff'd,** Loft Bd. Order No. 2688 (Nov. 29, 2001).

¶ 66. The owner was excused from fully addressing several of the abandonment factors set forth in section 2-10(f)(3) of the Loft Board's rules where the prior eviction occurred under former owner's operation of building. **Matter of Mervin,** OATH Index No. 1965/01 (Nov. 8, 2001), **aff'd,** Loft Bd. Order No. 2689 (Nov. 29, 2001).

¶ 67. Petitioner submitted sufficient reliable proof showing that the last occupant of a covered residential unit abandoned the unit. Abandonment occurred shortly after occupant's appeal of Loft Board Order No. 1321, finding the unit, but not the occupant, covered under the Loft Law, was denied. **Matter of 38 Walker Street, LLC,** OATH Index No. 1430/01 (Aug. 24, 2001), **aff'd,** Loft Bd. Order No. 2669 (Oct. 10, 2001).

¶ 68. Abandonment application granted where evidence indicated that the unit was previously occupied by a residential tenant who vacated the premises owing thousands of dollars in back rent and the value of fixtures she left behind did not cover the back rent or repairs. **Matter of Life Realty Partners, L.P.,** OATH Index No. 1674/01 (Oct. 12, 2001), **aff'd,** Loft Bd. Order No. 2687 (Nov. 29, 2001).

¶ 69. The determination of whether an interim multiple dwelling is considered abandoned rests within the purview of the New York City Loft Board. Where an abandonment proceeding was already pending before the Loft Board, it was proper for the Supreme Court to dismiss an action to compel a determination of plaintiff's claim to an interim multiple dwelling, wihtout prejudice to restoring the action following resolution of the administrative proceeding. EPDI Assoc. v. Conley, 776 N.Y.S.2d 902 (App.Div. 1st Dept. 2004).

¶ 70. Abandonment application denied where the owner established that 1983 occupants no longer lived in the units, but failed to provide sufficient proof as to the circumstances under which they left the building, as contemplated by the factors set forth in subsection (3) of this rule. **Matter of 117 Hester Realty, LLC,** OATH Index No. 2026/06

(Sept. 26, 2006), **adopted**, Loft Bd. Order No. 3139 (Jan. 18, 2007).

¶ 71. Abandonment application denied where the owner established that unit had been commercially occupied since 1992, and that there has been no prior findings or harassment, where the owner offered no evidence relating to the other factors set forth in subsection (3) of this rule. **Matter of MAS, LLC,** OATH Index No. 445/07 (Oct. 24, 2006).

¶ 72. Subsection (f) of this rule, as amended, now requires abandonment applications to be filed within one year of the date the owner knew or should have known a unit was abandoned. The amendment applies to all abandonment applications filed after April 8, 2007. ALJ dismissed application filed on July 12, 2007, because the owner knew or should have known the unit was vacant when the building was purchased, over twenty years ago. **Matter of 103 W. 27th Street Realty, Inc.**, OATH Index No. 868/08 (Nov. 21, 2007).

¶ 73. ALJ rejected an IMD owner's assertion that because it filed its abandonment application within one year of the date the owner had purchased the building, the application was timely, even though the protected tenant had vacated the abandoned unit over twenty years earlier. Under paragraph (f)(3) of this section, all abandonment applications must be filed within one year of the date the owner knew or should have known that the tenant vacated the unit. Therefore, the one-year time limit for filing under this section began running in 1983, the date the prior owner knew that the tenant abandoned the unit. Because a new owner of a building generally steps into the shoes of the prior owner, the ALJ found that the application for a finding of abandonment was untimely and should be dismissed. **Matter of Johnson**, OATH Index No. 967/08 (Jan. 7, 2008).

¶ 74. Abandonment application granted where proof showed that protected tenant had vacated the unit to pursue an employment opportunity outside of New York. **Matter of 20 Beaver Street, LLC**, OATH Index No. 691/06 (June 25, 2007), **adopted**, Loft Bd. Order No. 3436 (May 15, 2008).

¶ 75. Abandonment application denied where owner's sole witness knew little about the circumstances surrounding the protected tenant's vacatur of the unit and did not explain what efforts, if any, the owner made to obtain additional information from the man who had owned the building at the time the tenant departed. **Matter of Aulisa**, Loft Bd. Order No. 3437 (May 15, 2008), **rejecting,** OATH Index No. 1816/06 (Aug. 4, 2006).

¶ 76. Abandonment not found where prior tenant departed the unit in accord with its lease, gave advance notice, and did not owe back rent. Loft Board Order distinguishes between turnover of tenants, which occurred here, and abandonment of unit, which did not occur. **Matter of 67 Vestry Street, LLC**, Loft Bd. Order No. 3476 (Nov. 20, 2008), **adopting on other grounds,** OATH Index Nos. 1818/06 & 2095/06 (Sept. 20, 2006).

¶ 77. Although death of tenant would constitute an abandonment, the Loft Board denied an application where the owner listed former tenants as deceased but failed to provide any documentary evidence that the former tenants were actually deceased. **Matter of L & F Realty Corp**., OATH Index No. 796/07 (Jan. 4, 2007), **adopted**, Loft Bd. Order No. 3478 (Nov. 20, 2008).

Rules of the City of New York

29 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-11 Fees.

(a) **Collection of fees.** The Loft Board shall charge and collect reasonable fees in the execution of its responsibilities. The Loft Board may, by amending these regulations, add to, delete from or modify the types of applications for which fees are charged and/or revise the amount of the fee imposed.

(b) **Schedule of reasonable fees.** (1) **Registration and Code Compliance Monitoring fee.**

(i) The filing fee for registration and code compliance monitoring shall be $500.00 per residentially occupied unit.

(A) Registration of a building or a part thereof as an interim multiple dwelling (IMD) by the owner, lessee of a whole building, and the agent is required annually. The annual period shall begin on July 1 of each year and end on June 30 of the following year. If more than one registration application is filed for a building, the filing fee for the residentially occupied units therein shall be charged only once during any annual period.

(B) Landlords filing annual renewal registration applications, which become effective on July 1, 1983 and annually thereafter, shall be required to pay the registration filing fee prior to the processing of the application.

(C) Registration as an IMD shall not be issued to or renewed for an owner of a building against whom a fine has been imposed for any violation of these rules or against whom any late-filing fee has been imposed pursuant to §2-11(b)(1)(i)(D), unless or until such fine and late-filing fee has been paid, or such owner has entered into, and is in compliance with, an installment agreement, payment plan or other similar arrangement for the payment of such fine. Registration as an IMD shall not be issued to or renewed for an owner of a building unless and until all prior unpaid

registration fees and late-filing fees (if any) have been paid.

(D) If the annual renewal registration application and fee are not submitted by July 31 of each year in which they are required to be submitted, the Loft Board shall assess the owner a late filing fee of $25.00 for the month of July for each residentially occupied unit. Thereafter the Loft Board shall assess the owner an additional late filing fee of $5.00 per residentially occupied unit for each month or portion of a month until the date when the application is submitted and the fee is paid.

(2) **Code compliance applications.**

(i) The filing fee for an application for rent adjustments based upon the costs of compliance with Article 7-B of the Multiple Dwelling Law, or of obtaining a final residential certificate of occupancy, or both shall be $100.00 for each residentially occupied unit listed in the application.

(ii) The filing fee for an application for certification of estimated future rent adjustments shall be $75.00 for each residentially occupied unit listed in the application.

(3) **Article 7-C coverage applications.**

(i) The filing fee for an application, filed by either the landlord or by the tenant, for coverage of any building or part thereof, pursuant to Article 7-C of the Multiple Dwelling Law shall be $25.00 for each unit listed in the application.

(4) **Rent dispute applications.**

(i) The filing fee for an application, filed by either the landlord or tenant, disputing base rent or rent increases, not including rent adjustments based on costs of code compliance which are governed by §2-11(b)(3) of these regulations, shall be $50.00.

(5) **Sales of improvements applications.** (i) **Filing fees for landlords.**

(A) The filing fee for a sales of improvements application filed with the Loft Board before the effective date of these rules by a landlord or tenant shall be $300.00.

(B) The filing fee for any such application filed by the landlord with the Loft Board on or after the effective date of these rules shall be $500.00.

(ii) There is no fee for filing a Disclosure Form or Sales Record.

(6) **Housing maintenance applications.**

(i) The filing fee for an application filed by a tenant for violation of the minimum housing maintenance standards or by a landlord disputing its responsibility for providing any such service is $50.00.

(7) **Article 7-C compliance applications.**

(i) The filing fee for an application filed by a tenant or landlord concerning the landlord's compliance with Article 7-C is $50.00.

(8) **Tenant harassment applications.**

(i) The filing fee for an application filed by a tenant complaining of harassment is $100.00.

(9) **Tenant code compliance work plan.**

(i) The filing fee for an alternate code compliance work plan or for a waiver to allow late filing of an alternate code compliance work plan by a tenant is $50.00.

(ii) There is no filing fee for code compliance work plans filed by the landlord.

(10) **Interference with use applications.**

(i) The filing fee for an application filed by a tenant for unreasonable interference with use by the landlord in code compliance work is $50.00.

(11) **Landlord access applications.**

(i) The filing fee for an application filed by the landlord for an access order by the Board to permit access to tenants' units to perform code compliance work following tenants' refusal of such access is $50.00.

(12) **Landlord hardship applications.**

(i) The filing fee for an application filed by the landlord for a hardship exemption from Article 7-C is $1,000.00.

(13) **Decoverage applications.**

(i) The filing fee for an application filed by the landlord for an exemption from legalizing nonconforming units (decoverage) is $200.00.

(14) **Appeals to the Board of Administrative Decisions.**

(i) The filing fee for an application to appeal the Board's administrative decisions, such as a request for an extension denied by the staff, is $100.00.

(15) **Reconsideration applications.**

(i) The filing fee for an application for reconsideration is $100.00.

(16) **Abandonment applications.**

(i) The filing fee for an application for a determination that the occupant of an IMD unit has abandoned the unit is $100.00.

(17) **Sublessee-prime lessee compensation applications.**

(i) The filing fee for an application to determine the value of improvements installed in a unit for which the prime lessee is not the residential occupant qualified for protection is $500.00.

(18) **Extension applications.**

(i) The filing fee for an extension application is $50.00.

(19) **Other applications.**

(i) The filing fee for other applications filed with the Loft Board is $50.00.

(c) **Procedures for collection of fees.** The procedure for collection is as follows:

(1) The fee is due and payable upon the filing of the application. Payment may be made in person or by mail, by

certified check, teller check or money order made payable to the City Collector, at the offices of the Loft Board. Upon receipt of payment, the Loft Board will send proof of payment to the applicant.

(2) The application will not be processed until the fee is received. Applications received without the fee will not be considered final until payment is received. Applications will be administratively dismissed if proper payment is not received on due notice within one month.

(d) **Applicability.** This fee schedule will apply to all applications received in person or postmarked on or after January 1, 1991.

(e) **Waiver of fees for indigent persons.** (1) A party may apply to the Loft Board for a full waiver of fees for applications required by these rules on the basis of indigency. There shall be no waiver of fees required for registration applications set forth in §2-11(b)(i) of these rules.

(2) **Procedure for applying for waiver of fees.**

(i) The application for waiver of fees shall be on a form prescribed by the Loft Board. In the absence of such form, application shall be made by letter setting forth all pertinent information (name, address, building address, IMD registration number, if applicable, kind of application for which waiver is requested) and shall be accompanied by the affidavit required by §2-11(e)(2)(ii) of these regulations.

(ii) The application for waiver of fees shall be accompanied by an affidavit setting forth the amount and all sources of applicant's income, any property owned and the value thereof, a statement stating why a waiver of fees is requested, and any other facts that will be helpful to the Loft Board in determining whether such application should be granted.

(iii) The application for waiver of fees shall also be accompanied by a proof of service of said application for waiver of fees and accompanying affidavit on all affected parties.

(3) The application for waiver of fees must be received by the Loft Board no later than thirty days after the filing of an application.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) par (1) heading amended City Record Sept. 30, 2008 §1, eff. Oct. 30, 2008. [See Note 4]

Subd. (b) par (1) subpar (i) open par amended City Record Sept. 30, 2008 §1, eff. Oct. 30, 2008.

[See Note 4]

Subd. (b) par (1) subpar (i) [There is no subpar (ii) to par (1)] open par amended City Record Dec.

5, 2006 §1, eff. Jan. 4, 2007. [See Note 2]

Subd. (b) par (1) subpar (i) [There is no subpar (ii) to par (1)] opening par amended City Record

May 11, 2004 eff. June 10, 2004. [See Note 1]

Subd. (b) par (1) subpar (i) clauses (A), (C) amended City Record May 19, 2008 §1, eff. June 18,

2008. [See Note 3]

Subd. (b) par (1) subpar (i)(C) added City Record May 8, 1997 eff. June 7, 1997. [See T29 §2-01

Note 2]

Subd. (b) par (1) subpar (i) clause (D) added City Record May 19, 2008 §1, eff. June 18, 2008. [See

Note 3]

Subd. (b) par (18) added City Record May 8, 1997 eff. June 7, 1997. [See T29 §2-01 Note 2]

Subd. (b) par (18) subpar (i) added City Record May 8, 1997 eff. June 7, 1997. [See T29 §2-01

Note 2]

Subd. (b) par (19) renumbered (formerly (18)) City Record May 8, 1997 eff. June 7, 1997.

Subd. (c) par (1) amended City Record Dec. 5, 2006 §2, eff. Jan. 4, 2007. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record May 11, 2004:

Section 282 of the Multiple Dwelling Law ("MDL") provides, in pertinent part, that the New York City Loft Board has the authority to charge and collect reasonable fees in the execution of its responsibilities. Pursuant to this authority the Loft Board has collected annual registration fees since 1983.

This amendment will increase registration fees from $50 to $100 per residentially occupied unit.

This increase is necessary to provide the staffing, facilities, equipment and other resources required in order for the Loft Board (1) to serve the needs of landlords and tenants still under its jurisdiction, and (2) to fulfill its obligation to the public to legalize all remaining interim multiple dwellings still under its jurisdiction.

2. Statement of Basis and Purpose in City Record Dec. 5, 2006: Although the annual fee for the registration of IMD buildings was increased in 2004 (for the first time since 1992), an additional increase is necessary to support the operations of the Loft Board, which are mandated by statute.

3. Statement of Basis and Purpose in City Record May 19, 2008: Pursuant to §2-11 of the rules of the Loft Board, landlords whose buildings are registered as interim multiple dwellings ("IMDs") are required to renew their registration annually beginning on July 1 of each year. A filing fee specified in §2-11 is charged for each residentially occupied unit in an IMD. The late submission of registration renewal application and fees, that is, submission after the start of the filing period on July 1, has unfortunately reached such an extent that the Board has incurred significant enforcement costs in ensuring compliance with its requirements. The Board is therefore constrained to meet these expenses by imposing a late-filing fee for applications submitted after July 31.

4. Statement of Basis and Purpose in City Record Sept. 30, 2008: Pursuant to §2-11 of the rules of the Loft Board, landlords whose buildings are registered as interim multiple dwellings ("IMDs") are required to renew their registration annually beginning on July 1 of each year. A filing fee specified in §2-11 is charged for each residentially occupied unit in an IMD. Although the annual fee for the registration of IMD buildings was increased in 2006 an additional increase is necessary to support the operations of the Loft Board, which are mandated by statute. The Board is therefore constrained to meet these expenses by increasing the filing fee for annual registrations submitted after July 1, 2009.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The rule does not limit a contractor's common-law liability for affirmative acts of negligence which result in the creation of a dangerous condition upon a public street or sidewalk. Ingles v. City of New York, 309 A.D.2d 835,

766 N.Y.S.2d 80 (2d Dept. 2003).

Rules of the City of New York

***** Current through December 2009 ****

29 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

CHAPTER 2 INTERIM MULTIPLE DWELLINGS

§2-12 MDL §286(2)(ii) Rent Adjustments.

(a) **Definitions.**

Alteration application. "Alteration application" shall mean an application accepted for filing by the Department of Buildings of the City of New York ("DOB") specifying the work to be undertaken to obtain a certificate of occupancy for an interim multiple dwelling ("IMD") unit, as defined in §281 of the Multiple Dwelling Law, ("covered unit") for residential or joint living-work quarters for artists usage ("residential certificate of occupancy").

Alteration permit. "Alteration permit" shall mean a building permit issued by DOB authorizing the owner to make the alterations set forth in the approved alteration application which are necessary to obtain a residential certificate of occupancy for a covered unit.

Article 7-B compliance. "Article 7-B compliance" shall mean compliance with the fire protection and safety standards of Article 7-B of the Multiple Dwelling Law, or alternative building codes as authorized by MDL §287. Article 7-B compliance shall be evidenced by DOB's issuance of a final residential certificate of occupancy, or by DOB's issuance of a final residential certificate of occupancy after June 21, 1992, or by DOB records demonstrating that the alterations necessary for issuance of a residential certificate of occupancy have been completed, or by the filing with the Loft Board of a sworn statement by a registered architect or professional engineer stating that the IMD has achieved Article 7-B compliance and the date of such compliance.

(b) **Eligibility requirements.** The owner of an IMD is eligible for one or more rent adjustments pursuant to MDL §286(2)(ii) if all the following conditions are met:

(1) The residential unit for which the rent adjustment is sought is covered under Article 7-C of the Multiple Dwelling Law;

(2) The IMD in which the covered residential unit is located is registered with the Loft Board;

(3) A final certificate of occupancy permitting residential occupancy of the covered unit was not issued on or before June 21, 1992;

(4) The residential unit was not rented at market value between June 21, 1982 and June 21, 1992 as a result of a sale of improvements pursuant to MDL §286(6) or sale of rights pursuant to MDL §286(12) and Loft Board rules issued pursuant thereto; and

(5) The owner meets or has already met one or more of the code compliance obligations set forth in MDL §284(1) which requires that the owner file an alteration application; obtain an approved alteration permit; and achieve Article 7-B compliance.

An eligible owner is entitled to one or more of the applicable rent adjustments as set forth in subdivisions c through e of §2-12 of these rules.

(c) **Alteration application rent adjustment.** (1) An owner who otherwise meets the eligibility requirements of §2-12(b) of these rules and who filed an alteration application with DOB prior to June 21, 1992 is entitled to a six percent (6%) increase over the maximum rent permissible under Loft Board rules for the covered residential unit on June 21, 1992.

(2) An owner who otherwise meets the eligibility requirements of §2-12(b) of these rules and who files an alteration application with DOB on or after June 21, 1992 is entitled to a six percent (6%) increase over the maximum rent permissible under Loft Board rules for the covered residential unit on the date the alteration application is filed.

(d) **Alteration permit rent adjustment.** (1) An owner who otherwise meets the eligibility requirements of §2-12(b) of these rules and who obtained an alteration permit prior to June 21, 1992 is entitled to a fourteen percent (14%) increase over the maximum rent permissible under Loft Board rules for the covered residential unit on June 21, 1992.

(2) An owner who otherwise meets the eligibility requirements of §2-12(b) of these rules and who obtains an alteration permit from DOB on or after June 21, 1992 is entitled to an eight percent (8%) increase over the maximum rent permissible under Loft Board rules for the covered residential unit on the date the alteration permit is issued by DOB.

(e) **Article 7-B compliance rent adjustment.** (1) An owner who otherwise meets the eligibility requirements of §2-12(b) of these rules and who achieved Article 7-B compliance prior to June 21, 1992 is entitled to a twenty percent (20%) increase over the maximum rent permissible under Loft Board rules for a covered residential unit on June 21, 1992.

(2) An owner who otherwise meets the eligibility requirements of §2-12(b) of these rules and who achieves article 7-B compliance on or after June 21, 1992 is entitled to a six percent (6%) increase over the maximum rent permissible under Loft Board rules for the covered residential unit on the date Article 7-B compliance is achieved.

(f) **Payment of rent adjustments.** Payment of rent adjustments based on filing an alteration application, obtaining an alteration permit or achieving Article 7-b compliance shall commence the month immediately after the month the alteration application is filed, the alteration permit is obtained or Article 7-B compliance is achieved, or on July 1, 1992, whichever is later.

(g) **Effect on other rent increases and base rent.** (1) Rent adjustments pursuant to this section shall be in addition to any rent increases which an owner is entitled to pursuant to §2-06 or §2-06.1 (Interim Rent Guidelines), or §2-01(m) (Code Compliance Work-Initial legal regulated rents) of these rules.

(2) The base rent for covered units shall be the amount of rent after rent adjustments pursuant to this section are implemented.

(3) Rent adjustments pursuant to this section shall be effective upon filing an alteration application, obtaining an alteration permit or Article 7-B compliance regardless of the subsequent expiration of said alteration application, alteration permit or temporary certificate of occupancy, or the filing of a further qualifying alteration application for the building. If the Loft Board or a court of competent jurisdiction determines the sworn statement of Article 7-B compliance was erroneous, all rent increases based on such statement shall be nullified.

HISTORICAL NOTE

Section added City Record Sept. 17, 1993 eff. Oct. 17, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. No demand for legalization milestone rent increases pursuant to this section is necessary. Instead, such rent increases accrue automatically, and may be assessed retroactively. Matter of Longfellow Properties, Inc., OATH Index No. 1780/96 (Nov. 4, 1996), aff'd, Loft Bd. Order No. 2057 (Jan. 30, 1997); Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (Mar. 20, 1997).

¶ 2. Where a building owner applied for and obtained an alteration permit before June 21, 1992, the owner was entitled, as of July 1, 1992, to a 14 percent rent increase pursuant to subparagraph (d)(1) of this section, not to sequential six percent and eight percent increases pursuant to subparagraphs (c)(1) and (d)(1) of this section. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Oct. 25, 1996), report and recommendation (Dec. 12, 1996), aff'd, Loft Bd. Order No. 2082 (May 20, 1997).

¶ 3. Where a building owner leased a loft unit at market value beginning in 1983, but in 1988 the Loft Board granted the lessee's rent overcharge application and ordered that the rent be reduced to the regulated rent, the unit was not exempt from legalization milestone rent increases pursuant to subparagraph (b)(4) of this section. Matter of Greenfield, OATH Index No. 1234/96 (Sept. 20, 1996), aff'd, Loft Bd. Order No. 2033 (Nov. 21, 1996).

¶ 4. The alleged failure of a building owner to maintain the building properly did not constitute a valid basis to object to legalization milestone rent increases pursuant to this section. Matter of Greenfield, OATH Index No. 1234/96 (Sept. 20, 1996), aff'd, Loft Bd. Order No. 2033 (Nov. 21, 1996).

¶ 5. Correspondence between former owner's attorney and covered tenants' attorney is binding agreement resolving rent dispute. Successor owner is not entitled to correct unilateral "mistake" by former owner in calculating the rent. Former owner was not precluded from agreeing to lower rents than the maximum permissible rent under the Board's regulations. **Matter of 473-475 Broadway, LLC,** OATH Index No. 761/98, mem. dec. (Apr. 22, 1998) incorporated in OATH Index No. 761/98 (May 22, 1998), **aff'd,** Loft Bd. Order No. 2267 (June 25, 1998).

¶ 6. Owner is not entitled to any code compliance increases under Multiple Dwelling Law section 286(2)(ii) where a final certificate of occupancy permitting residential occupancy of the covered unit was issued in March 1990. **Matter of M.R.A. Realties,** OATH Index No. 1317/98 (Dec. 2, 1998), **aff'd in part, modified on other grounds,** Loft Bd. Order No. 2369 (Feb. 23, 1999).

¶ 7. Administrative law judge found that the language of stipulation, settling prior proceedings between the parties,

specifically allowed for legalization increases in rent for obtaining an alteration application, pursuant to Multiple Dwelling Law section 286(2)(ii)(B). Administrative law judge rejected petitioner's claim that the increase was barred by subparagraph (b)(4) of this section, which prohibits an owner from taking legalization increases if the unit leased at market rent between June 21, 1982 and June 21, 1992. **Matter of Davidson,** OATH Index No. 900/98 (Oct. 15, 1998), **aff'd,** Loft Bd. Order No. 2381 (Mar. 23, 1999).

¶ 8. Unilateral mistake by former owner in the calculation of base rents and 6% increase for filing alteration application pursuant to Multiple Dwelling Law section 286(2)(ii)(A), is not a ground to undo a valid agreement, absent legally sufficient allegations that the mistake was induced by fraud by the other party. **Matter of 473-475 Broadway, LLC,** OATH Index No. 761/98, mem. dec. (Apr. 22, 1998) incorporated in OATH Index No. 761/98 (May 22, 1998), **aff'd,** Loft Bd. Order No. 2267 (June 25, 1997).

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***** Current through December 2009 ****

29 RCNY 2 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 29 Loft Board

APPENDIX A DEPARTMENT OF BUILDINGS MEMORANDUM: EXTENSIONS OF APPROVAL OF APPLICATIONS (DIRECTIVE NO. 17 OF 1971)

APPENDIX A DEPARTMENT OF BUILDINGS MEMORANDUM: EXTENSIONS OF APPROVAL OF APPLICATIONS (DIRECTIVE NO. 17 OF 1971)

The City of New York HOUSING AND DEVELOPMENT ADMINISTRATION Department of Buildings

DEPARTMENTAL MEMORANDUM DATE: October 5, 1971

TO: Borough Superintendents

FROM: Director of Operations, Thomas V. Burke

SUBJECT: Extensions of Approval of Applications

The following procedure, for the purpose of uniformity, shall be instituted in regard to reinstatement of an application filed on or after December 6, 1969, which has expired under §§26-109 or 26-118.6 [now §27-155 or §27-196] of the Administrative Code (new Building Code.)

Condition Expiration Date Reinstatement

Partial disapproval. No further action within 1 year after submission. Date of submission, plus 12 months Within 2 years of date of submission.

Approved application. No permit obtained within 1 year after approval. Date of approval, plus 12 months Within 2

years of date of approval.

Permit issued. No work commenced within year. Date of issuance, plus 12 months. Within two years of date of issuance of permit.

Permit issued, and work commenced within 1 year. Suspended or abandoned for 12 months thereafter. Date of suspension or abandonment of work plus 12 months Within 2 years of date of issuance of permit.

In the case of applications disapproved in whole or in part, extensions of time shall be for 12 month periods, which can be renewed upon reasonable cause.

The above listed requirements shall be applicable to all applications filed on or after December 6, 1969, regardless of whether the scope of work is in accordance with provisions of the new Building Code (Local Law 76/68), or in accordance with applicable laws in existence prior to December 6, 1968.

Requests for reinstatement shall be made by amendment. The required reinstatement fee (which shall be considered a new filing fee) shall be paid prior to accepting the amendment for processing. Examiners are cautioned to check particularly the effect of amendments to the Zoning Resolution or Building Code, change of street status or legal grade, installation of a new sewer, designation as a Landmark or within an Urban Renewal area, or an Unsafe Building violation.

Applications filed prior to December 6, 1969, for examination for compliance with the new Building Code shall also be subject to the above mentioned requirements.

Amendments or amended plans submitted after expiration shall not be considered unless accompanied by a simultaneous request for reinstatement.

Applications filed prior to December 6, 1969, for examination for compliance with the 1938 Building Code shall be governed by the provisions of Directive No. 15/69.

Directive No. 45/57 is hereby repealed.

Applications for capital construction projects shall not be expired without the approval of the Borough Superintendent.

Thomas V. Burke, P.E.

Director of Operations

TVB/IEM/SL

cc: Comm. J. Stein Exec. staff Industry

APPENDIX B

DEPARTMENT OF BUILDINGS MEMORANDUM:

TENANT SAFETY PLAN

DEPARTMENT OF BUILDINGS

(Directive #2/1984)

EXECUTIVE OFFICES

120 WALL STREET, NEW YORK, N.Y. 10005

ROBERT ESNARD, R.A., Commissioner

CAROL FELSTEIN

Deputy Commissioner

Date: January 6, 1984

To: Borough Superintendents

From: Carol Felstein

Re: Tenant Safety Plan

The question of defining the necessary elements of a tenant safety plan has arisen in regard to two recent directives, i.e. implementation of Local Law 19 of 1983 regarding permits for conversion of SRO facilities (directive of August 10) as well as a directive of July 28 regarding rehabilitation of occupied buildings and arson-prone buildings. At a minimum, the tenants safety plan must make provisions for:

(1) **Egress** At all times in the course of construction provision is made for adequate egress, as required by the Code. Required egress must not be obstructed at any time.

(2) **Fire Safety** All necessary laws and controls as well as any additional safety measures necessitated by the construction shall be strictly observed.

(3) **Health Requirements** Provision for control of dust, disposal of construction debris, pest control and maintenance of sanitary facilities, and limitation of noise to acceptable levels shall be included.

(4) **Services** Continuation of essential services as required by the New York City Building Code and Housing Code and the State Multiple Dwelling Law.

(5) **Structural Stability** No work to be done where there might be any danger to occupants due to structural work.

(6) **Controlled Inspection** Everything should be under controlled inspection.

(7) **Plans** Plans submitted by the applicant shall show compliance with the above items during construction. Details such as temporary Fire-Rated Assemblies and Opening Protectives shall be included.

The applicant must provide a notarized statement that the above conditions will be met.

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30 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-01 Adjustment for Renewal Leases (Apartments).

Where heat is provided or required to be provided to a dwelling unit by an owner from a central or individual system at no charge to the tenant, the adjustments are as follows:

-For a one-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 4.5%

-For a two-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 8.5%

Provided, however, that where the most recent vacancy lease was executed six years or more prior to the date of the renewal lease under this Order, the following shall instead apply:

-For a one-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 4.5% or $45, whichever is greater.

-For a two-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 8.5% or $85, whichever is greater.

Where heat is neither provided nor required to be provided to a dwelling unit by an owner from a central or individual system, the adjustments are as follows:

-For a one-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 4.0%

-For a two-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 8.0%

Provided, however, that where the most recent vacancy lease was executed six years or more prior to the date of the renewal lease under this Order, the following shall instead apply:

-For a one-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 4.0% or $40, whichever is greater.

-For a two-year renewal lease commencing on or after October 1, 2008 and on or before September 30, 2009: 8.0% or $80, whichever is greater.

Adjustments for renewal leases shall also apply to dwelling units in a structure subject to the partial tax exemption program under §421a of the Real Property Tax Law, or in a structure subject to §423 of the Real Property Tax Law as a Redevelopment Project.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-02 Vacancy Allowance for Apartments.

No vacancy allowance is permitted except as provided by §§19 and 20 of the Rent Regulation Reform Act of 1997.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

Rules of the City of New York

***** Current through December 2009 ****

30 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-03 Additional Adjustment for Rent Stabilized Apartments Sublet Under §2525.6 of the Rent Stabilization Code.

In the event of a sublease governed by subdivision (e) of §2525.6 of the Rent Stabilization Code, the allowance authorized by such subdivision shall be 10%.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the

Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-04 Adjustments for Lofts (Units in the Category of Buildings Covered by Article 7-C of the Multiple Dwelling Law).

The Rent Guidelines Board adopts the following levels of rent increase above the "base rent", as defined in §286, subdivision 4, of the Multiple Dwelling Law, for units to which these guidelines are applicable in accordance with Article 7-C of the Multiple Dwelling Law:

-For one-year increase periods commencing on or after October 1, 2008 and on or before September 30, 2009: 3.5%

-For two-year increase periods commencing on or after October 1, 2008 and on or before September 30, 2009: 6.5%

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-05 Vacant Loft Units.

No vacancy allowance is permitted under this Order. Therefore, except as otherwise provided in §286, subdivision 6, of the Multiple Dwelling Law, the rent charged to any tenant for a vacancy tenancy commencing on or after October 1, 2008 and on or before September 30, 2009 may not exceed the "base rent" referenced above plus the level of adjustment permitted above for increase periods.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as

amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-06 Fractional Terms.

For the purposes of these guidelines any lease or tenancy for a period up to and including one year shall be deemed a one-year lease or tenancy, and any lease or tenancy for a period of over one year and up to and including two years shall be deemed a two-year lease or tenancy.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration

of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-07 Escalator Clauses.

Where a lease for a dwelling unit in effect on May 31, 1968 or where a lease in effect on June 30, 1974 for a dwelling unit which became subject to the Rent Stabilization Law of 1969, by virtue of the Emergency Tenant Protection Act of 1974 and Resolution Number 276 of the New York City Council, contained an escalator clause for the increased costs of operation and such clause is still in effect, the lawful rent on September 30, 2008 over which the fair rent under this Order is computed shall include the increased rental, if any, due under such clause except those charges which accrued within one year of the commencement of the renewal lease. Moreover, where a lease contained an escalator clause that the owner may validly renew under the Code, unless the owner elects or has elected in writing to delete such clause, effective no later than October 1, 2008 from the existing lease and all subsequent leases for such dwelling unit, the increased rental, if any, due under such escalator clause shall be offset against the amount of increase authorized under this Order.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

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The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-08 Special Adjustments Under Prior Orders.

All rent adjustments lawfully implemented and maintained under previous apartment orders and included in the base rent in effect on September 30, 2008 shall continue to be included in the base rent for the purpose of computing subsequent rents adjusted pursuant to this Order.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

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CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-09 Special Guideline.

Under §26-513(b)(1) of the New York City Administrative Code, and §9(e) of the Emergency Tenant Protection Act of 1974, the Rent Guidelines Board is obligated to promulgate special guidelines to aid the State Division of Housing and Community Renewal in its determination of initial legal regulated rents for housing accommodations previously subject to the City Rent and Rehabilitation Law which are the subject of a tenant application for adjustment. The Rent Guidelines Board hereby adopts the following Special Guidelines:

For dwelling units subject to the Rent and Rehabilitation Law on September 30, 2008, which become vacant after September 30, 2008, the special guideline shall be:

(1) 50% above the maximum base rent, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to §8(c)(1) of the United States Housing Act of 1937 (42 U.S.C. §1437f[c][1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2008.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

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The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-10 Decontrolled Units.

The permissible increase for decontrolled units as referenced in Order 3a which become decontrolled after September 30, 2008, shall be:

(1) 50% above the maximum base rent, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to §8(c)(1) of the United States Housing Act of 1937 (42 U.S.C. §1437f[c][1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2008.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 1*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Apartment & Loft Order #40]

§1-11 Credits.

Rentals charged and paid in excess of the levels of rent increase established by this Order shall be fully credited against the next month's rent.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

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The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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30 RCNY 2-01

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-01 Adjustment for Renewal Leases (Apartments).

Together with such further adjustments as may be authorized by law, the annual adjustment for renewal leases for apartments shall be:

Where heat is provided or required to be provided to a dwelling unit by an owner from a central or individual system at no charge to the tenant, the adjustments are as follows:

-For a one-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 3%

-For a two-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 6%

Provided, however, that where the most recent vacancy lease was executed six years or more prior to the date of the renewal lease under this Order, the following shall instead apply:

-For a one-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 3% or $30, whichever is greater.

-For a two-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 6% or $60, whichever is greater.

Where heat is neither provided nor required to be provided to a dwelling unit by an owner from a central or individual system, the adjustments are as follows:

-For a one-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 2.5%

-For a two-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 5%

Provided, however, that where the most recent vacancy lease was executed six years or more prior to the date of the renewal lease under this Order, the following shall instead apply:

-For a one-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 2.5% or $25, whichever is greater.

-For a two-year renewal lease commencing on or after October 1, 2009 and on or before September 30, 2010: 5% or $50, whichever is greater.

These adjustments shall also apply to dwelling units in a structure subject to the partial tax exemption program under §421a of the Real Property Tax Law, or in a structure subject to §423 of the Real Property Tax Law as a Redevelopment Project.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 16, 2009 eff. Aug. 15, 2009. Note: Statement of Basis and Purpose in City Record July 16, 2009:

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The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to §286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (§280).

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-02 Vacancy Allowance for Apartments.

No vacancy allowance is permitted except as provided by §§19 and 20 of the Rent Regulation Reform Act of 1997.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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§2-03 Additional Adjustment for Rent Stabilized Apartments Sublet Under §2525.6 of the Rent Stabilization Code.

In the event of a sublease governed by subdivision (e) of §2525.6 of the Rent Stabilization Code, the allowance authorized by such subdivision shall be 10%.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-04 Adjustments for Lofts (Units in the Category of Buildings Covered by Article 7-C of the Multiple Dwelling Law).

The Rent Guidelines Board adopts the following levels of rent increase above the "base rent", as defined in §286, subdivision 4, of the Multiple Dwelling Law, for units to which these guidelines are applicable in accordance with Article 7-C of the Multiple Dwelling Law:

-For one-year increase periods commencing on or after October 1, 2009 and on or before September 30, 2010: 3%

-For two-year increase periods commencing on or after October 1, 2009 and on or before September 30, 2010: 6%

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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§2-05 Vacant Loft Units.

No vacancy allowance is permitted under this Order. Therefore, except as otherwise provided in §286, subdivision 6, of the Multiple Dwelling Law, the rent charged to any tenant for a vacancy tenancy commencing on or after October 1, 2009 and on or before September 30, 2010 may not exceed the "base rent" referenced above plus the level of adjustment permitted above for increase periods.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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§2-06 Fractional Terms.

For the purposes of these guidelines any lease or tenancy for a period up to and including one year shall be deemed a one-year lease or tenancy, and any lease or tenancy for a period of over one year and up to and including two years shall be deemed a two-year lease or tenancy.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-07 Escalator Clauses.

Where a lease for a dwelling unit in effect on May 31, 1968 or where a lease in effect on June 30, 1974 for a dwelling unit which became subject to the Rent Stabilization Law of 1969, by virtue of the Emergency Tenant Protection Act of 1974 and Resolution Number 276 of the New York City Council, contained an escalator clause for the increased costs of operation and such clause is still in effect, the lawful rent on September 30, 2009 over which the fair rent under this Order is computed shall include the increased rental, if any, due under such clause except those charges which accrued within one year of the commencement of the renewal lease. Moreover, where a lease contained an escalator clause that the owner may validly renew under the Code, unless the owner elects or has elected in writing to delete such clause, effective no later than October 1, 2009 from the existing lease and all subsequent leases for such dwelling unit, the increased rental, if any, due under such escalator clause shall be offset against the amount of increase authorized under this Order.

HISTORICAL NOTE

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-08 Special Adjustments Under Prior Orders.

All rent adjustments lawfully implemented and maintained under previous apartment orders and included in the base rent in effect on September 30, 2009 shall continue to be included in the base rent for the purpose of computing subsequent rents adjusted pursuant to this Order.

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-09 Special Guideline.

Under §26-513(b)(1) of the New York City Administrative Code, and §9(e) of the Emergency Tenant Protection Act of 1974, the Rent Guidelines Board is obligated to promulgate special guidelines to aid the State Division of Housing and Community Renewal in its determination of initial legal regulated rents for housing accommodations previously subject to the City Rent and Rehabilitation Law which are the subject of a tenant application for adjustment. The Rent Guidelines Board hereby adopts the following Special Guidelines:

-For dwelling units subject to the Rent and Rehabilitation Law on September 30, 2009, which become vacant after September 30, 2009, the special guideline shall be:

(1) 50% above the maximum base rent, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to §8(c)(1) of the United States Housing Act of 1937 (42 U.S.C. §1437f[c][1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2009.

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CHAPTER 2*1 APARTMENTS AND LOFTS: RENT LEVELS FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Apartment and Loft Order #41]

§2-10 Decontrolled Units.

The permissible increase for decontrolled units as referenced in Order 3a which become decontrolled after September 30, 2009, shall be:

(1) 50% above the maximum base rent, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to §8(c)(1) of the United States Housing Act of 1937 (42 U.S.C. §1437f[c][1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

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§2-11 Credits.

Rentals charged and paid in excess of the levels of rent increase established by this Order shall be fully credited against the next month's rent.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 16, 2009 eff. Aug. 15, 2009. Note: Statement of Basis and Purpose in City Record July 16, 2009:

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CHAPTER 3*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Hotel Order #38]

§3-01 Applicability.

This order shall apply to units in buildings subject to the Hotel Section of the Rent Stabilization Law (§§26-504(c) and 26-506 of the N.Y.C. Administrative Code), as amended, or the Emergency Tenant Protection Act of 1974 (L.1974, c.576 §4 [§5(a)(7)]). With respect to any tenant who has no lease or rental agreement, the level of rent increase established herein shall be effective as of one year from the date of the tenant's commencing occupancy, or as of one year from the date of the last rent adjustment charged to the tenant, or as of October 1, 2008, whichever is later. This anniversary date will also serve as the effective date for all subsequent Rent Guidelines Board Hotel Orders, unless the Board shall specifically provide otherwise in the Order. Where a lease or rental agreement is in effect, this Order shall govern the rent increase applicable on or after October 1, 2008 upon expiration of such lease or rental agreement, but in no event prior to one year from the commencement date of the expiring lease, unless the parties have contracted to be bound by the effective date of this Order.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing hotel units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

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***** Current through December 2009 ****

30 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 3*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Hotel Order #38]

§3-02 Rent Guidelines for Hotels, Rooming Houses, Single Room Occupancy Buildings and Lodging Houses.

Pursuant to its mandate to promulgate rent adjustments for hotel units subject to the Rent Stabilization Law of 1969, as amended, (§26-510(e) of the N.Y.C. Administrative Code) the Rent Guidelines Board hereby adopts the following rent adjustments:

The allowable level of rent adjustment over the lawful rent actually charged and paid on September 30, 2008 shall be:

(1) Residential Class A (apartment) hotels: 4.5%

(2) Lodging houses: 4.5%

(3)

Rooming houses (Class B buildings containing less than 30units): 4.5%

(4) Class B hotels: 4.5%

(5) Single Room Occupancy buildings (MDL §248 SROs): 4.5%

Except that the allowable level of rent adjustment over the lawful rent actually charged and paid on September 30,

2008 shall be 0% if permanent rent stabilized or rent controlled tenants paying no more than the legal regulated rent, at the time that any rent increase in this Order would otherwise be authorized, constitute fewer than 85% of all units in a building that are used or occupied, or intended, arranged or designed to be used or occupied in whole or in part as the home, residence or sleeping place of one or more human beings.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing hotel units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

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30 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 3*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Hotel Order #38]

§3-03 New Tenancies.

No "vacancy allowance" is permitted under this Order. Therefore, the rents charged for tenancies commencing on or after October 1, 2008 and on or before September 30, 2009 may not exceed the levels over rentals charged on September 30, 2008 permitted under the applicable rent adjustment provided above.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing hotel units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended.

The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

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***** Current through December 2009 ****

30 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 3*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009 [Hotel Order #38]

§3-04 Additional Charges.

It is expressly understood that the rents collectible under the terms of this Order are intended to compensate in full for all services provided without extra charge on the statutory date for the particular hotel dwelling unit or at the commencement of the tenancy if subsequent thereto. No additional charges may be made to a tenant for such services, however such charges may be called or identified.

HISTORICAL NOTE

Section added City Record July 18, 2008 eff. Aug. 17, 2008.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 18, 2008 eff. Aug. 17, 2008. Note Statement of Basis and Purpose in City Record July 18, 2008:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing hotel units subject to the

Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

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***** Current through December 2009 ****

30 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 4*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Hotel Order #39]

§4-01 Applicability.

This order shall apply to units in buildings subject to the Hotel Section of the Rent Stabilization Law (§§26-504(c) and 26-506 of the N.Y.C. Administrative Code), as amended, or the Emergency Tenant Protection Act of 1974 (L.1974, c.576 §4 [§5(a)(7)]). With respect to any tenant who has no lease or rental agreement, the level of rent increase established herein shall be effective as of one year from the date of the tenant's commencing occupancy, or as of one year from the date of the last rent adjustment charged to the tenant, or as of October 1, 2009, whichever is later. This anniversary date will also serve as the effective date for all subsequent Rent Guidelines Board Hotel Orders, unless the Board shall specifically provide otherwise in the Order. Where a lease or rental agreement is in effect, this Order shall govern the rent increase applicable on or after October 1, 2009 upon expiration of such lease or rental agreement, but in no event prior to one year from the commencement date of the expiring lease, unless the parties have contracted to be bound by the effective date of this Order.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 16, 2009 eff. Aug. 15, 2009. Note Statement of Basis and Purpose in City Record July 16, 2009:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing hotel units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

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***** Current through December 2009 ****

30 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 4*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Hotel Order #39]

§4-02 Rent Guidelines for Hotels, Rooming Houses, Single Room Occupancy Buildings and Lodging Houses.

Pursuant to its mandate to promulgate rent adjustments for hotel units subject to the Rent Stabilization Law of 1969, as amended, (§26-510(e) of the N.Y.C. Administrative Code) the Rent Guidelines Board hereby adopts the following rent adjustments:

The allowable level of rent adjustment over the lawful rent actually charged and paid on September 30, 2009 shall be:

(1) Residential Class A (apartment) hotels: 0%

(2) Lodging houses: 0%

(3)

Rooming houses (Class B buildings containing less than 30units): 0%

(4) Class B hotels: 0%

(5) Single Room Occupancy buildings (MDL §248 SROs): 0%

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 16, 2009 eff. Aug. 15, 2009. Note Statement of Basis and Purpose in City Record July 16, 2009:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing hotel units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

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RULES OF THE CITY OF NEW YORK

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CHAPTER 4*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Hotel Order #39]

§4-03 New Tenancies.

No "vacancy allowance" is permitted under this Order. Therefore, the rents charged for tenancies commencing on or after October 1, 2009 and on or before September 30, 2010 may not exceed the levels over rentals charged on September 30, 2009 permitted under the applicable rent adjustment provided above.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 16, 2009 eff. Aug. 15, 2009. Note Statement of Basis and Purpose in City Record July 16, 2009:

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The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

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***** Current through December 2009 ****

30 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 30 Rent Guidelines Board

CHAPTER 4*1 HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES: RENT LEVELS TO BE EFFECTIVE FOR LEASES COMMENCING OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 [Hotel Order #39]

§4-04 Additional Charges.

It is expressly understood that the rents collectible under the terms of this Order are intended to compensate in full for all services provided without extra charge on the statutory date for the particular hotel dwelling unit or at the commencement of the tenancy if subsequent thereto. No additional charges may be made to a tenant for such services, however such charges may be called or identified.

HISTORICAL NOTE

Section added City Record July 16, 2009 eff. Aug. 15, 2009.

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 16, 2009 eff. Aug. 15, 2009. Note Statement of Basis and Purpose in City Record July 16, 2009:

The Rent Guidelines Board is authorized to promulgate rent guidelines governing hotel units subject to the

Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4).

Rules of the City of New York

31 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 31 Mayors Office of Homelessness and Single Room Occupancy

CHAPTER 1 ELIGIBILITY OF HOMELESS FAMILIES AND INDIVIDUALS TO RENT CITY-OWNED APARTMENT

§1-01 Eligibility.

(a) Apartments in City-owned buildings may be viewed and rented by families who have been homeless for at least twelve months.

(b) Priority for such housing among eligible families shall be based on length of stay in City-sponsored emergency housing. Families with a longer cumulative stay in such housing shall have a priority for viewing and renting City-owned apartments. In determining the length of stay for this purpose, stays in Tier I or Tier II shelters, Family Centers, hotels (when family has been in continuous receipt of hotel/motel allowance), or City sponsored battered women's programs shall be cumulated. Where a family has a break in residence in excess of 30 days their length of stay should be calculated from the first day of their return to any of the above facilities.

(c) Exceptions to the policy stated in paragraphs (a) and (b) may be granted in exigent circumstances by the Mayor's office or Homelessness and SRO Housing Services. An exception may be granted only if residence in any facility listed in paragraph (b) would pose a serious and present danger to the life, safety or health of a family member and there is no alternative housing available for the family.

(d) Smaller apartments suitable for only single individuals may be assigned to appropriate homeless individuals. They shall be assigned to appropriate homeless individuals:

(1) to foster and encourage independence by shelter residents participating in employment programs, and

(2) to address the special medical needs of an individual who may benefit from housing outside of the shelter system, as determined by ERA in conjunction with a designee of the Mayor's Office on Homelessness and SRO Housing Services.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 1 FERRY TERMINALS AND VESSELS

§1-01 Definitions.

Commissioner. "Commissioner" means the Commissioner of Transportation or his/her designee, or any successor in function to the Commissioner of any successor agency thereof.

Department. "Department" means the Department of Transportation of the City of New York and any successor agency thereof.

Ferry. "Ferry" means any vessel that transports passengers or vehicles pursuant to a regular schedule in either direction between the Borough of Manhattan and the Borough of Staten Island and is owned and operated by the City of New York.

Manager. "Manager," with respect to the terminals (as defined herein), means the Chief Operating Officer, Executive Director of Safety and Security, Director of Terminal Operations, Director of Ferry Operations, Facility Security Officer, Ferry Terminal Manager, Safety Manager, Security Inspector and Ferry Terminal Supervisor as designated by the Department to exercise the powers and functions vested in him/her by these rules in either terminal, and his/her duly designated representatives, and, with respect to the ferries, means the Captain designated by the Department of Transportation to exercise the powers and functions vested in him/her by these rules and general maritime law aboard any ferry, and his/her duly designated representatives.

Motor vehicle. "Motor vehicle" means any automobile, truck, bus, motorcycle, moped, or other vehicle that is propelled by any power other than muscular power.

Owner. "Owner" means any person owning, operating, or having the use of a vehicle (as defined in §159 of the New York Vehicle and Traffic Law), bicycle or any other personal property.

Permission. "Permission" means permission or authorization granted by the Commissioner or Manager except where otherwise specifically provided.

Permit. "Permit" means, unless otherwise herein provided, any written authorization issued by or under the authority of the Commissioner or Manager for a specialized privilege, permitting the performance of a specified act or acts in the terminals or on the ferries.

Person. "Person" means any natural person, corporation, society, organization, incorporated or unincorporated association, form, or partnership, and shall include any assignee, receiver, trustee, executor, administrator or similar representative appointed by a court, and shall mean the United States of America or any political subdivision thereof, or any foreign government or political subdivision thereof.

Person with a Disability. A person with a disability is an individual with a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Personal audio device. "Personal audio device" means a portable sound reproduction device as normally and customarily used for personal purposes, including but not limited to a personal radio, phonograph, television receiver, tape recorder, cassette player, compact disc player, or mp3 player.

Police officer. "Police officer" means any member of the Police Department of the City of New York and any person designated as a peace officer pursuant to section 2.10 of the New York State Criminal Procedure Law when acting pursuant to his/her special duty in or at the terminals or on the ferries.

Rule. "Rule" means, unless otherwise herein provided, any rule promulgated pursuant to §2903(c) of the New York City Charter and in compliance with the requirements of Chapter 45 of the New York City Charter.

Service animal. A "service animal" is any animal that is specifically trained to provide assistance to a person with a disability.

Sound reproduction device. "Sound reproduction device" means any device intended primarily for the production or reproduction of sound, including, but not limited to, any radio receiver, phonograph, television receiver, musical instrument, tape recorder, or electronic sound amplifying system.

Storage. "Storage" means the use of space on the ferries or in the ferry terminals to keep materials or possessions.

Terminals. "Terminals," used in the plural, includes both the ferry terminal located at Whitehall Street in the Borough of Manhattan and the ferry terminal located at St. George in the Borough of Staten Island. "Terminals" shall also include the other ferry terminals and landings owned and/or operated by the Department. Each terminal may also be referred to herein by its specific location, in which case "terminal" shall mean only the terminal referred to. Each terminal may have a different Manager. "Terminal" includes areas approaching the ferry slips and all other city-owned real property upon which the terminal building is situated, and the surrounding grounds thereof as designated on the city map.

HISTORICAL NOTE

Section amended City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010. [See T34 §1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Person w/disability definition added City Record Dec. 16, 2005 §1, eff. Jan. 15, 2006. [See Note 1]

Service animal definition added City Record Dec. 16, 2005 §1, eff. Jan. 15, 2006. [See Note 1]

Storage definition amended City Record Sept. 1, 1993 eff. Oct. 1, 1993.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 16, 2005:

The Commissioner of the Department of Transportation is authorized to maintain and operate the ferries of the city and to be responsible for all ferry boats, ferry houses, ferry terminals and equipment thereof pursuant to §§1043 and 2903(c) of the New York City Charter.

Section 1-01 of Title 34 of the Official Compilation of the Rules of the City of New York provides definitions related to Chapter 1: Ferry Terminals and Vessels.

Definitions are being added to define terms related to compliance with the Americans with Disabilities Act. A previous rule on the Staten Island Ferry allowed no pets on the ferry with the exception of pets in cages and "seeing eye" dogs. According to ADA mandates service animals must be accommodated in all public places/transportation conveyances without exception. Service animals are not limited to Seeing Eye dogs.

Section 1-02 of Title 34 of the Official Compilation of the Rules of the City of New York delineates rules of conduct for users of the Ferry facilities and vessels.

Subdivision (d) of §1-02 is being amended to provide procedures for the stowing of bicycles during the transit of passengers on the Ferry and for removal, reclamation and storage of bicycles abandoned on the Ferry. Unattended bicycles left continuously on the bicycle racks for more than one hour may be removed from the ferry. To reclaim a bicycle, the owner may call 311 within 10 days. After 10 days, bicycles will be considered abandoned and may be transferred to the NYPD Property Clerk for disposal pursuant to law (General Municipal Law §250 and NYC Administrative Code §10-106).

Subdivision (n) of §1-02 is being amended so that the written rules reflect the Ferry Division's compliance with the Americans with Disabilities Act regarding service animals, which are no longer limited to guide dogs, and to provide a more healthful facility for the use of ferry riders by prohibiting activities that may encourage birds, scavengers or rodent populations in the Ferry Division facilities or vessels. Commuters are directed not to feed the pigeons in the terminals and on the boats.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 1 FERRY TERMINALS AND VESSELS

§1-02 Prohibited Uses.

(a) **Gambling prohibited.** No person shall gamble or conduct or engage in any game of chance in the terminals or on the ferries unless such game of chance is permitted by local, state or federal law and has been approved by the Commissioner.

(b) **Defacing or damaging terminals or ferries or property therein prohibited.** No person shall deface, mark, break, or otherwise damage any part of the terminals or ferries or any property thereat. No person shall remove, alter or deface any barricade, fence or sign in the terminals or on the ferries.

(c) **Creation of obnoxious odors, noxious gases, smoke or fumes prohibited.** No person shall create, or permit any vehicle or machine of which he/she is in charge to create obnoxious odors, noxious gases, or excessive smoke or fumes in the terminals or on the ferries.

(d) **Bathing prohibited.** No person shall bathe, shower, shave, launder or change clothes or remain undressed in any public restroom, sink, washroom or any other area in the terminals or on the ferries.

(e) **Smoking or carrying lighted cigars, cigarettes, pipes, etc. in certain areas prohibited.** No person shall smoke or carry lighted cigars, cigarettes, pipes, matches or any naked flame in areas of the terminals or ferries where smoking is prohibited by the Department or by law, ordinance, rules or regulations of the United States government, the State of New York or the City of New York.

(f) **Noxious conduct.** No person shall urinate or defecate in any part of the terminals or ferries other than in a

urinal or toilet intended for that purpose. No person shall spit upon the public surfaces of the terminals or ferries including the floors and furniture.

(g) **Lying down prohibited; sitting restricted.** No person shall lie down in any place, including benches or seating facilities, within the terminals or on the ferries. No person shall be seated in the terminals or on the ferries except upon seating facilities provided for that purpose. No person shall occupy more than one seat. No person shall place personal belongings on seating facilities so as to interfere with their use by other persons.

(h) **No skateboarding, rollerskating, rollerblading or bicycle riding.** No person shall skateboard, roller skate, roller blade or ride a bicycle, scooter or any other vehicle or device except a wheelchair or other similar device used to assist a person with a disability and/or required for transit on or through any part of the terminals or ferries. Bicycles and non-motorized scooters must be walked through the terminals and ferries.

(i) **Noise.** No person shall make, continue, cause or permit to be made or continued any unreasonable noise in the terminals or on the ferries. Unreasonable noise shall mean any excessive or unusually loud sound that disturbs the peace, comfort or repose of a reasonable person of normal sensitivities, injures or endangers the health or safety of a reasonable person of normal sensitivities, or which causes injury to plant or animal life, or damage to property or business. Unreasonable noise shall include, but shall not be limited to sound that exceeds the following prohibited noise levels:

(1) Sound attributable to the source measured at a level of 7dB(A) or more above the ambient sound level at or after 10:00 p.m. and before 7:00 a.m., as measured at any point within a receiving property, as defined in §24-203 of the Administrative Code of the City of New York, or as measured at a distance of 15 feet or more from the source in a terminal or on a ferry.

(2) Sound attributable to the source measured at a level of 10dB(A) or more above the ambient sound level at or after 7:00 a.m. and before 10:00 p.m., as measured at any point within a receiving property, as defined in §24-203 of the Administrative Code of the City of New York, or as measured at a distance of 15 feet or more from the source in a terminal or on a ferry.

(3) Sound attributable to a personal audio device with personal earphones such that sound from such earphones is plainly audible to another individual at a distance of five feet or more from the source.

(j) **Disorderly behavior.** No person shall engage in disorderly behavior in the terminals or on the ferries, such as, but not limited to the following:

(1) fighting or assaulting any person; or

(2) interfering with, encumbering, obstructing or rendering dangerous any part of the ferry or terminal; or

(3) obstructing pedestrian or vehicular traffic; or

(4) climbing upon any wall, fence, shelter or any structure not specifically intended for climbing purposes; or

(5) engaging in any form of sexual conduct, as that term is defined in §130.00 of the New York State Penal Law; or

(6) engaging in a course of conduct or committing acts that endanger the safety of others; or

(7) engaging in any other course of conduct or committing acts disruptive to crew members, which obstructs or impairs their ability to carry out their duties; or

(8) engaging in any other course of conduct or committing acts against other passengers, which disturbs the peace,

comfort or repose of a reasonable person of normal sensitivities, injures or endangers the health or safety of a reasonable person of normal sensitivities; or which causes injury to plant or animal life, or damage to property or business.

(k) **Controlled substances.** No person shall possess, distribute, sell or solicit or consume any controlled substance or marihuana, as those terms are defined in §220.00 of the New York State Penal Law, on any ferry or in any terminal.

(l) **Loitering.** No person shall engage in loitering as defined in §§240.36 or 240.37 or subdivisions 2,4, 5 or 6 of §240.35 of the New York State Penal Law on any ferry or in any terminal.

(m) **Unlawful exposure.** No person shall appear in public on any ferry or in any terminal in such a manner that his/her genitalia are unclothed or exposed.

(n) **Fishing.** No person shall fish from any ferry or terminal.

HISTORICAL NOTE

Section amended City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010. [See Note 1]

DERIVATION

Section in original publication July 1, 1991.

Subd. (d) amended City Record Dec. 16, 2005 §2, eff. Jan. 15, 2006. [See T34 §1-01 Note 1] This subd. was repealed City Record Dec. 24, 2009.

Subd. (n) amended City Record Dec. 16, 2005 §2, eff. Jan. 15, 2006. [See T34 §1-01 Note 1] This subd. was repealed City Record Dec. 24, 2009.

Subd. (aa) amended City Record Sept. 1, 1993 eff. Oct. 1, 1993. This subd. was repealed City Record Dec. 24, 2009.

Subd. (dd) added City Record Dec. 10, 1993 eff. Jan. 9, 1994. This subd. was repealed City Record Dec. 24, 2009.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 24, 2009:

The Commissioner of Transportation is authorized to promulgate rules regarding ferries and their related facilities in the City pursuant to §2903(c) of the New York City Charter.

Chapter 1 of Title 34 of the Rules of the City of New York (RCNY) is being amended to update and revise the current rules regarding the ferry terminals and vessels under the jurisdiction of the Department. In the past few years, the ferry terminals and vessels have undergone some operational changes and enhancements, including the United States Coast Guard-approved Staten Island Ferry Combined Facility and Vessel Security Plan. As a result, certain rules are now obsolete while other rules are in need of being updated or established.

Specifically, the Ferry Rules of Conduct as currently codified in §1-02 of the RCNY are posted on the Staten Island Ferry vessels and throughout the St. George and Whitehall ferry terminals to ensure the safety, security, and comfort of passengers and employees. The Staten Island Ferry carries approximately 65,000 passengers a day. The Department wishes to continue to prohibit unsafe and disruptive behavior and to maintain good order, as required under general maritime law. In addition, the proposed rule would apply the Rules of Conduct to City-owned ferry landings and terminals. The definition in §1-01 of the current rules excludes the City-owned ferry landings and terminals, which

host the operations of several of the City's private ferries. Private ferry operators transport approximately 25,000 passengers a day and are an important component of the City's mass transportation system. As is the case with the Staten Island Ferry terminals, it is important to maintain a safe and secure environment in all of the City-owned ferry facilities.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 1 FERRY TERMINALS AND VESSELS

§1-03 Regulated Uses.

(a) **Permission to use terminals and ferries is conditional.** Any permission granted by the Department directly or indirectly, expressly or by implication, to any person to enter upon or use the terminals or ferries, or any part thereof, is conditioned upon acceptance of and compliance with this chapter, as from time to time may be amended, and entry upon or into the terminals or ferries by any person shall be deemed to constitute an agreement by such person to comply with such rules; provided, further, that such rules shall apply to premises or spaces occupied or used under the provisions of a written agreement made with the Department unless provision is made therein that such rules do not apply.

(b) **Permits.**

(1) When any provision of this section requires a permit as a condition to the performance of an act or activity, no such act or activity shall be implemented or commenced prior to the receipt of written authorization from the Commissioner.

(2) A permit may be granted upon such terms and conditions as the Commissioner shall reasonably impose and shall authorize the permitted acts or activities only insofar as they are performed in strict accordance with the terms and conditions thereof.

(3) Permits shall be applied for on forms prepared and provided by the Department, which forms shall require such information as the Department may deem appropriate for the review and evaluation of the permit application. Applications must be received at least two business days prior to the requested date of the act or activity.

(4) No person shall conduct any activity for which a permit is required unless:

(i) such permit has been issued;

(ii) all terms and conditions of such permit have been complied with; and

(iii) the permit is kept on site, so it is available for inspection by Department employees or a police officer.

(5) Upon application, the Commissioner may deny a permit if:

(i) an applicant was previously granted a permit and on that prior occasion, knowingly violated a material term or condition of the permit, these rules or applicable law;

(ii) the date, time, and/or location requested have been previously allotted; or

(iii) the issuance of the permit would cause the existence of a dangerous condition or a condition that would interfere with operations or traffic in the terminals or on the ferries.

(6) If a permit application is denied, the applicant may, within three business days of such denial, appeal the determination by written request filed with the designated appeals officer who may reverse, affirm or modify the original determination and provide a written explanation of his or her finding. However, if a permit application is denied three business days or less prior to the requested date of the act or activity, the applicant shall have one day from the date such denial is mailed or otherwise delivered to the applicant to appeal such denial. The Department shall render a decision on such appeal as soon as is reasonably practicable.

(7) The Commissioner may, after giving the permittee reasonable notice and an opportunity to be heard, revoke or refuse to renew a permit (i) for failure to comply with the terms and conditions of such permit, these rules or other applicable law in carrying out the activity for which the permit was issued; (ii) whenever there has been any false statement or any misrepresentation as to material fact in the permit application or accompanying documents upon which the issuance of the permit is based; or (iii) whenever a permit has been issued in error contrary to paragraph 5 of subdivision b of this section.

(8) The Commissioner may delay or postpone the issuance of any permit or may temporarily suspend any permit already granted in the event of emergencies, such as snowstorms, traffic accidents, power failures, transportation strikes or other conditions which affect the traffic flow in any of the areas covered by the permit such that conduct of the activities would create a dangerous condition or would interfere with traffic in the terminals or on the ferries.

(c) **Use of terminals or ferries may be denied persons violating laws or rules.** The Manager shall have the authority to deny use of the terminals or ferries to any individual violating Department rules or laws, ordinances or regulations of the United States government, the State of New York, or the City of New York, which relate to conduct in public places or in the terminals or the ferries.

(d) **Restricted areas and times.** Permission to enter certain areas of the terminals or ferries is restricted as follows:

(1) No person, except a person assigned to duty therein or a police officer, shall enter, without permission, any area of the terminals or ferries posted as being restricted to the public. If permission to enter a restricted area is granted, such permittee shall be monitored and/or escorted at all times in accordance with the Maritime Transportation Security Act.

(2) In the event that portions of the terminals are closed to all members of the general public, any person shall, when entering or remaining in such portions of the terminals, exhibit such authorization as shall be prescribed by the Commissioner. Effective September 25, 2008 and in accordance with the Maritime Transportation Security Act, all individuals in restricted areas must display at all times a Transportation Worker Identification Credential or other authorized identification credential, including those issued to police officers.

(e) **Unattended property.**

(1) No person shall leave any property unattended in the terminals or on the ferries.

(2) Unattended property will be removed and transferred to the Staten Island Ferry's Lost and Found.

(3) Bicycles shall be stowed at the designated bicycle areas. Bicycles left on racks at the terminal for longer than 48 hours shall be deemed abandoned and will be removed and may be transferred to the Property Clerk of the New York City Police Department or other appropriate location.

(4) Owners of reclaimed property may be assessed a removal and/or storage fee.

(f) **Distribution of commercial printed materials.** No person shall, for commercial purposes, post, distribute or display signs, advertisements, circulars or printed or written material in the terminals or on the ferries without having been granted a permit by the Commissioner.

(g) **Distribution of noncommercial printed material and carrying of placards.** No person shall engage in the noncommercial distribution of leaflets, the setting up of card tables to aid in that distribution, the carrying of placards or the posting or displaying of noncommercial signs in the terminals or on the ferries without having been granted a permit by the Commissioner. No person shall distribute leaflets or other materials by leaving them unattended in the terminals or on the ferries.

(h) **Distribution of food, clothing, packages, or other non-printed items.** No person shall engage in the distribution of any food, clothing, packages, or any other non-printed items, or in the setting up of card tables to aid in that distribution in the terminals or on the ferries without having been granted a permit by the Commissioner. No person shall distribute such items by leaving them unattended in the terminals or on the ferries.

(i) **Sale of merchandise, solicitation of trade, entertainment or solicitation of contributions.**

(1) No person, unless duly authorized by the Commissioner shall, in or upon any area, platform, stairway, waiting room, appurtenance, or any other area of the terminals or ferries,

(i) sell or offer for sale any article of merchandise, or

(ii) solicit any business, service or trade, including the carrying of baggage for hire or the shining of shoes.

(2) No person shall engage in (i) the entertainment of persons by singing, dancing or playing any musical instrument or (ii) the solicitation of contributions in the terminals or on the ferries without having been granted a permit by the Commissioner.

(j) **Assemblies, meetings, exhibitions.**

(1) No person shall hold or sponsor any assembly, meeting, exhibition or other event without written approval from the Commissioner or his/her designee. A gathering of 10 or more people shall constitute an assembly or meeting.

(2) No person shall erect any structure, stand, booth, platform or exhibit in connection with any assembly, meeting, exhibition or other event without written approval from the Commissioner or his/her designee.

(k) **Refuse to be deposited in appropriate receptacles.** No person shall throw, discharge or deposit trash, garbage, waste, oil or other petroleum products or any other waste material into the harbor or into or upon any portion of the terminals or ferries except by depositing such material in receptacles provided therefor. The placement of all such receptacles shall be subject to the approval of the Manager. No person shall remove refuse or other material from such receptacles except as authorized by the Manager.

(l) **Animals barred.** No person, except a police officer or another person authorized by the Manager, shall enter the terminals or ferries with any animal except a service animal or an animal properly restrained for transport subject to the discretion of the Manager. No person shall feed any animal, including unconfined squirrels and birds, within the terminals or on any ferry.

(m) **Passage through boarding doors restricted.** No person shall pass through the boarding doors to the ferries except:

(1) persons employed by or doing business with a concessionaire whose duties require such passage;

(2) authorized representatives of the Department of Transportation;

(3) persons having permission;

(4) police officers;

(5) firefighters and emergency medical technicians employed by the New York City Fire Department; and

(6) passengers immediately prior to boarding a ferry or immediately after leaving a ferry.

(n) **Photography or filming.**

(1) For purposes of this subdivision, "photography or filming" shall include the taking of photographs; the making of motion pictures; the use and operation of television cameras, transmitting television equipment, or radio remotes; or load-ins or load-outs supporting indoor performances.

(2) A permit from the Mayor's Office of Film, Theatre and Broadcasting (MOFTB) and a separate permit from the Commissioner are both required in circumstances under which a permit from MOFTB is required by its rules.

(3) As is the case with photography or filming on City streets, sidewalks or other pedestrian passageways, a permit is not required in those instances where a handheld device (with or without a tripod) is used, except when the use of such handheld device (with or without a tripod) unreasonably interferes with the use of the ferry terminal or ferry. For purposes of this subdivision, "unreasonable interference" means the assertion of exclusive use by any means, including physical or verbal, of an area that consists of a radius greater than five feet from where the individual engaged in photography or filming is located. Where such exclusive use is asserted, the individual engaged in photography or filming shall obtain a permit from the Commissioner.

(4) For purposes of this subdivision, standing in a ferry terminal or on a ferry while using a handheld device (with or without a tripod) and not otherwise asserting exclusive use by any means, including physical or verbal, of an area that consists of a radius greater than five feet from where the individual engaged in photography or filming is located, is not activity that requires a permit from MOFTB or the Commissioner.

(o) **Fire.** No person shall cook, light a fire or otherwise create a fire in any part of the terminals or ferries, except as authorized by the Commissioner.

(p) **Alcoholic beverages.** No person shall drink or carry any open alcoholic beverage in any part of the terminals, except on the premises of a concession or retail establishment duly licensed for the sale of alcoholic beverages if permitted therein by the concessionaire or leasee. Alcoholic beverages may be purchased and consumed from the concessionaire aboard a ferry in accordance with all federal, state and local laws and rules. It shall be a violation of these rules for any person to enter and/or remain in the terminals and/or aboard a ferry under the influence of alcohol, to the degree that he or she may endanger himself or herself, other persons or property, or unreasonably annoy persons in his or her vicinity.

(q) **Carrying of firearms or other weapons.** No person, shall, without the permission of the Manager, bring into or carry in the terminals or on the ferries any firearms or other weapons; provided, however, that this subdivision shall not apply to police officers and other persons authorized by federal, state or local law to carry firearms or other weapons.

(r) **Permission required to bring into or carry explosives, acids, inflammables, compressed gases, etc.** No person shall bring into or carry in the terminals or on the ferries any explosives, acids, inflammables, compressed gases or articles or materials having or capable of producing strong offensive odor, or articles or materials likely to endanger persons or property, except with permission of the Chief Operating Officer or the Executive Director of Safety and Security. No person shall bring or cause to be brought into or kept in the terminals any signal flare or any container filled with or which has been emptied or partially emptied of oil, gas, petroleum products, paint or varnish, except with permission of the Chief Operating Officer or the Executive Director of Safety and Security. Bringing into the terminals or on the ferries without special permission gasoline or other motor fuel contained in tanks permanently attached to vehicles and not under pressure shall not be an infraction of this regulation.

(s) **Unauthorized interference with or use of terminal or ferry systems or equipment prohibited.** No person shall do or permit to be done anything which may interfere with the effectiveness or accessibility of any means of escape, the fire protection system, sprinkler system, drainage system, alarm system, telephone system, public announcement and intercommunication system, plumbing system, air-conditioning system, ventilation system, fire hydrants, hoses, fire extinguishers, or other mechanical system, facility or equipment installed or located in the terminals or on the ferries; including closed circuit television cameras and monitors, signs and notices; nor shall any person operate, adjust or otherwise handle or manipulate, without permission, any of the aforesaid systems or portions thereof, or any machinery, equipment or other devices installed or located at the terminals or on the ferries. Tags showing date of last inspection attached to units of fire extinguishing equipment shall not be removed therefrom nor shall any person plug a television, radio or other electrical device into any outlet or connect any device to any utility at or in the terminals or on the ferries.

(t) **Storage.** Storage of materials or possessions of any kind either on the ferries or in the ferry terminals is strictly prohibited at all times. Any materials or possessions stored on the ferries or ferry terminals will be disposed of promptly. This provision shall not apply to any authorized storage by a lessee, concessionaire or contractor pursuant to an agreement with the Department.

(u) **No sound reproduction devices.** Except with prior permission of the Commissioner, no person shall operate or use any sound reproduction device in the terminals or on the ferries, other than a personal audio device with personal earphones such that sound from such earphones is not plainly audible to another individual at a distance of five feet or more from the source.

(v) **Use of lighting or sound reproduction equipment.** No person shall without specific authorization from the Commissioner operate or use or cause to be operated or used any lighting or sound reproduction device for commercial or business advertising purposes or for the purpose of attracting attention to any performance, show, sale or display of merchandise, or any business enterprise, in front or outside of any building, place or premises in the terminals or on the ferries.

HISTORICAL NOTE

Section added City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010. [See T34

§1-02 Note 1]

DERIVATION

Subd. (e) former §1-02(d) amended City Record Dec. 16, 2005 §2, eff. Jan. 15, 2006. [See T34 §1-01 Note 1]

Subd. (h) former §1-02(dd) added City Record Dec. 10, 1993 eff. Jan. 9, 1994.

Subd. (l) former §1-02(n) amended City Record Dec. 16, 2005 §2, eff. Jan. 15, 2006. [See T34 §1-01 Note 1]

Subd. (t) former §1-02(aa) amended City Record Sept. 1, 1993 eff. Oct. 1, 1993.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 1 FERRY TERMINALS AND VESSELS

§1-04 Vehicles.

No vehicles shall be permitted on the ferries except with permission from the Chief Operating Officer.

HISTORICAL NOTE

Section renumbered and amended (former §1-03) City Record Dec. 24, 2009

§1, eff. Jan. 23, 2010. [See T34 §1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 1 FERRY TERMINALS AND VESSELS

§1-05 Elevators, Escalators, and Loading Docks.

(a) **Freight prohibition.** Passenger elevators and escalators may not be used to carry freight.

(b) **Causing an elevator or escalator to stop.** No unauthorized person shall cause an elevator or escalator to stop by means of any emergency stopping device unless continued operation would appear to result in probable injury to a person or persons. Any such stoppage should be reported immediately to the Manager.

(c) **Truck loading docks.** Truck loading docks located in the terminals are designed to accomplish the immediate transfer of merchandise between the freight elevators and trucks. All persons will confine their use of the docks to such purpose as directed by the Manager. No storage or holding of merchandise on the truck loading docks awaiting the arrival of trucks or awaiting transfer to premises or space at the terminals will be permitted.

HISTORICAL NOTE

Section renumbered and amended (former §1-04) City Record Dec. 24, 2009

§1, eff. Jan. 23, 2010. [See T34 §1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Section 1-05 Staten Island Ferry Vehicular Fares repealed City Record Dec. 24, 2009, in original publication July

1, 1991, amended City Record May 26, 1994.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 1 FERRY TERMINALS AND VESSELS

§1-06 Penalty.

Failure to comply with these rules or the terms or conditions of any permit issued shall be punishable as provided in the administrative code of the city of New York.

HISTORICAL NOTE

Section added City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010. [See T34

§1-02 Note 1]

DERIVATION

Section in original publication July 1, 1991.

Former §1-06 Student Passes repealed City Record Dec. 24, 2009.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-01 Definitions.

Administrative Code. The term "Administrative Code" means the Administrative Code of the City of New York.

Block Segment. The term "Block Segment" means the linear stretch of the street between the curblines of the cross streets that intersect such block.

Commissioner. The term "Commissioner" means the Commissioner of the Department of Transportation or his or her authorized designee.

Corrective action request or CAR. The term "corrective action request" or "CAR" means a formal notice by the Department that work performed and/or a condition created or maintained on a street is in violation of these rules or other applicable law with a request that action be taken by the person to whom such notice is addressed to correct the work and/or the condition so described.

Department. The term "Department" means the Department of Transportation.

Designated field headquarters. The term "designated field headquarters" means an office maintained at the work site, unless some other location is approved by the Department.

Embargo period. The term "embargo period" means a period of time designated by the OCMC during which there shall be a temporary suspension of work (except for emergency work) due to a holiday, special event or emergency.

Emergency. The term "emergency" means a situation endangering the public safety or causing or likely to cause

the imminent interruption of service required by law, contract or franchise to be continuously maintained.

Emergency work. The term "emergency work" means work necessary to correct a situation endangering the public safety or causing or likely to cause the imminent interruption of service required by law, contract or franchise to be continuously maintained, for example, by a government agency, a public utility, a franchisee, etc. Such term shall not include work on new construction, regrades of existing hardware, continuation of an existing permit that has expired or will expire imminently or any other work which is not necessary to correct a condition likely to cause such imminent interruption.

Intersection. The term "Intersection" means the area contained within the grid created by extending the curblines of two or more streets at the point at which they cross each other.

OCMC. The term "OCMC" means the Office of Construction Mitigation and Coordination, a unit within the Department which is responsible for providing traffic stipulations and coordinating construction activity on City streets.

Protected street. The term "protected street" means a street which has been resurfaced or reconstructed within five years prior to the date of application for a permit.

Roadway. The term "roadway" means that portion of a street designed, improved or ordinarily used for vehicular travel, exclusive of the shoulder and slope.

Sidewalk. The term "sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

Specifications. The term "specifications" means the standard specifications available from the Department indicating required construction materials.

Standards. The term "standards" means the standard details of construction, available from the Department, which contains drawings showing required dimensions of items to be constructed.

Street. The term "street" means a public street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct, square or place, except marginal streets.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Block Segment added City Record May 7, 2001 §1, eff. June 6, 2001.

Embargo period amended City Record Feb. 25, 2000 §1, eff. Mar. 26, 2000.

Intersection added City Record May 7, 2001 §1, eff. June 6, 2001.

OCMC redesignated and amended (formerly MTCCC) City Record Feb. 25, 2000 §1, eff. Mar. 26,

2000. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 25, 2000:

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and

highways in the City pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code.

Recently the Department changed the name of the unit known as the Mayor's Traffic and Construction Coordinating Council (MTCCC) to the Office of Construction Mitigation and Coordination (OCMC). Various sections are being revised to reflect this change.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers

to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-02 Permits.

(a) **Initial permit application.** The following information shall be provided to the Department upon initial application for a permit under these rules and shall be updated as necessary and refiled annually:

(1) **If the applicant is a corporation:**

(i) address and telephone number of applicant;

(ii) name and telephone number of a contact person in the event of an emergency;

(iii) affidavit acknowledging incorporation and a certified copy of the certificate of incorporation, and proof of registration with the New York State Department of State, Office of the Secretary of State. When completing the permit application, applicants must supply the Department with the identical identifying information, including but not limited to the company name, as they have provided to the New York State Department of State, Office of the Secretary of State;

(iv) names of corporate officers;

(v) names of two agents/employees designated to receive summonses or notices of violation or other notices required by these rules or other provisions of law;

(vi) New York City plumber's license certificate or other license numbers, if applicable;

(vii) name(s) of representative(s) authorized to obtain permit(s) on behalf of the applicant;

(viii) employer identification number;

(ix) e-mail address, if any.

(2) **All other applicants:**

(i) address and telephone number of applicant;

(ii) name(s) of representative(s) authorized to obtain permit(s) on behalf of the applicant;

(iii) New York City plumber's license certificate or other license numbers, if applicable;

(iv) employer identification number;

(v) e-mail address, if any.

(3) **Insurance and indemnification requirements (for all applicants):**

(i) Each applicant shall, before applying for a permit, obtain a Commercial General Liability (CGL) insurance policy or policies satisfying the requirements of this subparagraph. All CGL insurance policies, whether primary, excess or umbrella, shall:

(A) be issued by a company or companies that may lawfully issue the required policy and has an A.M. Best rating of at least A-VII or a Standard and Poor's rating of at least AA.

(B) provide coverage to protect the City of New York ("City") and the applicant from claims for property damage and/or bodily injury, including death, which may arise from any operations performed by or on behalf of the applicant for which the Department has issued it a permit;

(C) provide coverage at least as broad as that provided by the most recent edition of ISO Form CG 0001;

(D) provide coverage for completed operations;

(E) provide coverage of at least $1,000,000 combined single limit per occurrence, except that with respect to applications for permits to place a crane on a street, such minimum amount shall be no less than $3,000,000 combined single limit per occurrence;

(F) provide that the City and its officials and employees are Additional Insureds with coverage at least as broad as set forth in ISO Form CG 2026 (11/85 ed.);

(G) provide that the limit of coverage applicable to the Named Insured is equally applicable to the City as Additional Insured.

(H) This policy shall not be cancelled or terminated, or modified or changed in a way that affects the City by the issuing insurance company unless thirty (30) days prior written notice is sent to the Named Insured and the Commissioner of the New York City Department of Transportation, except that notice of termination for non-payment may be made on only ten (10) days written notice.

(I) If the permit applicant has applied for more than one thousand permits in the previous calendar year, the insurance policy shall contain each of the following endorsements;

(1) If and insofar as knowledge of an "occurrence", "claim", or "suit" is relevant to the City as Additional Insured

under this policy, such knowledge by an agent, servant, official or employee of the City of New York will not be considered knowledge on the part of the City of the "occurrence", "claim", or "suit" unless notice thereof is received by the: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department; and

(2) Any notice, demand or other writing by or on behalf of the Named Insured to the insurance company shall also be deemed to be a notice, demand or other writing on behalf of the City as Additional Insured. Any response by the Insurance Company to such notice, demand or other writing shall be addressed to the Named Insured and to the City at the following address: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(ii) Each applicant shall, before applying for a permit, obtain Workers Compensation insurance in accordance with the laws of the State of New York from a licensed insurance company.

(iii) Each applicant shall, before applying for a permit, file with the Department proof that the applicant has insurance in place that provides coverage set forth in this subdivision with respect to the permit period. If the applicant chooses to meet this proof with an insurance certificate, the insurance certificate shall set forth the coverage provided, state that completed operations coverage is included and that the City is an additional insured, and shall be accompanied by a sworn statement in a form prescribed by the Department from the insurer or from a licensed insurance broker certifying that the insurance certificate is accurate in all material respects, and that the described insurance is in effect.

(iv) An applicant may obtain insurance policies applicable to more than one permit application, in which case the proof pursuant to subparagraph (iii) shall state that the policies cover all such permits in specified boroughs, or throughout the City.

(v) The applicant shall provide a copy of any required policy within thirty days of a request for such policy by the Department or the New York City Law Department.

(vi) In its sole discretion, the Department may allow applicants that frequently seek permits to self-insure, provided that the applicant:

(A) presents proof of excess or umbrella CGL coverage applicable to its operations under such permits;

(B) certifies that it has a self-insurance program in place that satisfies the requirements contained in subparagraph (i) and will continue it for the life of the permit and the Guarantee Period, as defined in subparagraph (ii) of paragraph (16) of subdivision (e) of §2-11 of these rules;

(C) agrees to provide the same defense of any suit against the City that alleges facts that bring the suit within the scope of the coverage required in subparagraph (i) as an insurer would be obligated to provide under the laws of New York;

(D) submits a statement, signed by a person authorized to bind the applicant and acknowledged by a notary public, in which the applicant agrees to assume full liability for satisfying all obligations set forth in this subparagraph (vi), and

(E) provides the Department with the name and address of the office or official of its self-insurance program who is responsible for satisfying the self insurance obligations.

(vii) The permittee shall maintain insurance throughout the Guarantee Period, as defined in subparagraph (ii) of paragraph (16) of subdivision (e) of §2-11 of these rules, satisfying the requirements in subparagraph (i) of this paragraph and providing coverage to protect the City, the Department and the applicant from all claims for property damage and/or bodily injury, including death, which may arise from any defects discovered during such Guarantee Period.

(viii) The permittee shall notify in writing the CGL insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any loss, damage, injury, or accident, and any claim or suit arising from any operations performed by or on behalf of the permittee for which the Department has issued it a permit, immediately, but not later than 20 days after such event. The permittee's notice to the CGL insurance carrier must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as the Named Insured." The permittee's notice to the insurance carrier shall contain the following information: the name of the permittee, the number of the permittee, the date of the occurrence, the location (street address and borough) of the occurrence, and the identity of the persons or things injured, damaged or lost.

(ix) The permittee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements), known or unknown, contingent or otherwise, allegedly arising out of or in any way related to the operations of the permittee and/or its failure to comply with any of the requirements set forth herein or law. Insofar as the facts and law relating to any claim would preclude the City and its officials and employees from being completely indemnified by the permittee, the City and its officials and employees shall be partially indemnified by the permittee to the fullest extent provided by law.

(x) A failure by the City of New York or the Department to enforce any of the foregoing requirements shall not constitute a waiver of such requirement or any other requirement.

(4) **Permit bonds.**

(i) A permit bond shall be submitted by all permittees to the permit office at the time of permit issuance to cover all costs and expenses that may be incurred by the City as a result of the activity for which the permit is issued or for the purpose of otherwise safeguarding the interests of the City. The permit bond shall be in the form prescribed by the Department. Such permit bonds described above shall cover all permitted activities described herein.

(ii) For a permit bond submitted for the purpose of performing street openings and excavations pursuant to §2-11 of these rules, such permit bond shall be submitted in the amount of $10,000.00 for a single location within the City of New York per calendar year, $25,000.00 for two to fifty locations within the City of New York per calendar year, and $50,000.00 for fifty-one to one hundred locations within the City of New York per calendar year. Permittees who are issued permits for more than one hundred locations per calendar year shall submit a permit bond in the amount of $100,000.00.

(iii) Bonds shall be valid through the permit's guarantee period as set forth in these rules.

(iv) The issuer of the bond shall give the Department at least 30 days written notice prior to expiration or cancellation of such bond.

(v) A receipt demonstrating full payment of the bond shall be filed with the Department.

(vi) A separate bond need not be filed for each location, provided such coverage is in force for all operations in the entire borough, City or state.

(vii) A notice of continuation of certificate shall be received every calendar year for the continuation of an existing bond.

(viii) Effective July 1, 2008, for a permit bond submitted pursuant to subparagraph (ii) above, such permit bond shall be submitted in the amount of $10,000.00 for a single location within the City of New York per calendar year, $50,000.00 for two to fifty locations within the City of New York per calendar year, and $100,000.00 for fifty-one to one hundred locations within the City of New York per calendar year. Effective July 1, 2008, permittees who are issued permits for more than one hundred locations per calendar year shall submit a permit bond in the amount of $250,000.00.

(ix) For permits with the exception of those set forth in subparagraph (ii) above and sidewalk construction permits issued pursuant to §2-09 of these rules, a permit bond shall be submitted in the amount of $5,000 for a single location within the City of New York per calendar year or in the amount of $25,000 for multiple locations within the City of New York per calendar year. In the event that a permittee will also secure street opening and excavation permits within the City of New York during the same calendar year, the permittee's compliance with subparagraph (ii), or effective July 1, 2008 with subparagraph (iii), above shall be sufficient to demonstrate compliance with this section.

(5) **Deposits.**

(i) A deposit of $5,000.00, in the form of money order or certified check, shall be required from permittees when outstanding balances for permit fees, backcharge fees, corrective action requests (CARs) or other charges exceed $3,000.00 for a period longer than forty-five (45) calendar days.

(ii) Such permittees shall maintain a deposit balance of $5,000.00 at all times until the deposit is refunded pursuant to subparagraph (iv), below. If the balance of such cash deposit falls below $5,000.00, all review of permit applications and permit issuance may cease, except in cases of emergency work.

(iii) Any amounts owed by permittees for permit fees, CAR fees, backcharge fees or other charges payable pursuant to law for a period longer than forty-five (45) calendar days shall be deducted from the deposit after notice to the permittee.

(iv) Deposits shall be refunded after one year (365 consecutive calendar days) of full compliance with all applicable laws, rules and specifications.

(b) **General conditions for all permits.** (1) Permit applications for the following work shall be reviewed by OCMC prior to the issuance of permits:

(i) work to be performed for sewer and water system construction;

(ii) work to be performed in Manhattan;

(iii) work required on primary and secondary arteries;

(iv) permits to close streets;

(v) permits for placement of commercial refuse containers in Manhattan;

(vi) any other activity deemed necessary by the Commissioner.

(2) **Permits for emergency work.** Permits for emergency work shall be issued in accordance with §2-11 of these rules.

(3) Before issuing a permit the Department may demand that permittee show proof of required approvals from other governmental entities.

(4) **Street closings lasting more than 180 days.** Permits that will result in a publicly mapped street being fully closed for more than 180 consecutive calendar days shall be issued in accordance with all the requirements of §2-16 of these rules.

(c) **Display of permits and signs at work site.** (1) Unless otherwise authorized, permits shall be kept at the work site or designated field headquarters at all times and shall be made available for inspection upon request of any police officer or any authorized employee of the Departments of Environmental Protection, Buildings, Police and Transportation or any other City employees specifically authorized by the Commissioner to enforce these rules.

(2) Permittees shall display signs at the work site or at 100 foot intervals along a series of excavations or continuous cut indicating the name of the permittee conducting the work, the name of the entity for whom the work is being conducted and, if applicable, the name(s) of the subcontractor(s). Such signs shall include:

(i) permittee's telephone number for complaints;

(ii) contractor's telephone number, if not the permittee;

(iii) the permit number;

(iv) the purpose of the street opening; and

(v) the start and scheduled completion dates of the work.

(3) Signs shall be conspicuously displayed and shall face the nearest curb line. Such signs shall be clear, readable and in letters at least $1^1/_2$ inches in height and shall conform to the Department's specifications.

(4) Permittees will be required to post Project Informational Signs for any project with a projected completion time of three months or more, or as otherwise directed by the Commissioner. Signs shall be kept in readable, good condition.

(5) Sign size, content and graphics will conform to "Project Information Sign" specifications which is available at the Department Permit Offices and also on the Department website. Sign content shall include the following:

(i) the name of the street on which the work is being performed;

(ii) the nature of the work (i.e., major reconstruction project, sewer work, new building, water shaft, or transit work major utility installation);

(iii) a brief description of the work. For building operations, permittees must include: type of work (i.e. new building, major renovation), building use (commercial or residential), size. For street/roadway work information permittees must include: the type of work being performed (i.e. upgrade of water supply, new transit station or transit line, upgrade of existing transit station or transit line, and upgrade of sewer system), roadway reconstruction with added amenities, and the quality of life benefits resulting from project;

(iv) the scheduled completion date of the project;

(v) project name, or if a governmental project, the project identification number;

(vi) contact information for the construction company performing the work, and a telephone number and/or a web site for more information.

(d) **Corrective action request (CAR).** (1) A CAR may be served either personally, by mail and/or by e-mail on the person responsible for the work and/or the condition which requires correction at his or her last known address, e-mail address or at the address or e-mail address for such person contained in the records of the Department. Where a CAR is served for a violation of §19-147 of the Administrative Code, in the case of a utility company, the CAR may be given orally or in writing to a person or at a place designated by the utility and the utility shall respond within twenty-four (24) hours.

(2) Any corrective action required by the CAR shall be performed within thirty (30) days of the issuance of the CAR unless such issuance is protested as provided herein.

(3) Within fourteen (14) days after the date of mailing of the CAR, unless a different time is specified on the CAR or in these rules, the respondent may protest the issuance of the CAR in the manner directed on the CAR.

(4) Protests shall be reviewed by the Department and a final determination regarding the protest shall be made within a reasonable period of time.

(5) If a protest is denied, any corrective action required by the CAR shall be performed within thirty (30) days after the date of such denial.

(6) In the event that the original permit has expired before the corrective action is undertaken and an additional excavation is necessary, a new permit shall be obtained in order to complete the required work. The new permit shall not affect the guarantee period, which will relate back to the original permit. If a permittee is performing restoration work that does not entail an additional excavation or re-grading of hardware, a new permit shall not be required by the Department.

(7) Where a CAR relates to a violation of §19-147 of the Administrative Code and no corrective action is taken within the applicable time or where an imminent danger to life or safety exists, the Department may perform the work required by a CAR or the work necessary to avert the danger and charge the cost to the person responsible for restoring, replacing or maintaining the pavement, sidewalk, curb, gutter or street hardware in accordance with such section.

(8) Notwithstanding the above, where a condition exists that creates an imminent danger to pedestrians or vehicles, the Department may issue a priority CAR, which shall require corrective action to be taken within three (3) hours of issuance of the CAR by telephone call. The Department may also issue a priority CAR via email requiring corrective action to be taken within three (3) hours of issuance; however, should a priority CAR be issued via email, a follow-up telephone call must also be placed to the permittee.

(9) In the event that a CAR is issued within the guarantee period, the corrective action shall still be taken even after the expiration of the guarantee period.

(e) **Orders.** (1) Except as otherwise provided by these rules or other applicable law, any orders issued by the Commissioner may be served personally or by mail addressed to the last known address of the person to whom the order is directed or to the address for such person set forth in the records of the Department or by delivery or mailing to a person or a location designated by the person to whom the order is directed.

(2) Except as otherwise provided by these rules, a person to whom an order is directed shall have an opportunity to be heard within five business days after a timely request for such opportunity is received by the Department. A request shall be made within the time and in the manner directed on the order. If, after considering the written objections of the respondent, the Commissioner affirms the order, the work required by the order shall be completed within 30 days after notice of such determination is mailed to the respondent.

(3) Notwithstanding the foregoing provisions, an order to cease and desist may be given orally or in writing to the persons executing the work and shall require immediate compliance therewith.

(4) In accordance with §19-151 of the Administrative Code where a respondent fails to comply with an order issued by the Commissioner, including an order to cease and desist, within the applicable time, the Commissioner may execute the work required to be executed in such order. All costs and expenses of the City for such work may be recovered from the persons who are found to be liable for the violation.

(5) In addition, failure to comply with an order issued by the Commissioner may result in criminal or civil penalties in accordance with §19-149 or 19-150 of the Administrative Code.

(f) **Fees.** (1) The fees for permits and CARs are specified in §2-03 of these rules.

(2) Permits shall be valid for fifteen calendar days, unless otherwise specified on the permit. Permits may be extended for 14 days upon presentation of proof that circumstances beyond the permittee's control caused a delay in the

work and payment of an additional fee. In the event a permittee fails to complete the work within the time period specified in the permit, another permit may be issued for a period of time to be specified by the Commissioner. There shall be a separate permit fee for each such additional permit.

(3) Payment of all fees shall be received upon application for the permit or, where applicable, no later than thirty calendar days after the billing date.

(g) **Notice of street operations.** (1) Permittees and owners of underground facilities shall comply with state Industrial Code Rule No. 53 relating to Construction, Excavation and Demolition Operations at or Near Underground Facilities.

(2) Permittees shall notify the Police Department and the communications center of the Fire Department of all construction activities requiring street closing at least twenty-four hours in advance of the commencement of non-emergency work.

(3) In the event that any non-emergency construction work results in the closing of

(i) more than two-thirds (2/3) of the moving lanes per direction on any street for more than 15 minutes per hour between the hours of 1 a.m. and 5 a.m., or

(ii) half (50%) or more of the moving lanes per direction on any street or limited access roadway, for a duration of more than four minutes or two traffic light cycles of the nearest traffic signal, whichever is less, during all other hours,

the permittee shall post at the site of the closing a public notification seven (7) calendar days prior to such closing in a manner directed by OCMC.

(h) **Work site safety.** All obstructions on the street shall be protected by barricades, fencing, railing with flags, lights, and/or signs, placed at proper intervals and at prescribed hours in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices. During twilight hours the flags shall be replaced with amber lights. Permittees shall also comply with any additional work site safety requirements set forth in these rules or in the permit.

(i) **Waivers.** (1) Except where expressly prohibited by law, the Commissioner may, in his/her discretion, waive or modify these rules, in the interests of public safety and convenience.

(2) Requests for waivers shall be submitted in writing to the Commissioner.

(j) **Suspension of application review.** The Commissioner may suspend review of applications for permits pending:

(1) payment by an applicant of outstanding fines, civil penalties or judgments imposed or entered against such applicant by a court or the environmental control board,

(2) payment by an applicant of outstanding fees or other charges lawfully assessed by the Commissioner against such applicant pursuant to these rules or other applicable law and/or

(3) satisfactory compliance by an applicant with a CAR or order issued by the Commissioner.

(k) **Permit revocation and refusal to renew permit.** (1) The Commissioner may, after giving the permittee notice and an opportunity to be heard, revoke or refuse to renew a permit:

(i) for failure to comply with the terms or conditions of such permit, these rules or other applicable law in carrying out the activity for which the permit was issued;

(ii) whenever there has been any false statement or any misrepresentation as to a material fact in the application or accompanying papers upon which the issuance of the permit was based; or

(iii) whenever a permit has been issued in error and the conditions are such that the permit should not have been issued.

(2) Prior to taking any of the actions listed in paragraph (1) above, the Commissioner shall give the permittee an opportunity to be heard upon not less than two days notice.

(3) Notwithstanding any inconsistent provision of paragraph (2) above, if the Commissioner determines that an imminent peril to life or property exists, the Commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to such revocation. Upon request of the permittee, the Commissioner shall afford the permittee an opportunity to present his or her objections to such action within five days after such request is received by the Department.

(l) **Refusal to issue permit.** The Commissioner may refuse to issue a permit to an applicant:

(1) who has exhibited a pattern of disregard for the rules or orders of the Department or the terms or conditions of permits issued by the Department or for other applicable law,

(2) who has been found liable by a court or in a proceeding before the environmental control board of a violation of a rule or order of the Department or the terms or conditions of a permit issued by the Department or other applicable law, which violation caused an imminent peril to life or property.

(m) **Embargo periods.** (1) All routine work shall be suspended during an embargo period unless approval for the work is granted by OCMC. Such suspension shall not apply to emergency work, for which an emergency number shall be obtained by the permittee pursuant to the provisions of §2-11 of these rules. Information regarding embargo periods is on file at each borough permit office and is available upon request. It is the responsibility of each permittee to obtain such information prior to the commencement of any work. It shall be a violation of these rules to do any work on the street during an embargo period without the prior approval of OCMC or an emergency number.

(2) A request for approval to work during an embargo shall be submitted on a form provided by the Commissioner, along with a fee as specified in §2-03 of these rules. Payment of the application fee shall not guarantee that approval to work during the embargo period will be granted and application fee is in addition to any required permit fees.

(n) **Voiding and reissuing of permits.** Permits may be voided and reissued only within three business days of issuance. See §2-03 for the fee for reissuance. Permits reissued after three business days shall be subject to the full permit fee.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Subd. (a) pars (1), (2) amended City Record June 7, 2007 §1, eff. July 7, 2007. [See Note 5]

Subd. (a) par (3) amended City Record Apr. 1, 2009 §1, eff. May 1, 2009. [See Note 7]

Subd. (a) par (3) repealed and added City Record Dec. 23, 2005 eff. Jan. 22, 2006. [See Note 3]

Subd. (a) par (3) subpar (i) open par amended City Record Mar. 3, 2003 eff. Apr. 2, 2003. [See

Note 1]

Subd. (a) par (4) heading amended City Record Feb. 8, 2007 §1, eff. Mar. 10, 2007. [See Note 4]

Subd. (a) par (4) subpars (i), (ii) amended City Record Sept. 14, 2007 §1, eff. Oct. 14, 2007. [See Note 6]

Subd. (a) par (4) subpars (i), (ii) amended City Record Feb. 8, 2007 §1, eff. Mar. 10, 2007. [See Note 4]

Subd. (a) par (4) subpars (viii), (ix) added (as subpars (iii), (iv)) City Record Sept. 14, 2007 §1, eff. Oct. 14, 2007. [See Note 6]

Subd. (b) par (1) amended City Record Feb. 25, 2000 §2, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (b) par (3) added City Record May 7, 2001 §2, eff. June 6, 2001. [See Note 2]

Subd. (b) par (4) added City Record Aug. 30, 2005 §1, eff. Sept. 29, 2005. [See T34 §2-16 Note 1]

Subd. (c) pars (4), (5) added City Record June 7, 2007 §2, eff. July 7, 2007. [See Note 5]

Subd. (d) amended City Record June 7, 2007 §3, eff. July 7, 2007. [See Note 5]

Subd. (g) par (2) amended City Record Dec. 21, 2001 eff. Jan. 20, 2002.

Subd. (g) par (3) added City Record Dec. 21, 2001 eff. Jan. 20, 2002.

Subd. (m) amended City Record June 7, 2007 §4, eff. July 7, 2007. [See Note 5]

Subd. (m) amended City Record Feb. 25, 2000 §3, eff. Mar. 26, 2000.

DERIVATION

Section 2-02 was derived from former §§2-28 and 2-29 from original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 3, 2003:

The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to section 2903 of the New York City Charter and Title 19 of the New York City Administrative Code.

Subparagraph (i) of paragraph (3) of subdivision (a) of section 2-02 is being amended to add a requirement that a copy of the insurance certificate be submitted along with the original for record keeping purposes.

2. Statement of Basis and Purpose in City Record May 7, 2001: Section 2-02 of the Highway Rules is being amended to allow the Agency to better regulate the issuance of permits. The proposed rule allows the Department to demand that permittees show proof of required approvals from other governmental entities as a condition for issuing a Departmental permit. This revision should heighten public safety by allowing the Department to insure that permittees secure approval from other governmental entities as required.

3. Statement of Basis and Purpose in City Record Dec. 23, 2005: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Paragraph (3) of subdivision (a) of §2-02 is being amended to clarify the insurance and indemnification requirements for our permit applicants and also to enhance the protection to the City. Permit applicants may now use a standard ISO form which contains the coverage required by the Department and permit applicants may now use out-of-state insurers. The requirements are also more in-line with insurance requirements from other City agencies. Additionally, the amendment provides a procedure for applicants with self-insured programs.

4. Statement of Basis and Purpose in City Record Feb. 8, 2007: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Subparagraphs (i) and (ii) of paragraph (4) of subdivision (a) of §2-02 are being amended to ensure that the City's possible exposure as a result of a permittee's activities is sufficiently covered. The current permit bonds required in the rule are insufficient to cover the City's costs and expenses in the event that a permittee fails to meet its obligations under the permit. This amendment is being promulgated to coincide with some of the permit bond revisions recommended by the City of New York's consultants during a value engineering exercise. The changes in the permit bond will assist in greater quality assurance from the permittee. In addition, this amendment is required to ensure that the permittee utilizes the permit bond required by the Department. The Department has made several amendments to the rule as a result of both written and oral comments received pursuant to the publication on October 19, 2006 of the Notice of Opportunity to Comment on proposed rulemaking. In response to comments that the originally proposed increases to the required bond amounts may cause a hardship to smaller companies applying for permits, the Department has revised the required amounts of the permit bonds by adding two additional threshold categories. The Department will now require a $50,000 bond for contractors securing two to fifty permits per calendar year. Contractors who take out fifty-one to one hundred permits per calendar year must obtain a bond in the amount of $100,000. The Department has elected to maintain the current requirement that bond issuers must provide the Department with thirty days of written notice prior to the cancellation or expiration of the bond, as opposed to sixty days. Finally, the Department will maintain the current guarantee periods for protected and non-protected streets. Thus, the guarantee period for protected streets shall remain five years, while the period for non-protected streets shall remain three years.

5. Statement of Basis and Purpose in City Record June 7, 2007: The Commissioner of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. These rules are being amended to achieve several purposes: to enhance and clarify existing rules; to enhance vehicular and pedestrian safety, and to provide methods of enforcement for the rules. Finally, these amendments will better protect the City's investment in the roadways throughout the five boroughs. Subdivision (a) of §2-02 is being amended to add that an applicant must supply an e-mail address, if available, in order to facilitate Department contact with permittees. Subdivision (a) is also being amended to require permittees to submit proof of registration with the New York State Secretary of State to the Department, to ensure that permittees file the identical information provided to the Secretary of State on all permit applications submitted to the Department, and to ensure that permittees provide the Department with consistent and correct identifying information. Subdivision (c) of §2-02 is being amended to require permittees to place informational signs at the site of construction projects lasting in excess of three months, in order to give the public vital information regarding ongoing construction. Subdivision (d) of §2-02 is being amended to add e-mail as a method of serving corrective action requests. Subdivision (d) is also being amended to clarify that corrective action must be performed within 30 days of the issuance of the CAR, unless protested, and to create a category of priority CAR for conditions that create an imminent danger. Subdivision (d) is also being amended to provide that corrective action must still be taken after the guarantee period on a particular roadway expires. Subdivision (m) of §2-02 is being amended to provide for a procedure and a fee for an application to work during an embargo period. The procedure and fees are designed to ensure that work during an embargo period is indeed necessary, and prevents the expenditure of Department time and resources to evaluate applications for work that is not critical. Such work could already be approved by the Department under the current rules. Section 2-03 is being

amended to add a fee for an application for work during an embargo and one for installing or changing markings, signs and supports during construction, in order to provide the public with an updated, current schedule of fees. Subdivision (h) of §2-04 is being amended in order to be consistent with recent changes to insurance requirements for all permits contained in §2-02(3). Subdivision (d) of §2-05 is being amended to delete an exemption for permittees storing material with a street opening permit, because such storage is covered under §2-11. Paragraph (2) of subdivision (d) of §2-05 is being amended to add requirements that specifically detail the necessary planking, skids, and/or plating required when placing a container upon the roadway, and to identify who is responsible for placement of necessary planking, skids and/or plating for protection of the roadway. Paragraph (2) of subdivision (d) is also being amended to state that the protective covering placed underneath a container cannot exceed the perimeter of the container. Paragraph (1) of subdivision (a) of §2-07 is being amended to add a requirement that entities who put out tool carts must have their name, address and telephone number on the cart to facilitate the Department's identification of permittees. Subdivision (b) of §2-09 is being amended to correct a typographical error. Subdivision (f) of §2-09 is being amended in order to be consistent with recent changes to insurance requirements for all permits contained in §2-02(3). Subdivision (f) of §2-09 is also being amended to allow for the use of approved volumetric mixers for concrete for sidewalks. The use of these mixers has become increasingly common in this kind of work. Paragraph (1) of subdivision (d) of §2-11 is being amended to add a requirement that the Division of Bridges be informed and approve of proposed work within 100 feet of a bridge in order to ensure that the applicant arranges the work so as to avoid damaging the bridge or is given appropriate specifications to restore the structure. Subdivision (d) of §2-11 is also being amended by adding a new paragraph (3) to require submission of a protected street determination form for approval prior to obtaining permits if curb to curb restoration will be performed on over 50% of a street segment. The form will be used to allow the Department to regulate future street openings on those streets more effectively. Subparagraph (i) of paragraph (8) of subdivision (e) of §2-11 is being amended to allow asphalt millings to be used as backfill material in order to conform to Local Law 45 of 2003, which allows for such use. Subparagraph (vi) of paragraph (8) of subdivision (e) of §2-11 is being amended to ensure that the rule will apply during the life of the guarantee period. Temporary restoration applied only during the life of the permit, and did not apply after the expiration of the permit and during the life of the guarantee period. This will ensure that restoration requirements are imposed upon permittees during the guarantee period. Subparagraph (ii) of paragraph (10) of subdivision (e) of §2-11 is being amended to remove vague language stating that a plate must overlap the edges, and to specify the amount of overlap required by the Department for permittees to place steel plates on the streets, so that the street opening is fully covered. Subparagraph (iii) of paragraph (10) of subdivision (e) of §2-11 is being amended to include "spiking" and "pinning" as methods of securing steel plates in order to prevent the plates from shifting, and to specify the required filling method for any holes resulting from spiking and pinning. Subparagraph (v) of paragraph (10) of subdivision (e) of §2-11 is being amended to delete an obsolete reference and to specify that adherence to federal manual on uniform traffic control devices is required, in order to create a standard for the size and placement of signs referencing plating and decking. Subparagraph (ii) of paragraph (12) of subdivision (e) of §2-11 is being amended to require that permittees must re-dig any backfill on a non-protected street if the restoration sinks more than two inches during the guarantee period, which will create conformity to similar requirements for a protected street. Subparagraph (iv) of paragraph (12) of subdivision (e) of §2-11 is being amended to delete the reference to machine excavations and to add the language, "after the required cutbacks" to ensure that permittees make proper restoration of street cuts regardless of whether the opening was excavated via machine or other means. Subparagraph (v) of paragraph (12) of subdivision (e) of §2-11 is being deleted in order to clarify that excavations within 3 feet of each other must be repaired integrally, to ensure that permittees properly restore street openings. Subparagraph (x) of paragraph (12) of subdivision (e) of §2-11 is being amended by adding a requirement that a permit be obtained prior to changing or installing any markings, signs or supports during construction and that such signs, markings or supports be removed prior to permit expiration. This is to create a formal process for removing temporary signs and markings and to create a method of enforcement. In addition, the usage of temporary asphalt during the winter months has been clarified. Paragraph (12) of subdivision (e) of §2-11 is also being amended by adding a new subparagraph (xii) that requires permittees to return the protected street determination form required in §2-11(d)(3) to the Department within 24 hours of completing work on a street that is to be protected so that the Department may better regulate future street openings on those streets. Paragraph (14) of subdivision (e) of §2-11 is being amended to clarify the colors and uses of codes and markers used to identify permittees once they leave the work site, to facilitate the

Department's identification and contact of those permittees in the event of problems. Subparagraph (vii) of paragraph (4) of subdivision (f) of §2-11 is being amended to include a requirement that the permanent restoration of a protected street shall be flushed with the surrounding pavement on all sides of the restoration, which will create smoother roadway surfaces. The subparagraph is also being amended in order to clarify that permittees are required to install properly compacted backfill on non-protected streets in the event that a permanent restoration sinks, as is also required on protected streets.

6. Statement of Basis and Purpose in City Record Sept. 14, 2007: The Commissioner of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903(b) of the New York City Charter and Title 19 of the New York City Administrative Code. The rule is being amended to systematically phase in higher bond amounts and to accommodate an orderly transition for the permittees and the surety industry to the bond requirements. DOT intends to reduce the penal amounts for the required permit bonds until July 1, 2008. The Department believes that this bond requirement is commensurate with the risk of potential damage to City streets occasioned by street openings and excavations. This rule is further being amended to allow permittees securing permits for building operations and construction activity (except sidewalk construction) that do not require a street opening to submit a bond to the Department in a lower amount. This distinction recognizes that street openings have the potential to cause greater damage to City streets than most other permitted activities; thus, permittees performing such work must submit a bond that adequately covers this risk. If a permittee performs building operation and construction activity (except sidewalk construction) and additionally must perform a street opening, the Department will require that permittee to submit a bond in the amount required for street openings.

7. Statement of Basis and Purpose in City Record Apr. 1, 2009: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Paragraph (3) of subdivision (a) of §2-02 is being amended to set forth an industry standard ISO form which provides a reference for permit applicants and their brokers and insurers as to what would constitute sufficient insurance coverage to cover the liability assumed by the permit applicant when obtaining a permit. This amendment also eliminates the requirement for specific notice endorsements for most permit applicants to reduce burdens that small businesses may face in procuring insurance that includes the specific notice endorsements. In addition, this amendment provides minor corrections and clarifications of the rule relating to insurance requirements.

FOOTNOTES

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[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular,

rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-03 Schedule of Fees.

All fees shall be paid in accordance with the following fee schedule:

Permit or Activity	Fee	Other Charges	Maximum Duration per Permit	Maximum Distance per Permit	Maximum Width per Permit
Street Opening Permits-General:					
Normal street	$135.00		15 days	300 linear ft.(lin. ft.)	12 feet
Protected street	$135.00	$245.00inspectionfee	15 days	300 lin. ft.	12 feet
Emergency work	$45.00		2 businessdays	300 lin. ft.	12 feet
Specific Types of Street Opening Permits:					
Open sidewalk to install foundation		$135.00	30 days	300 lin. ft.	sidewalk (SW) width
Major installations-electric conduit		$135.00,$380.00protectedstreet	30 days (90 days with OCMC approval.)	300 lin. ft.	12 feet
Major installations-gas		$135.00,$380.00protected	30 days (90 days with OCMC ap-	300 lin. ft.	12 feet

pipe	street	proval.)		
Major installations-steam pipe	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	300 lin. ft.	12 feet
Major installations-telephone line	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	300 lin. ft.	12 feet
Transformer vault-in roadway	$135.00,$380.00protected street	15 days to 30 days	300 lin. ft.	variable
Transformer vault-in sidewalk	$135.00	15 days to 30 days	300 lin. ft.	SW width
Installation and/or Removal of poles	$135.00	30 days	2 sw flags	SW width
Major installations-water	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	300 lin. ft.	12 feet
Major installations-cable	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	300 lin. ft.	12 feet
Major installations-sewer	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	300 lin. ft.	12 feet
Rapid transit construct/ alteration	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	300 lin. ft.	Variable or SW width
Installation of public telephone stanchion	$135.00	30 days	Not Applicable	SW width
Installation of newsstand	$135.00	30 days	As per approved plans	As per approved plans
Repair water connections/ mains	$135.00,$380.00protected street	$10.00 minimum for tunneling and/or jacking. Excess over 1st 10 ft., $1.00 per ft.	15 days to 30 days	300 lin. ft.	12 feet
Repair sewer connections/ main	$135.00,$380.00protected street	15 days to 30 days	300 lin. ft.	12 feet
Repair water and sewer connection/ mains	$135.00,$380.00protected street	15 days to 30 days	300 lin. ft.	12 feet
Install or replace fuel oil line	$135.00	15 days	300 lin. ft.	SW width
Vault construction, alteration, or repair	$135.00	30 days	300 lin. ft.	As per approved plan
Reset, replace, install or repair curb	$135.00	30 days	As required, up to 300 lin. ft.	Not applicable
Pave roadway	$135.00	15 days	300 lin. ft. & as per approved plan	As per approved plan
Tree pit	$135.00	30 days	300 lin. ft.	Variable based on SW width

Construct or alter utility access chamber	$135.00,$380.00protected street	15 days	300 lin. ft.	12 feet
Adjust hardware casting	$135.00	15 days	300 lin. ft.	12 feet
Access to utility chamber in restricted zone during restricted hours	$30.00	Uninterrupted emergency period	300 lin. ft.	12 feet
Repair gas connections/mains	$135.00,$380.00protected street	30 days	300 lin. ft.	12 feet or SW width
Repair steam connection/ mains	$135.00,$380.00protected street	30 days	300 lin. ft.	12 feet or SW width
Repair electric/communication lines	$135.00,$380.00protected street	30 days	300 lin. ft.	12 feet or SW width
Test pits, cores or boring	$135.00,$380.00protected street	15 days	300 lin. ft.	Not applicable
Conduit construction (cable, telecommunication) & franchise	$135.00,$380.00protected street	15 days	300 lin. ft.	12 feet
Major installation-franchise	$135.00,$380.00protected street	30 days (90 days with OCMC approval.)	As per approved plans	As per approved plans
Erect canopy	$135.00	30 days	Not applicable	SW width
Install street furniture	$135.00	30 days	Not applicable	Not applicable
Land fill	$135.00	Inspection fee of $25.00 for 1st 400 cubic yards. Excess over 400 cy at $0.05 per cy.	30 days	Not applicable	Not applicable
Private sewer	$135.00,$380.00protected street	30 days	300 lin. ft.	12 feet
Install fence	$135.00	30 days	300 lin. ft.	Not applicable
Install traffic signals	$135.00,$380.00protected street	30 days	300 lin. ft.	Not applicable
Install or repair petroleum pipelines/monitoring and recovery systems	$135.00,$380.00protected street	30 days	300 lin. ft.	12 feet or SW width
Installation of fire alarm box	$135.00	30 days	Not applicable	SW width
Fee for review of request to work during an embargo period	$135.00			
Installation of bus shelter	$135.00	30 days	As per Division of Franchises	As per Division of Franchises

Construction Activity Permits

Types of Construction Activity Permits:

Place material on street	$50.00	$30.00 per month inspection fee	3 months	300 linear ft. but not more than 80% frontage may be encumbered.	8 feet
Crossing sidewalk	$50.00	3 months	2 crossings at 12 ft. wide within 300 linear ft.		SW width
Place crane on street	$50.00 per week or part thereof.	$100.00 inspection fee	1 week	Variable	Not more than one third width of roadway
Place equipment other than crane on street	$50.00	3 months	300 lin. ft.	12 feet	
Place shanty or trailer on street	$50.00	3 months	Variable	12 feet	
Temporary pedestrian walk in roadway	$50.00	3 months	300 lin. ft.		
Install or change pavement markings, construction signs and supports	$50.00	90 days			
Hang temporary festoon/holiday lighting and/or other temporary lighting	$50.00	90 days			
Install decorative planters on street	$50.00	1 year			
Install bicycle rack	$50.00	1 year			
Temporary closing of roadway	$50.00	3 months			
Temporary sidewalk closing	$50.00	3 months			
Placement of containers for construction waste debris	$50.00	90 days	300 lin. ft.	12 feet	

Sidewalk Construction Permits:

Repair/construct sidewalk	$70.00	30 days	300 lin. ft. or per block and lot	SW width

Licenses:

Vault License	$35.00	$2.00 per sq. ft.	
Canopy Permits	$50.00	1 year	
Canopy in connection with a sidewalk cafe license	$25.00	1 year	

Miscellaneous Charges and Fees:

Subpoenas	$15.00	
Removal of banners, canopies, signs and other encroachments and ob-		cost of labor and materi-

structions			als	
Storage fee for removed banners, canopies, signs and other encroachments and obstructions			$15.00 per day	
CARs	$40.00			
Backcharges and JETS	$134.00 per sq. yd.			
Extension of Permit	$40.00	14 days		
Place commercial refuse container on street	$30.00 per year			12 feet
Application review fee for placement of commercial refuse container on street in restricted area as defined in §2-14(f)(4)			$30.00 per application	
Reissuance of permit within three business days	$15.00	duration of original permit		
Renew temporary security structure	$50.00	Six months	300 lin. ft.	Not applicable
Filing of Sidewalk, Curb and Roadway Application (SCARA)-Plan Type A			No fee	one year
Filing of SCARA-Plan Type B	$35.00 filing fee			one year
Filing of SCARA-Plan Type C	$2.00 per lin. ft.			one year
Filing of SCARA-Plan Type D	$4.00 per lin. ft.			one year
Filing of SCARA-Plan Type E	$4.00 per lin. ft.			one year
Filing of SCARA-Plan Type F	$8.00 per lin. ft.			one year
Install temporarysecurity structure	$50.00	One year	300 lin. ft.	Not applicable
City adjustment ofstreet hardware tomeet pavement	$125.00	Not applicable	Not applicable	Notapplicable

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Backcharges and JETS amended City Record Sept. 7, 2006 eff. Oct. 7, 2006. [See Note 6]

CARs amended City Record Apr. 20, 2009 §1, eff. May 20, 2009. [See Note 7]

City adjustment of street hardware to meet pavement added City Record May 5, 2004 eff. June 4, 2004. [See Note 3]

Fee for review . . . embargo period added City Record June 7, 2007 §5, eff. July 7, 2007. [See T34 §2-02 Note 5]

Filing of builder's paving plan repealed City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Filing of SCARA-Plan Type B added City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Filing of SCARA-Plan Type C added City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Filing of SCARA-Plan Type D added City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Filing of SCARA-Plan Type E added City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Filing of SCARA-Plan Type F added City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Filing of Sidewalk Curb and Roadway Application (SCARA)-Plan Type A added City Record Mar. 17, 2000 §1, eff. Apr. 16, 2000. [See Note 1]

Hang temporary festoon . . . lighting amended City Record Oct. 14, 2005 eff. Nov. 13, 2005. [See Note 5]

Hang temporary festoon . . . lighting amended City Record Apr. 13, 2005 §1, eff. May 13, 2005. [See Note 4]

Install or change . . . supports added City Record June 7, 2007 §6, eff. July 7, 2007. [See T34 §2-02 Note 5]

Install temporary security structure added City Record Oct. 27, 2003 eff. Nov. 26, 2003. [See T34 §2-10 Note 1]

Installation and/or Removal of poles (formerly Installation) amended City Record May 7, 2001 §3, eff. June 6, 2001. [See Note 2]

Major installation-franchise conduit amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Major installations-cable amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Major installations-electric conduit amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Major installations-gas pipe amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Major installations-sewer amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

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Major installations-telephone line amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Major installations-water amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34

§2-01 Note 1]

Rapid transit construct/alteration amended City Record Feb. 25, 2000, §4, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Renew temporary security structure added City Record June 27, 2005 §1, eff. July 27, 2005. [See T34 §2-10 Note 2]

DERIVATION

Section 2-03 was derived from former §§2-26 and 2-27 from original publication July 1, 1991.

Section 2-26 was amended in City Records July 10, 1991 and Oct. 6, 1996. Section 2-27

was amended in City Record Oct. 6, 1996.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 17, 2000:

Section 2-03 is being revised to reflect fees that are based on the complexity of the proposed sidewalk, curb or roadway project.

2. Statement of Basis and Purpose in City Record May 7, 2001: Section 2-03 is being amended to require a permit to be obtained for pole removal. This will enable the Department to better regulate such activity by giving the Department notice of pole removals.

3. Statement of Basis and Purpose in City Record May 5, 2004: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Section 2-03 is being amended to add a fee to cover the City's cost of adjusting private companies' street hardware to meet the roadway pavement after resurfacing work is done. The charge will be billed to the companies on whose behalf the City performs this adjustment work.

4. Statement of Basis and Purpose in City Record Apr. 13, 2005: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Section 2-03 is being amended to increase the duration and distance covered by a permit for hanging temporary festoon/holiday lighting and/or other temporary lighting. Subdivision (e) of §2-14 is being amended to enable the Department to more closely monitor the installation of temporary festoon/holiday lighting and/or other temporary lighting to ensure its safety and compliance with all applicable rules.

5. Statement of Basis and Purpose in City Record Oct. 14, 2005: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Section 2-03 is being amended to adjust the permit fee for hanging temporary festoon/holiday lighting and/or temporary lighting. A flat $50 permit fee will now

cover all such lights installed by one entity. Installing such lighting benefits the City, individual communities, and the Business Improvement Districts in terms of increased retail sales, tourism and enhancement of neighborhood pride. Upon further consideration, the $50 per block face fee appears to be financially overburdensome. Accordingly, the rule is being amended to revert to the flat permit fee of $50.

6. Statement of Basis and Purpose in City Record Sept. 7, 2006: The Commissioner of the Department of Transportation is authorized to promulgate rules relating to fees collected by the Department of Transportation pursuant to §2903(b) of the New York City Charter and Title 19 of the New York City Administrative Code. Section 2-03 is being amended to increase the fees collected for backcharges and JETS. This fee allows the Department of Transportation to recover the cost of temporarily restoring street defects caused by private entities, such as a plumbers and/or utility companies. The administrative fee currently charged no longer accurately reflects administrative and labor costs incurred in performing the required emergency repair work.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

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Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-04 Canopies.

(a) **Permit required.** No person shall erect or maintain a canopy over the sidewalk without obtaining a permit from the Commissioner. The canopy shall be adequate for public safety and convenience and shall respect the special circumstances of the particular site or street and shall not detract from public use of the sidewalk. Canopy permits may be issued for the entrance to a building, or place of business within a building.

(b) **Permit fees.** (1) The fee for the issuance of a canopy permit shall be $50 per year.

(2) The fee for the issuance of a canopy permit in connection with a sidewalk cafe license shall be $25.

(c) **Conditions.** (1) Canopy permits shall not be issued for:

(i) placement on streets listed in subdivision f of this section;

(ii) placement within the following: fifteen feet of fire hydrants or bus stop zones; beneath a fire escape or so located as to obstruct operation of fire escape drop ladders or counter-balanced stairs or so as to obstruct any exit from a building; within the area created by extending the building line to the curb (the "corner") or within the area from ten feet of either side of the corner (the "corner quadrant"); five feet of tree pit edges, four feet of street lights and utility hole or transformer vault covers or gratings; three feet of parking meters; or

(iii) placement without written approval from the property owner; or

(iv) placement without written approval from the Department of Consumer Affairs for locations licensed by the

Department of Consumer Affairs; or

(v) placement at locations deemed by the Commissioner as inadequate with respect to public safety and convenience.

(2) Canopies shall not be permitted above underground street access covers, vault covers, gratings, or cellar doors which require access.

(3) Canopy design and construction shall be in accordance with the Department's standard details of construction.

(4) Owners shall be responsible for the removal of a canopy within ten days when so directed by the Commissioner for necessary street construction.

(5) Advertising on a canopy is prohibited. The house or street number and/or firm name or filed trade name may appear on a canopy as prescribed by the Zoning Resolution of the City of New York. However, descriptive words contained in the firm name or filed trade name tending to advertise the business conducted on the premises are prohibited. Lettering may include logo art for the purpose of business identification only.

(6) All canopy permits shall be posted in a conspicuous place at the entrance for which the permit is issued.

(d) **Maintenance.** (1) Canopies shall be well maintained at all times.

(2) The covering shall be kept clean, free from accumulation of snow and ice and free from rips and tears, discoloration, fading, sagging, graffiti, etc.

(3) Canopies with metal frameworks shall be painted as needed, but at least every five years.

(4) All structural members shall be kept free of rust and surface imperfections (smooth to the touch).

(e) **Permit expiration, renewal and transferability.**

(1) Each permit shall expire one year from the date of issuance, unless revoked sooner by the Commissioner. Applications for renewal of canopy permits shall be made at least one month prior to permit expiration dates.

(2) Canopy permits shall not be transferable from person to person or from the location of original issue.

(3) Notwithstanding any inconsistent provision of this section relating to the location of a canopy, where a permit was issued for a canopy erected prior to May 19, 1995 under the rules in effect prior to that date, a renewal permit may be issued for the continued maintenance of such canopy at such location provided that:

(i) The canopy is at the same location and was not altered on or after May 19, 1995;

(ii) The canopy is not on a street listed as restricted in subdivision f of this section; and

(iii) The department performs an on-site inspection and determines that the canopy does not present a hazard to public safety and convenience. For the purposes of this provision, hazards for which the department will refuse the renewal of a permit shall include, but not be limited to, the location of a canopy within fifteen feet of a fire hydrant or bus stop, beneath or obstructing a fire escape or within a corner or corner quadrant.

(f) **Placement of canopies.** The following categories of restricted streets are established:

(1) **Fully Restricted Streets.** No canopy may be erected or maintained on the below listed streets:

(i) **Borough of Manhattan:**

(A) Fifth Avenue: West 34th Street to West 59th Street

(B) Sixth Avenue: West 34th Street to West 59th Street

(C) 34th Street: West side of Fifth Avenue to East side of Eighth Avenue

(D) 42nd Street: East side of Eighth Avenue to West side of Third Avenue

(E) Seventh Avenue: South side of 33rd Street to North side of 34th Street

(F) Broadway: Chambers Street to Battery Place

(G) Whitehall Street: Beaver Street to Water Street

(H) Wall Street: Broadway to South Street

(I) Broad Street: Wall Street to Water Street

(J) Sixth Avenue: West 4th Street to West 8th Street

(K) West 8th Street: Sixth Avenue to Fifth Avenue

(L) East 8th Street: Fifth Avenue to Fourth Avenue

(M) Astor Place: Broadway to 3rd Avenue

(N) St. Mark's Place: 3rd Avenue to 2nd Avenue

(O) 72nd Street: Broadway/Amsterdam Avenue to Columbus Avenue

(2) **Partially Restricted Streets.** The erection or maintenance of canopies on the streets listed below is limited to one building entrance only, except that hotels and apartment houses may erect and maintain canopies over all their entrances and restaurants may erect and maintain a canopy over one entrance separate and distinct from the building entrance, if any.

(i) **Borough of Manhattan**

(A) Fifth Avenue: West 12th Street to West 34th Street

(B) Madison Avenue: East 23rd Street to East 96th Street

(C) Park Avenue: East 46th Street to East 60th Street

(D) 43rd Street to 60th Street: Sixth Avenue to Lexington Avenue

(E) Riverside Drive: George Washington Bridge to West 135th Street

(F) Morningside Avenue: West 116th Street to West 125th Street

(G) Central Park West: West 60th Street to West 75th Street

(H) South Street Seaport

(I) Nassau Street Mall

(ii) **Borough of Brooklyn**

(A) Ocean Parkway: Belt Parkway to Prospect Park

(B) Ocean Avenue: Flatbush Avenue to Avenue Z

(C) Plaza Street: Eastern Parkway to Prospect Park West

(D) Eastern Parkway: Plaza Street to Ralph Avenue

(E) Fulton Street Mall

(F) Stuyvesant Avenue: Fulton Street to Madison Avenue

(G) Kings Highway: Bay Parkway to Rockaway Parkway

(iii) **Borough of the Bronx**

(A) Grand Concourse: 158 Street to 179 Street

(B) Pelham Parkway: Cruger Avenue to Hutchinson River Parkway

(iv) **Borough of Queens**

(A) Jamaica Avenue: 168 Street to Cross Island Parkway

(B) Hillside Avenue: 179 Street to the City Line

(v) **Borough of Richmond**

(A) Hylan Boulevard: Fingerboard Road to Tysens Lane

(B) Victory Boulevard: Bay Street to Willowbrook Road

(C) Richmond Avenue: Richmond Terrace to Forest Avenue

(D) New Dorp Lane: Richmond Road to Hylan Boulevard

(g) **Design criteria.** (1) **Size limitations of canopies.**

(i) **Width.** Canopy width is limited to the width of the building entrance or the place of business, as defined by the doors leading into the building or place of business, but in no case shall the width be less than 4 feet nor more than 10 feet, unless authorized in writing by the Commissioner or as required by the Commissioner.

(ii) **Height.** The bottom of any portion of the canopy covering shall not be less than eight feet above the sidewalk and the top of any portion of the canopy covering shall not exceed 12 feet above the sidewalk, unless authorized in writing by the Commissioner.

(iii) **Length.** The canopy shall extend from the building line to within a minimum of eighteen inches and a maximum of twenty-four inches from the face of the curb line.

(2) Canopy design and construction shall conform to Standard Details of Construction H 1029. Canopy shall be fully roofed.

(3) Certification by the manufacturer that the covering is flameproof shall be submitted with the permit application.

Where certification is unobtainable from the manufacturer, certification by the installer may be submitted instead.

(4) **Lettering on covering.**

(i) The height of lettering on any side of a canopy shall not exceed 12 inches, as specified in the Zoning Resolution.

(ii) The painting, imprinting, or stenciling authorized in the above paragraph (4)(i) shall be limited to a single horizontal line of lettering, and with a cumulative surface area not exceeding twelve (12) square feet per side. It shall be lawful to paint, imprint or stencil directly upon a canopy within the character and area limitations prescribed by the Zoning Resolution of the City of New York.

(5) **Lighting and Illumination.**

(i) The area under the canopy shall be lighted to a minimum of thirty foot candles when the canopy is within twenty feet of a lamppost. Illumination shall be limited to the underside of the canopy. Neon lights are not permitted. Fluorescent light fixtures shall have the bulbs covered so they are not visible. Illumination sources shall be installed so that they do not protrude below the bottom of any portion of the canopy covering.

(ii) All electrical work shall be done by a licensed electrician.

(6) Side curtains are not permitted.

(7) Supporting framework shall be constructed of metal members.

(i) Vertical uprights shall be of sufficient size and strength and shall be no less than a standard steel pipe, one and one-quarter inches in diameter and not exceeding three inches in diameter. Where a special construction is used instead of pipe, the design shall be equivalent to the above valid minimum pipe standard approved by the Commissioner. The vertical uprights shall be imbedded in an independent concrete footing of adequate size, designed to sustain all anticipated loads.

(ii) Intermediate vertical upright supports are not permitted except for additional upright supports at the face of the building. Such additional upright supports shall not extend more than 18 inches of the property line.

(iii) Diagonal bracing at vertical upright supports is not permitted, except where required for wind bracing. Permissible wind bracing supports shall be constructed parallel to the curb line and shall extend outward no more than eighteen inches from the vertical upright.

(h) **Application.** (1) Applications for canopy permits shall include:

(i) A statement of the basic construction details including the following:

(A) type, description and color of the canopy covering;

(B) type, diameter and gauge of all supporting members;

(C) description of the frame, wind bracing assembly and sidewalk and building fastenings;

(D) description of proposed lettering on canopy covering, including exact wording and dimensions thereof;

(E) five inch by seven inch photograph of the proposed site.

(ii) A sketch showing the canopy dimensions, location and all street facilities within fifteen feet of both sides of the canopy.

(iii) A certificate that the covering is flameproof.

(iv) Consent of the Landmarks Preservation Commission for the erection of a canopy in a designated landmark historic district or attached to a building that has Landmark's historic designation.

(v) Reserved.

(2) **Permit requirements.** All permits are subject to applicable provisions contained in §2-02 of these rules.

(i) **Removal of unauthorized canopies.** Pursuant to §19-124 of the Administrative Code, the Commissioner may serve an order upon the owner of any premises requiring the removal of any unauthorized canopy. Upon the owner's failure to comply with such order within the time specified, the Commissioner may remove such canopy or cause the same to be removed, at the owner's sole cost and expense.

(j) **Miscellaneous.** No attachments of any kind or in any manner are permitted on a canopy, including, but not limited to:

(1) Temporary or permanent signs

(2) Balloons

(3) Streamers

(4) Flags

(5) Banners

(6) Pennants

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Subd. (c) par (1) amended City Record May 7, 2001 §4, eff. June 6, 2001. [See Note 1]

Subd. (e) amended City Record May 7, 2001 §5, eff. June 6, 2001. [See Note 1]

Subd. (f) par (1) subpar (i) clause (O) added City Record May 22, 1998 eff. June 21, 1998.

Subd. (f) par (1) subpar (ii) repealed City Record Feb. 25, 2000 §5, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (h) par (1) subpar (v) repealed City Record June 7, 2007 §7, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (h) par (2) added City Record June 7, 2007 §7, eff. July 7, 2007. [See T34 §2-02 Note 5]

DERIVATION

Section was derived from former §2-03 from original publication. Such §2-03 was amended in

City Records Apr. 9, 1995, Dec. 15, 1996 and May 22, 1998.

NOTE

1. Statement of Basis and Purpose in City Record May 7, 2001:

Section 2-04 is being amended in order that the Agency may better regulate the issuance of canopy permits. The proposed rules prohibit the placement of canopies under fire escapes or obstructing the use of fire escape drop ladders, counter-balanced stairs, and any building exits. The revision brings the current Highway Rules into compliance with the New York City Administrative Code, Title 19, §19-124(f). Additionally, this revision heightens public safety since canopies obstructing the use of fire escapes and building exits would render such fire escapes and building exits inoperable.

Additionally, the proposed rules enable the Department to renew permits for canopies constructed and approved before May 19, 1995 without imposing the newer construction restrictions, so long as a Department Inspector inspects the canopy and determines that such canopy does not present any hazards to public safety and convenience.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-05 Construction Activity.

(a) **Permit required.** (1) A separate construction activity permit is required for each of the following activities, except where otherwise provided by these rules or by permit stipulations:

(i) Placing construction material on street during working hours

(ii) Placing construction equipment other than cranes or derricks on the street during working hours

(iii) Temporarily closing sidewalk

(iv) Constructing temporary pedestrian walk in roadway

(v) Temporarily closing roadway

(vi) Placing shanty or trailer on street

(vii) Crossing a sidewalk

(viii) Placing crane or derrick on street during working hours

(ix) Storing construction material on the street during non-working hours

(x) Storing construction equipment on the street during non-working hours

(2) Permits for construction activity involving building operations shall be obtained only by the general contractor or the construction manager.

(b) **Permit requirements.** All permits are subject to applicable provisions contained in §2-02 of these rules.

(c) **Conditions.** (1) Permits shall be kept on the job site or at the designated field headquarters at all times and shall be made available for inspection.

(2) All obstructions on the street shall be protected by barricades, fencing, railing with flags, lights, and/or signs, placed at proper intervals and at prescribed hours in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices. During twilight hours the flags shall be replaced with amber lights.

(3) All permittees shall notify the Police Department and the communications center of the Fire Department of all construction activities requiring street closing at least twenty-four hours in advance of the commencement of non-emergency work.

(4) Permittees may be required to obtain approval(s) from OCMC or from a designee of the Commissioner.

(5) All permittees shall comply with the provisions of subdivision (g) of §2-02 of these rules, if applicable.

(d) **Conditions for the placement or storage of construction material and equipment (other than cranes) on the street.** (1) Sidewalks shall be kept clear for pedestrian passage and the curbline shall be kept clear and unobstructed for drainage purposes.

(2) The street shall be protected with proper covering to prevent damage; e.g.: planking, skids, plating, pneumatic tires, before construction material or equipment, including containers are placed on the street. All planking and skids for containers must be a minimum of $1\frac{1}{2}$" to a maximum of 3" thick. Overall size must be a minimum of 12"×12" and the placement of the protective covering must not exceed the outer dimensions of the container. Protection shall be placed directly under each steel wheel or roller of the container to adequately distribute the weight. Placement of all protection shall be done upon delivery by the managing agent, distributor, or owner of the container.

(3) The name, address and telephone number of the owner shall be printed on two sides of each container used for construction debris.

(4) Each container shall be stored in an area designated by the Commissioner for the storage of construction material.

(5) All containers shall be clearly marked on all four sides with high intensity fluorescent paint, reflectors, or other markings capable of producing a warning glow when struck by the head lamps of a vehicle or other source of illumination at a distance of three hundred feet.

(6) No temporary hoist or scaffold shall be erected on or over a roadway without review of site plans by OCMC, approval of such plans by the Commissioner and a permit from the Department of Buildings.

(7) No temporary fence which extends more than three feet onto the street shall be erected on the sidewalk without the Commissioner's approval of the location and a permit from the Department of Buildings.

(8) Construction material or equipment shall not be stored or placed within:

(i) five feet of railroad tracks;

(ii) three feet of any city-owned electrical systems equipment including, but not limited to, signal and lamp posts, ITS systems, cameras, panel and/or junction boxes, provided that access to the equipment is maintained at all times;

(iii) fifteen feet of hydrants;

(iv) the area created by extending the building line to the curb (the "corner") or within the area from ten feet of either side of the corner (the "corner quadrant");

(v) any "No Standing" zone.

(9) Permittees shall comply with all rules or permit conditions relating to interference with access to subway facilities, fire alarms, street signs, parking meters, emergency telephones, water main valves, utility facilities and any city-owned electrical equipment including, but not limited to, cameras, ITS, street light and signal poles, panel and/or junction boxes.

(10) Space shall be provided within the storage area for loading and unloading construction materials and for all other permissible operations.

(11) The storage area shall be clearly delineated on all sides with barricades, fencing, railing or other safety devices reflectorized and/or illuminated in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices.

(12) For the purpose of mixing mortar, concrete or other materials, or to bend steel reinforcement bars, surface protection shall be provided.

(13) Mortar boxes for hand mixing shall not extend beyond the area permitted for the storage of materials on the street.

(14) Storage space shall not exceed eighty percent of each linear frontage of the plot on which the buildings are to be constructed, altered or demolished; nor shall more than one-third of the roadway width, with a maximum of one lane measured from the curb, be encumbered with construction material unless a street closing permit is obtained.

(15) The Commissioner may direct that construction material stored or placed within the street line, particularly in a critical area, be confined to the sidewalk frontage area where the building is to be constructed, altered or demolished. The permittee shall enclose the sidewalk storage area with a four foot high barricade or fence in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices and shall provide adequate lighting and a minimum of five feet of clear pedestrian passage. A temporary partial sidewalk closing permit shall be required.

(16) All equipment hoses, cables, or wires carried overhead across the sidewalk shall have fourteen (14) feet minimum clearance.

(17) All equipment hoses, cables, or wires placed on the sidewalk while in use shall be bridged and protected by warning signs and/or lights.

(18) A construction activity permit shall be required for a truck crane (boom truck) with telescopic, hydraulic or folding booms, over fifty feet and not more than one hundred thirty-five feet with a maximum rated capacity of three tons. A valid copy of a current "Crane Approval and Operations Certificate (CD)" shall be obtained from the Department of Buildings when a "Certificate of On-site Inspection" is not required.

(e) **Temporarily closing sidewalk.** A temporary partial sidewalk closing permit shall be required when more than three feet from the property line is obstructed by a fence. A temporary full sidewalk closing permit shall be required when a minimum clear sidewalk passage of five feet cannot be maintained for pedestrians.

(f) **Temporary pedestrian walkway in roadway.** (1) The Commissioner may require permittees to construct temporary pedestrian walkways on the roadway when adequate pedestrian passage cannot be maintained on the sidewalk.

(2) If a pedestrian walkway in the roadway is not required, warning signs advising pedestrians to use the opposite sidewalks shall be placed and maintained at each corner or as otherwise directed.

(g) **Temporarily closing roadway.** (1) A roadway closing permit is required for closing one or more lanes of the roadway.

(2) A roadway closing permit is required during blasting operations and the firing of shots.

(h) **Placement of shanties or trailers on the street.** (1) A permit shall be required to place a construction shanty, trailer, or similar structure on the street.

(2) Placement of shanties or trailers is subject to the same restrictions as the placement of equipment.

(3) Construction shanties or trailers shall be placed within the storage area provided for construction materials.

(4) Shanties and trailers shall be removed from the street when the building structure first floor level is covered by a roof, second floor or a second floor slab, unless otherwise directed by the Commissioner.

(5) Use of a shanty or trailer anywhere on a street as a renting or sales office shall be prohibited.

(6) No lettering or symbols shall be placed on a shanty or trailer except for the name and telephone number of the contractor.

(7) The shanty or trailer shall be lighted or have reflectorized striping on the exterior.

(i) **Crossing a sidewalk.** (1) A permit for crossing a sidewalk shall be obtained for the delivery or removal of any construction material or equipment on the street by vehicle or motorized equipment across a sidewalk where there is no approved drop curb (driveway).

(2) A maximum of two sidewalk crossings shall be allowed per each three hundred linear feet.

(j) **Placement of cranes and derricks on street.** For the purposes of these rules the terms "crane" and "derrick" shall be as defined in the New York City building code.

(1) **Permit requirements.**

(i) **Building operations.**

(A) A crane permit shall be required for all cranes and derricks operating in the street on building construction or related activity under the jurisdiction of the Department of Buildings, with the exception of: truck cranes with telescopic, hydraulic or folding booms, over fifty feet and not more than one hundred thirty-five feet with a maximum rated capacity of three tons, for which a construction activity permit has been issued.

(B) A crane permit shall be required for assist cranes with a maximum rated capacity greater than twenty tons to assemble, operate, or disassemble any crane on a street. Assist cranes with a maximum rated capacity of twenty tons or less shall require a Construction Activity Permit.

(C) All permittees shall comply with the rules for power operated cranes, derricks and cableways of the Department of Buildings.

(ii) **Street operations.**

(A) A crane permit shall be required for all cranes and derricks operating in the street with a maximum rated capacity greater than twenty (20) tons and which are not related to building operations.

(B) A construction activity permit shall be required for all cranes and derricks with a rated capacity of twenty tons or less when used for street related activity and where the activity is not under the jurisdiction of the Department of Buildings. A written statement shall be submitted by the owner of the structure, building or premises, general contractor, construction manager, or authorized agent stating that he/she visited the site and that there are no excavations or retaining walls and that no vaults or subsurface construction exists at the site. If there are excavations, retaining walls, vaults or subsurface construction existing at the site, then an affidavit shall be submitted from a Professional Engineer indicating (1) that the sidewalk or roadway and the supporting sub-grade can safely bear the crane and crane load, (2) that any existing vaults or other subsurface structures are capable of supporting the crane and load, and (3) that the sheeting or retaining walls supporting any excavations adjoining the street area are capable of supporting the crane and load.

(2) **Application.** All applicants for a permit shall file the following:

(i) A standard application including the following information:

(A) location of the work site;

(B) nature of the work to be performed;

(C) date of commencement of crane operation and estimated completion date; (D) length of the crane's boom. (Approval of the Department of Buildings is required for cranes with booms over two hundred fifty feet in length, contingent upon passing a satisfactory assembled inspection for each phase. For such cranes, a special review and approval meeting must be held with the Department of Buildings and the applicant.);

(E) model and serial numbers of cranes to be used;

(F) crane/derrick application form #M12;

(G) approval or permit from the Department of Buildings in the case of new structures, renovations or modifications made to a building, or placement of a sign structure; and

(H) daily or annual overdimensional permit.

(ii) A sketch showing:

(A) proposed location of the crane in the work area;

(B) area to be designated for pedestrian passageway;

(C) measures to be taken from safeguarding and protecting pedestrians and for maintaining vehicular traffic, including OCMC stipulations.

(iii) The following documentation from the Department of Buildings:

(A) "Crane Approval and Operations Certificate (CD)" (for all cranes and derricks).

(B) "Application for a Certificate of On-Site Inspection (Crane Notice)".

(C) All plans/amendments related to the operation and movement of the crane.

(3) **Placement.** All cranes may be placed partially or entirely on the street, in the discretion of the Commissioner, subject to the following conditions and requirements:

(i) A crane shall not occupy more than one third of the roadway width except in accordance with the stipulations

set forth in the street closing permit.

(ii) The extreme outer limit of the crane, in any operating or storage position, shall be at least twelve feet from the opposite curb. The Commissioner may issue a street closing permit when a minimum of twelve feet cannot be maintained.

(iii) Cranes equipped with steel tracks shall be supported by:

(A) steel plates; or

(B) timber platforms not less than six inches thick and covering the entire base of the crane.

(iv) The crane and loads shall not exceed 3,500 lbs. per square foot.

(v) For cranes equipped with rubber tires:

(A) the pressure applied to the street surface through outriggers or other elements of the crane shall not exceed 3,500 lbs. per square foot;

(B) the pressure shall be distributed by timber mats, wood planking or steel plates, extending not less than twelve inches beyond the base of the outriggers on all sides and sufficiently thick to uniformly distribute the load pressure including the weight of the crane.

(vi) Each permittee shall ensure that the surface upon which the crane will rest is capable of supporting the above pressures. The permittee shall further expand the size and thickness of the timber platforms, mats and steel plates beyond the minimum requirements stipulated above for all types of cranes, so as not to exceed the bearing capacity of the street. This shall apply to structural streets and streets over underground facilities/structures as well.

(vii) An alternate means of distributing the load may be approved by the Department of Buildings when a "Certificate of On-Site Inspection" is required.

(viii) When any part of the crane requiring a "Certificate of On-Site Inspection" is placed on the street, a statement by a New York State licensed professional engineer shall be filed with the Borough Permit Office certifying:

(A) that the street area and the supporting subgrade can bear the crane load safely. Should the street condition require that the crane and load be distributed over a larger area than afforded by the elements of the crane, the New York State licensed professional engineer shall furnish full dimensional details of load distribution;

(B) that the engineer has taken all necessary measures to ascertain that there is no vault underneath the sidewalk area or that if a vault does exist its roof is sufficiently strong to support the load to be imposed thereon.

(C) that the sheeting or retaining walls supporting any excavations adjoining the street bearing the load capacity are capable of supporting the area carrying the crane and load. When the crane is used to excavate adjacent to itself, the New York State licensed professional engineer shall specify the sheeting or retaining wall reinforcement required to support the crane and load.

(4) **Master or special rigger/sign hanger.** A "Certificate of Crane On-Site Inspection" is not required for a master or special rigger or a master or special sign hanger working within the purview of his/her license issued by the New York City Department of Buildings. Permissible work under the supervision of a master or special rigger or a master or special sign hanger includes:

(i) the hoisting or lowering of any article on the outside of any existing/completed building;

(ii) the removal or installation of boilers and tanks; and

(iii) the erection, maintenance or removal of signs or sign structures.

(5) **Safety requirements.**

(i) For purposes of safety, a flagperson(s) shall be assigned at all times during the operation of the crane to coordinate all crane operations with pedestrian and vehicular traffic and to give proper warnings to the crane operator. Exceptions may be granted under the following conditions:

(A) Where OCMC traffic stipulations provide for the crane to be operated in an area that has been closed to vehicular and pedestrian traffic, and

(B) Where the full outward swing of the crane actually does not exceed beyond the barricade and the sidewalk area within the swing of the crane carriage or boom is securely barricaded in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices to prevent pedestrian traffic or an adequate covered pedestrian walkway is provided.

(ii) When a crane is stored on a street it shall be clearly marked with adequate lighting or with high intensity fluorescent paint, reflectors, or other markings capable of producing a warning glow when struck by the head lamps of a vehicle or other source of illumination up to a distance of three hundred feet.

(iii) It shall be unlawful for any person other than a crane operator licensed by the Department of Buildings to operate a crane on a street.

(6) Permits for the placements of a crane on the street may be issued for the area from the northern street line of 66th Street to the extreme southernmost tip of Manhattan as specified on the map in subdivision l and in the following limited cases:

(i) When erecting from the street:

(A) a tower or climbing crane which will be operated within building site property lines; or

(B) a temporary platform or permanent plaza within a building site for the placement of a street crane.

(ii) When erecting a structure/building on a building site from the street within one hundred and ten working days when use of a tower or climbing crane is not practicable.

(iii) Temporary crane permits are issued for the erection of a structure for a maximum of one hundred ten working days. Crane usage shall be apportioned between the various stages of erection by the building owner, the general contractor or the construction manager. A working day is defined as each day covered by an active permit, not by the days a crane operates. Several cranes operating simultaneously at the same site shall be credited with one working day for each day covered by the active permit. The one hundred and ten day limit shall not be exceeded. However, extensions may be granted by the Commissioner in extraordinary circumstances.

(iv) Permittees shall be required to delineate the street area authorized for use in blue thermoplastic tape or paint. Upon expiration or revocation of the permit, the permittee shall remove the paint or markings and restore the area to its original condition.

(7) **Letter of Credit.** To ensure full compliance with all crane permit terms and stipulations the following requirements and procedures apply:

(i) Permittees are required to file a $40,000 Irrevocable Stand-by Letter of Credit.

(ii) The form of the Letter of Credit and the bank upon which it is drawn shall be approved by the Commissioner.

(iii) The term of such Letter of Credit shall be at least one year. Such Letter of Credit may cover multiple crane permit locations.

(iv) If the permittee fails to remove a crane when required or otherwise violates a permit condition, the terms of the Letter of Credit shall provide that the Commissioner may demand a payment of $1,000 a day for the first five days and $2,500 for each day thereafter.

(v) A Letter of Credit shall not be required in the following circumstances:

(A) contractors with licensed operators performing rigging operations, i.e. hoisting or lowering materials or equipment on or off existing buildings;

(B) in special cases, contractors with licensed operators performing rigging operations in conjunction with new building construction;

(C) contractors with licensed operators performing work on elevated railroad or bridge structure engaged in street construction such as pavement removal, trenching or bulkheading, or in the installation and/or repair of underground shafts, sewers and water facilities.

(k) **Format to be used for Irrevocable Stand-By Letter of Credit.**

Beneficiary

The City of New York

Department of Transportation

Manhattan Street Maintenance Office

Battery Maritime Building, 4th floor

New York, New York 10004

Sir/Madam:

By order of our client (name and address of Permittee), we issue this Stand-By Irrevocable Letter of Credit No. . . . . in your favor for $40,000.00 (Forty Thousand U.S. Dollars) effective immediately for our client's performance under the required Crane Permit(s) for the placement of cranes at the following location(s):

Funds under this Irrevocable Letter of Credit are available by Sight Draft drawn on us accompanied by:

1. A statement signed by the Commissioner of the New York City Department of Transportation or an authorized representative stating that:

"(Permittee Name) has failed to comply with the terms and conditions agreed to under the permit(s) issued or has failed to remove a crane when required. For this violation the City of New York, acting through its Department of Transportation, is demanding a payment of $1,000.00 (One Thousand U.S. Dollars) a day for the first five days of violation. After five days, payment for the continuing violation is $2,500.00 (Two Thousand Five Hundred U.S. Dollars) a day." "This(these) violation(s) has(have) existed for . . . days and demand is now made for payment of (enter total amount). We have notified (Permittee name and address) in writing that this certification is being presented."

2. A copy of notice given to (Permittee name) referred to in No. 1 above.

3. The original of this Irrevocable Letter of Credit and Amendments, if any.

The Sight Draft shall bear the following clause:

"DRAWN UNDER (Bank Name), LETTER OF CREDIT NUMBER . . . . . DATED . . . . . ."

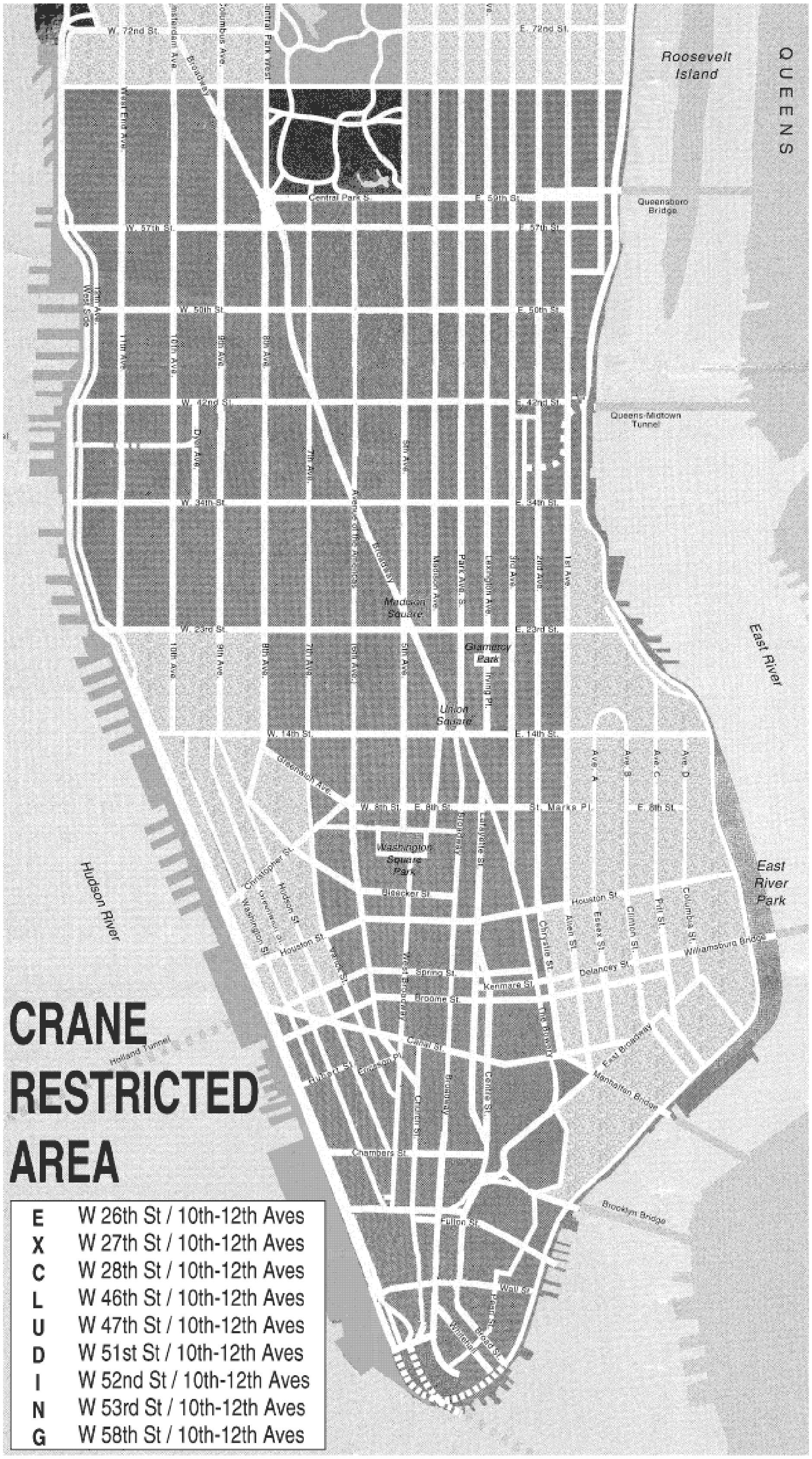
This Irrevocable Letter of Credit expires at (Bank office address) at the close of business on . . . . .

This Irrevocable Letter of Cedit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended, or amplified by reference to any document, instrument or agreement referred to herein or to which this Irrevocable Letter of Credit relates and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

We agree with you that drafts drawn in compliance with the terms of this Credit shall be honored on presentation.

This Irrevocable Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

(l) **Crane Restricted Area**


CRANE
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W 58th St / 10th-12th Aves
Roosevelt Island
QUEENS
Queensboro Bridge
Queens-Midtown Tunnel
East River
East River Park
Hudson River
Holland Tunnel
Williamsburg Bridge
Manhattan Bridge
Brooklyn Bridge
Madison Square
Gramercy Park
Union Square
Washington Square Park
W. 72nd St.
E. 72nd St.
W. 57th St.
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E. 23rd St.
W. 14th St.
E. 14th St.
Central Park S.
Houston St.
Canal St.
Chambers St.
Fulton St.
Wall St.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Subd. (c) par (4) amended City Record Feb. 25, 2000 §6, eff. Mar. 26, 2000.

Subd. (c) par (5) added City Record Dec. 21, 2001 §2, eff. Jan. 20, 2002.

Subd. (d) par (2) amended City Record June 7, 2007 §8, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (d) par (6) amended City Record Feb. 25, 2000 §7, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (d) par (8) amended City Record June 7, 2007 §9, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (d) par (8) subpar (ii) amended City Record Nov. 3, 2004 §1, eff. Dec. 3, 2004. [See Note 1]

Subd. (d) par (9) amended City Record Nov. 3, 2004 §2, eff. Dec. 3, 2004. [See Note 1]

Subd. (d) par (16) amended City Record Nov. 3, 2004 §3, eff. Dec. 3, 2004. [See Note 1]

Subd. (j) par (2) subpar (ii) clause (C) amended City Record Feb. 25, 2000 §8, eff. Mar. 26, 2000.

[See T34 §2-01 Note 1]

Subd. (j) par (5) subpar (i) clause (A) amended City Record Feb. 25, 2000 §9, eff. Mar. 26, 2000.

[See T34 §2-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 3, 2004:

The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2093 of the New York City Charter and Title 19 of the New York City Administrative Code.

Section 2-05 of Title 34 of the Official Compilation of the Rules of the City of New York regulates the placement of construction material, by private contractors, on areas under the jurisdiction of the Department.

Subparagraph (ii) of paragraph (8) and paragraph (9) of subdivision (d) of §2-05 are being amended to include additional city-owned electrical equipment in this rule and expand the access areas to it during construction.

Paragraph (16) of subdivision (d) of §2-05 is being amended to provide a safer passage for pedestrian traffic on the sidewalk.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2

included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-06 Land Contour Work.

(a) **Permit required.** (1) A permit shall be obtained from the Commissioner to perform land contour work which includes the clearing, grubbing, grading, filling or excavation of vacant lots and other specified land parcels.

(2) The provisions of these rules are also applicable to the disposal site for excavated materials.

(3) All permits are subject to applicable provisions contained in §2-02 of these rules.

(b) **Conditions.** (1) No condition shall be created or maintained that interferes with or obstructs existing drainage, unless an alternate drainage plan is provided for in the above plans, subject to approval by the Department of Environmental Protection. The applicant shall provide for conduction of surface waters as required by the Commissioner to the nearest approved Department of Environmental Protection collection point.

(2) Watercourses, drainage ditches, conduits and other like or unlike means of carrying off water or disposing of surface water shall not be obstructed by refuse, waste, construction materials, earth, stones, tree stumps, branches, or by any other means that may interfere with surface drainage or cause the impoundment of surface waters either within or beyond the area where land contour work is performed.

(3) All excavations shall be drained. The drainage shall be maintained until the completion of the excavation and pumping shall be used where necessary.

(4) Fill material shall consist of inert, inorganic matter, suitably compacted. No materials shall be used other than

clean earth, ashes, dirt, concrete, rock, gravel, stone, slag, or sand. Rocks and masonry shall not be larger than one-quarter of a cubic yard. No material larger than three inches in dimension may be placed within two feet of the surface. For public safety and health, the Commissioner may require a smooth graded surface treated according to the Department specifications with asphalt paving mixture, compacted cinders, stone screening, soil cement mixtures, or seeded or sodded lawn treatment, or other material as required by the Commissioner.

(5) Sodding or planting, where required, shall be completed within thirty days of work completion or as may be permitted by the Commissioner. Safeguards shall be provided to prevent soil erosion in the interval preceding sodding or planting.

(6) Work beyond lot lines shall be subject to the requirements of these rules.

(7) A minimum safety factor of two shall be used against earth slides within the property and the adjacent property. Where two parallel streets are at unequal elevations, the land grading between these two streets generally should be at a constant slope. Where possible the ground should be graded back from the front property line at a grade level with the street for a distance equal to the normal zoning set-back requirement but not less than twenty-five feet before commencing a slope.

(c) **Exceptions.** A permit is not required for grading work to be performed pursuant to a Department of Buildings permit for the erection of one or more structures, provided that the permit authorizes the grading, and that the work is performed entirely within the building site area.

(d) **Application.** (1) The application shall state the following:

(i) name of the land surveyor or New York State licensed professional engineer;

(ii) description of the land contour work;

(iii) work limits and number of linear feet in the work area;

(iv) cubic yards of fill to be placed;

(v) that work areas exceeding ten thousand square feet shall be supervised by a New York State licensed professional engineer. The application shall note the name, address, and telephone number of the New York State licensed professional engineer;

(vi) whether streets adjacent to the land are finally mapped and with whom title of the streets is vested. Prescriptive streets as determined by the corporation counsel shall be deemed as finally mapped.

(2) Applicants for a Land Contour permit shall be the property owner or the owner's authorized representative. The permit application shall be accompanied by:

(i) a statement of property ownership or of authorization by the property owner if work is to be performed by a contractor;

(ii) a statement from the surveyor or New York State licensed professional engineer which states that the work will not cause adverse drainage conditions to the property and adjacent land;

(iii) a plan prepared by a land surveyor or New York State licensed professional engineer.

(3) Applicants shall submit a plan at a minimum scale of 1"=50' or the scale required by the Commissioner. The original mylar plus one paper print filed at the time of permit application shall be drawn according to the Commissioner's standards. The plans shall show the following:

(i) name of the land surveyor or New York State licensed professional engineer;

(ii) existing watercourses, drainage ditches, conduits and other drainage facilities, or like or unlike means of carrying off water, or disposing of property surface water, and the area three hundred feet beyond the property and any additional information as required by the Commissioner;

(iii) existing and proposed grades of the area to be filled or excavated, plotted in contours spaced at five feet intervals or at other intervals as required by the Commissioner; (iv) direction of all surface water flow before and after completion of land contour work;

(v) statement of the slopes to be maintained and a cross section of the slopes; (vi) soil investigation, including, but not limited to, locating the elevation of the ground water table, whenever required by the Commissioner;

(vii) lines and grades of abutting streets which are legally mapped;

(viii) profile of the existing grade, legal grade and final grade of the abutting street;

(ix) substitute for existing drainage as noted below, subject to approval of the Department of Environmental Protection:

(A) interference with or obstruction of surface course causing drainage to flow in a direction other than a general direction and drainage pattern existing prior to the land contour work tending to cause impoundment or flooding either within or beyond the area on which contour work is performed;

(B) increase of surface course drainage in the direction and drainage pattern existing prior to the land contour work tending to cause impoundment or flooding either within or beyond the area in which contour work is performed; and

(C) interference or obstruction of existing watercourses, drainage ditches, conduits and other like or unlike means of carrying off water or disposing of surface water;

(x) proposed provisions for maintenance of existing drainage or for any substitute that shall drain the property adequately and shall provide safeguards against health hazards according to criteria established in consultation with the Department of Health as noted below:

(A) flooding: proposed provisions to eliminate existing conditions of surface water impoundment. The entire area under examination shall be provided within the property. The plans shall indicate the provisions taken to avoid direct flooding of adjacent properties or intrusion of surface water to existing or planned individual sewage disposal systems; and

(B) small water impoundment: proposed provisions to avoid small water impoundment which may become the breeding area or harborage of insects and other pests. Pests are defined as members of the class insecta and members of the Phylum Arthropoda including spiders, mites, ticks, mosquitoes, centipedes and wood lice.

(xi) provisions for disposal of excavation material.

(4) Certification shall be required from a New York State licensed professional engineer that drainage for a three hundred foot radius around the site will not be adversely affected by grading, and that existing watercourses, if any, will not be disturbed.

(e) **Approval required.** (1) Sites designated as Wetlands shall have prior approval from the New York State Department of Environmental Conservation.

(2) Sites in designated Natural Areas or in South Richmond shall require prior approval from the City Planning

Commission.

(3) The Commissioner may require that land contour plans be reviewed and approved by the Department of Environmental Protection.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

DERIVATION

Section 2-06 was derived from former §2-12 from original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

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contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

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Rules of the City of New York

34 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-07 Underground Street Access Covers, Transformer Vault Covers and Gratings.

(a) **General conditions.** (1) Except for work on the critical roadways during restricted times listed in subdivision c of this section, and subject to these rules, underground street access covers, transformer vault covers and gratings may be opened to perform subsurface work without the prior authorization of the Department. During a Department declared embargo, sidewalks shall be included in the restrictions listed in paragraph (5) of subdivision (c) of this section.

(2) Except when emergency work is being performed, if excessive traffic congestion occurs on a roadway where underground street access covers, transformer vault covers or gratings have been opened, any police officer or other person authorized to enforce these rules may direct that the cover or grating openings be closed and the encumbered traffic lane opened until the congestion abates. It shall be a violation of these rules to disobey such a direction.

(3) The opening of covers and gratings shall not restrict more than a maximum of 11 feet of roadway. If such opening results in a full roadway closure, the Police Department, the Communication Centers of the Fire Department and the Department of Transportation shall be notified simultaneously with the closing. If such opening falls under the provisions of subdivision (g) of §2-02 of these rules, the entity opening the covers or gratings shall comply with all the requirements of such subdivision.

(4) Except for emergency work or where required due to the nature of the work, no more than two consecutive covers or gratings shall be opened at any time on a block segment, including the adjacent intersection.

(5) A permit is required to store material or equipment on the street during non-working hours whether or not the cover or grating opening is in a critical roadway. No such permit shall be required to store tool carts on the sidewalk. No

tool cart shall be stored on a sidewalk unless a minimum passage of five feet is maintained on the sidewalk for pedestrians. No tool cart stored on a sidewalk shall obstruct any hydrant, bus stop or driveway. A permit is required to store tool carts on the roadway. All tool carts shall display the name, address and telephone number of the entity that placed them on the sidewalk or roadway.

(6) Where subsurface work requiring the opening of covers and gratings on a sidewalk is performed and a five foot minimum passageway on the sidewalk cannot be maintained for pedestrians, a temporary sidewalk closing permit shall be obtained.

(7) Flagpeople. Permittees whose work results in the closing of a moving traffic lane, which requires traffic to be diverted to another lane, shall, at all times while actively working at the site, post a flagperson or utilize an authorized plan for the maintenance and protection of traffic at the point where traffic is diverted to assist motorists and pedestrians to proceed around the obstructed lane.

(b) **Maintenance requirements.** (1) The owners of covers or gratings on a street are responsible for monitoring the condition of the covers and gratings and the area extending twelve inches outward from the perimeter of the hardware.

(2) The owners of covers or gratings shall replace or repair any cover or grating found to be defective and shall repair any defective street condition found within an area extending twelve inches outward from the perimeter of the cover or grating.

(3) Street hardware shall be flush with the surrounding street surface. Street hardware which is greater than $^{1}/_{2}$" above or below the street surface as measured by a six foot straight edge centered on the hardware shall be replaced or adjusted at the owner's expense.

(4) Owners of underground facilities shall only use covers with their name or registered markings clearly displayed for identification purposes. Owners shall have one year from the date of the adoption of this paragraph to be in full compliance with this paragraph.

(5) Covers shall be clearly identified with markings that are registered with the Department. The owners of covers which are in good condition but lack identifying markings shall place the assigned color code or tag next to the cover or grating in lieu of replacement.

(6) Underground street access covers, transformer vault covers, and gratings shall not be placed in any street over an opening unless they are of a type approved by the Commissioner.

(c) **Work in critical roadways.** (1) Except as otherwise provided in paragraphs 2 and 3 of this subdivision, no person shall perform subsurface work requiring cover and grating openings in the critical roadways listed in paragraph 5 of this subdivision at the locations and during the hours specified in such paragraph.

(2) No person shall perform emergency work requiring cover or grating openings in the critical roadways listed in paragraph 5 of this subdivision at the locations and during the hours specified in such paragraph without an emergency authorization number from the Department.

(3) Notwithstanding the foregoing provisions, subsurface work requiring cover or grating openings may be performed at any time in traffic lanes which are obstructed by street construction authorized by the Commissioner, i.e., by the installation of water mains, sewers, street lighting, traffic control devices, cranes, construction debris containers, or other construction equipment.

(4) Authorization for emergency work requiring cover and grating openings in critical roadways during restricted hours.

(i) An authorization number shall be obtained by the owner of the cover or grating or the authorized agent of the owner by faxing the required DOT request for authorization number form to the Department's Emergency Authorization Unit, unless otherwise directed by the Commissioner. Required information shall include, but not be limited to the following:

(A) Name of permittee

(B) Permittee ID #

(C) Location of emergency (including borough)

(D) Type of emergency (including interruption of service)

(ii) Authorization numbers shall be kept on site and shall be presented upon the request of any police officer or other City employee authorized by the Commissioner to enforce these rules. Any additional information regarding the emergency work that is requested at the site by a Department inspector shall be provided by the permittee and/or the persons performing such work.

(iii) The fee for obtaining an authorization number shall be thirty dollars ($30.00). Such fee shall be paid within fifteen days of billing. The owner shall be responsible for payment of all fees imposed pursuant to this paragraph.

(iv) Emergency work shall be performed on an around-the-clock basis until the emergency is eliminated, at which time the emergency authorization number expires, as specified in subparagraph (ii) of paragraph (2) of subdivision (g) of §2-11 of these rules.

(v) The person performing such emergency work shall inform the Department's Emergency Authorization Unit within twelve hours of the completion of such emergency work.

(5) Critical roadways: Work restrictions apply Monday through Friday (except for the holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day) at the locations (including intersections) and during the hours listed below:

(i) Manhattan

(A) **East/West Roadways-Restricted Access 7:00 AM to 8:00 PM**

1. 8th Street-Avenue of the Americas to Third Avenue

2. 9th Street-Avenue of the Americas to First Avenue

3. 14th Street-Joe DiMaggio Highway to FDR Drive

4. 20th Street-Avenue C to First Avenue

5. 23rd Street-Joe DiMaggio Highway to FDR Drive/Avenue C

6. 25th Street-FDR Drive to First Avenue

7. 30th Street-Joe DiMaggio Highway to FDR Drive

8. 31st Street-Tenth Avenue to Second Avenue

9. 32nd Street-Seventh Avenue to Second Avenue

10. 33rd Street-Joe DiMaggio Highway to First Avenue
11. 34th Street-Joe DiMaggio Highway to FDR Drive
12. 35th Street-Eleventh Avenue to FDR Drive
13. 36th Street-Eleventh Avenue to FDR Drive
14. 37th Street-Eleventh Avenue to FDR Drive
15. 38th Street-Eleventh Avenue to FDR Drive
16. 39th Street-Joe DiMaggio Highway to First Avenue
17. 40th Street-Joe DiMaggio Highway to First Avenue
18. 41st Street-Joe DiMaggio Highway to Avenue of the Americas
19. 42nd Street-Joe DiMaggio Highway to FDR Drive
20. 43rd Street-First Avenue to Lexington Avenue
21. 43rd Street-Vanderbilt Avenue to Joe DiMaggio Highway
22. 44th Street-First Avenue to Lexington Avenue
23. 44th Street-Vanderbilt Avenue to Joe DiMaggio Highway
24. 45th Street-First Avenue to Joe DiMaggio Highway
25. 46th Street-First Avenue to Eighth Avenue
26. 47th Street-First Avenue to Eighth Avenue
27. 48th Street-First Avenue to Eighth Avenue
28. 49th Street-FDR Drive to Joe DiMaggio Highway
29. 50th Street-Beekman Street to Joe DiMaggio Highway
30. 51st Street-First Avenue to Eighth Avenue
31. 52nd Street-First Avenue to Eighth Avenue
32. 53rd Street-FDR Drive to Eighth Avenue
33. 54th Street-First Avenue to Eighth Avenue
34. 55th Street-Sutton Place to Joe DiMaggio Highway
35. 56th Street-Sutton Place to Joe DiMaggio Highway
36. 57th Street-Sutton Place to Joe DiMaggio Highway
37. 58th Street-Sutton Place to Eleventh Avenue

38. 59th Street-Fifth Avenue to Sutton Place

39. 59th Street-Miller Highway to Columbus Avenue

40. 60th Street-FDR Drive to Fifth Avenue

41. 61st Street-FDR Drive to Fifth Avenue

42. 62nd Street-FDR Drive to Fifth Avenue

43. 63rd Street-FDR Drive to Fifth Avenue

44. 65th Street-Central Park West to Fifth Avenue (Transverse Roadway)

45. 65th Street-West End Avenue to York Avenue

46. 66th Street-Central Park West to Fifth Avenue (Transverse Roadway)

47. 66th Street-West End Avenue to York Avenue

48. 71st Street-FDR Drive to York Avenue

49. 72nd Street-Central Park West to Fifth Avenue (Transverse Roadway)

50. 72nd Street-Central Park West to Henry Hudson Parkway

51. 72nd Street-Park Avenue to Fifth Avenue

52. 73rd Street-FDR Drive to York Avenue

53. 79th Street-Central Park West to Fifth Avenue (Transverse Roadway)

54. 79th Street-Henry Hudson Parkway to Broadway

55. 79th Street-Park Avenue to Fifth Avenue

56. 79th Street-York Avenue to FDR Drive

57. 81st Street-Amsterdam Avenue to Central Park West

58. 84th Street-Park Avenue to Fifth Avenue

59. 85th Street-Park Avenue to Fifth Avenue

60. 86th Street-Amsterdam Avenue to Central Park West

61. 86th Street-Central Park West to Fifth Avenue (Transverse Roadway)

62. 92nd Street-FDR Drive to First Avenue

63. 95th Street-Riverside Drive to Broadway

64. 96th Street-FDR Drive to Fifth Avenue

65. 96th Street-Henry Hudson Parkway to Central Park West

66. 97th Street-Central Park West to Fifth Avenue (Transverse Roadway)

67. 97th Street-FDR Drive to Fifth Avenue

68. 97th Street-Henry Hudson Parkway to Central Park West

69. 106th Street-First Avenue to FDR Drive

70. 116th Street-First Avenue to FDR Drive

71. 125th Street-Henry Hudson Parkway to FDR Drive

72. 135th Street-St. Nicholas Avenue to Harlem River Drive

73. 138th Street-Malcolm X Boulevard to Harlem River Drive

74. 145th Street-Riverside Drive to Harlem River Drive

75. 155th Street-Riverside Drive to Harlem River Drive

76. 158th Street-Henry Hudson Parkway to Broadway

77. 165th Street-Riverside Drive to Broadway

78. 178th Street-Fort Washington Avenue to Amsterdam Avenue

79. 179th Street-Fort Washington Avenue to Amsterdam Avenue

80. 181st Street-Riverside Drive to Amsterdam Avenue

81. 207th Street-Broadway to Ninth Avenue

82. Ann Street-Park Row to Gold Street

83. Avenue of the Finest-Rose Street to Pearl Street

84. Barclay Street-West Street to Broadway

85. Battery Place-West Street to Broadway

86. Bayard Street-Baxter Street to Bowery

87. Beach Street-Varick Street to Avenue of the Americas

88. Beekman Street-Park Row to South Street

89. Broome Street-Varick Street to Clinton Street

90. Canal Street-West Street to Essex Street/East Broadway

91. Catherine Street-Bowery/Division Street to South Street

92. Central Park South-Broadway to Fifth Avenue

93. Chambers Street-River Terrace to Centre Street

94. Christopher Street-Joe DiMaggio Highway to Greenwich Avenue/Avenue of the Americas

95. Clarkson Street-Joe DiMaggio Highway to Seventh Avenue

96. Cartlandt Street-Church Street to Broadway

97. Delancey Street-Clinton Street to Bowery

98. Dey Street-Church Street to Broadway

99. Division Street-Bowery to Canal Street

100. Dominick Street-Avenue of the Americas to Hudson Street

101. Dover Street-Pearl Street to South Street

102. Dover Street-Pell Street to Bowery

103. Duane Street-Greenwich Street to Lafayette Street

104. Dyckman Street-Henry Hudson Parkway to Harlem River Drive

105. East Broadway-St. James Place to Grand Street

106. East Drive-Central Park South to Central Park North

107. Exchange Alley-Broadway to Hanover Street

108. Frankfort Street-Park Row to Pearl Street

109. Fulton Street-Church Street to South Street

110. Grand Street-Varick Street to South Street

111. Harrison Street-West Street to Hudson Street

112. Hester Street-Centre Street to Essex Street

113. Houston Street-Joe DiMaggio Highway to FDR Drive

114. John Street-Broadway to South Street

115. Kenmare Street-Lafayette Street to Bowery

116. Liberty Street-South End Avenue to Pearl Street

117. Madison Street-Avenue of the Finest to Grand Street

118. Maiden Lane-Broadway to South Street

119. Montgomery Street-East Broadway to South Street

120. Murray Street-North End Avenue to Broadway

121. Park Place-Greenwich Street to Broadway

122. Pearl Street-Lafayette Street to St. James Place

123. Pine Street-Broadway to South Street

124. Reade Street-Greenwich Street to Centre Street

125. Rector Street-West Street to Broadway

126. Robert F. Wagner Senior Place-Pearl Street to South Street

127. Spring Street-Joe DiMaggio Highway to Bowery

128. Spruce Street-Park Row to Gold Street

129. St. Marks Place-Third Avenue to First Avenue

130. Thomas Street-Hudson Street to Broadway

131. Vesey Street-North End Avenue to Broadway

132. Walker Street-Beach Street to Canal Street

133. Wall Street-Broadway to South Street

134. Warren Street-Greenwich Street to Broadway

135. Watts Street-Broome Street to Hudson Street

136. West Drive-Central Park South to Central Park North

137. Worth Street-Hudson Street to Park Row (Chatham Square)

Note: All service roads abutting highways, parkways, expressway, etc. are considered to be critical streets from 7:00 AM to 8:00 PM.

(B) **North/South Roadways-Restricted Access 7:00 AM to 8:00 PM**

1. Allen Street-East Broadway to Houston Street

2. Amsterdam Avenue-59th Street to 72nd Street

3. Avenue C-14th Street to 34th Street

4. Avenue of the Americas-Church Street to Central Park South

5. Battery Park Underpass-Joe DiMaggio Highway to South Street

6. Bowery-Worth Street to Third Avenue/6th Street

7. Broad Street-South Street to Wall Street

8. Broadway-Battery Place to 79th Street

9. Central Park West-59th Street to 66th Street

10. Centre Street-Park Row to Kenmare Street
11. Chrystie Street-Canal Street to Houston Street
12. Church Street-Liberty Street to Canal Street
13. Cleveland Place-Kenmare Street to Lafayette Street
14. Clinton Street-Grand Street to Broome Street
15. Columbus Avenue-59th Street to 66th Street
16. Eighth Avenue-Hudson Street to Central Park South
17. Eleventh Avenue-Joe DiMaggio Highway to 59th Street
18. Essex Street-Canal Street to Houston Street
19. FDR Drive-Whitehall Street to 125th Street
20. Fifth Avenue-Washington Square North to 139th Street
21. First Avenue-Houston Street to 66th Street
22. First Avenue Tunnel-41st Street to 49th Street
23. Fourth Avenue-Bowery to 14th Street
24. Gold Street-Maiden Lane to Frankfort Street
25. Greenwich Street-Battery Place to Gansevoort Street
26. Harlem River Drive-125th Street to Dyckman Street
27. Henry Hudson Parkway-59th Street to Henry Hudson Bridge
28. Hudson Street-Chambers Street to 14th Street
29. Irving Place-14th Street to 20th Street
30. Joe DiMaggio Highway-Battery Place to 59th Street (*Restricted Access 6:00 AM to 8:00 PM)
31. Lafayette Street-Centre Street to 8th Street
32. LaGuardia Place-Houston Street to Washington Square South
33. Lexington Avenue-Gramercy Park North to 129th Street
34. Madison Avenue-23rd Street to 138th Street
35. Nassau Street-Wall Street to Spruce Street
36. Ninth Avenue-Gansevoort Street to 59th Street
37. Norfolk Street-Grand Street to Delancey Street

38. Park Avenue-42nd Street to 66th Street

39. Park Avenue South-17th Street to 42nd Street

40. Park Avenue Tunnel-33rd Street to 40th Street

41. Park Row-Broadway to Worth Street

42. Pearl Street-State Street to Lafayette Street

43. Pike Street-South Street to East Broadway

44. Second Avenue-Houston Street to 66th Street

45. Seventh Avenue-11th Street to Central Park South

46. Seventh Avenue South-Houston Street to 11th Street

47. South Street-Whitehall Street to Montgomery Street

48. St. James Place-Pearl Street to Bowery

49. State Street-Whitehall Street to Battery Place

50. Suffolk Street-Grand Street to Delancey Street

51. Sutton Place/Sutton Place South-53rd Street to 59th Street

52. Tenth Avenue-Joe DiMaggio Highway to 59th Street

53. Third Avenue-Bowery/6th Street to 66th Street

54. Trinity Place-Morris Street to Liberty Street

55. Union Square East-14th Street to 17th Street

56. Union Square West-14th Street to 17th Street

57. University Place-8th Street to 14th Street

58. Vanderbilt Avenue-42nd Street to 47th Street

59. Varick Street-West Broadway to Houston Street

60. Washington Street-Joseph P. Ward Street to 14th Street

61. Water Street-Whitehall Street to Fulton Street

62. West Broadway-Vesey Street to Houston Street

63. West End Avenue-59th Street to 72nd Street

64. Whitehall Street-South Street to Broadway

65. William Street-Broad Street to Spruce Street

66. York Avenue-59th Street to 73rd Street

Note: All service roads abutting highways, parkways, expressway, etc. are considered to be critical streets from 7:00 AM to 8:00 PM.

(C) **North/South Roadways-Restricted Access 7:00 AM to 10:00 AM/4:00 PM to 8:00 PM**

1. Adam Clayton Powell Boulevard-Central Park North to 155th Street

2. Amsterdam Avenue-72nd Street to 181st Street

3. Broadway-79th Street to Ninth Avenue/Harlem River

4. Dyckman Street-Harlem River Drive to Henry Hudson Parkway

5. East End Avenue-79th Street to 90th Street

6. FDR Drive Southbound Service Road-92nd Street to 97th Street

7. First Avenue-66th Street to 125th Street

8. Fort Washington Avenue-Broadway/158th Street to 181st Street

9. Lenox Avenue-Central Park North to 145th Street

10. Riverside Drive-72nd Street to Dyckman Street

11. Second Avenue-66th Street to 128th Street/Harlem River Drive

12. St. Nicholas Avenue-Central Park North to 181st Street

13. Tenth Avenue-Dyckman Street to Broadway

14. Third Avenue-66th Street to 128th Street

15. West End Avenue-72nd Street to 106th Street

16. York Avenue-73rd Street to 92nd Street

(D) **North/South Roadways-Restricted Access 7:00 AM to 10:00 AM**

1. Central Park West (southbound)-110th Street/Cathedral Parkway to 72nd Street

2. Columbus Avenue (southbound)-Cathedral Parkway/110th Street to 66th Street

3. Frederick Douglass Boulevard (southbound)-155th Street to 110th Street

4. Park Avenue (southbound)-135th Street/Harlem River Drive to 66th Street

(E) **North/South Roadways-Restricted Access 4:00 PM to 8:00 PM**

1. Central Park West (northbound)-72nd Street to 110th Street/Cathedral Parkway

2. Frederick Douglass Boulevard (northbound)-110th Street/Cathedral Parkway to 155th Street

3. Park Avenue (northbound)-66th Street to 135th Street/Harlem River Drive

(ii) Brooklyn

(A) **Restricted Access 7:00 AM to 7:00 PM**

1. Adams Street-Fulton Street to Prospect Street

2. Belt Parkway (Shore Parkway)-Gowanus Expressway to Queens County Line

3. Boerum Place-Atlantic Avenue to Fulton Street

4. Brooklyn-Queens Expressway-Gowanus Expressway to Kosciusko Bridge

5. Cadman Plaza West-Old Fulton Street to Pierrepont Street

6. Court Street-Pierrepont Street to Atlantic Avenue

7. DeKalb Avenue-Carlton Avenue to Fulton Street

8. Flatbush Avenue-Concord Street/Manhattan Bridge to Grand Army Plaza

9. Fourth Avenue-Shore Road to Flatbush Avenue

10. Furman Street-Old Fulton Street to Atlantic Avenue

11. Gowanus Expressway-Verrazano Bridge to Brooklyn-Queens Expressway/Battery Tunnel

12. Hamilton Avenue-Third Avenue to Van Brunt Street

13. Hicks Street East (northbound)-Hamilton Avenue to Atlantic Avenue

14. Jackie Robinson Parkway-Jamaica Avenue to County Limits

15. Jay Street-Fulton Street to Prospect Street

16. Joralemon Street-Clinton Street to Flatbush Avenue

17. Myrtle Avenue-Jay Street to Carlton Avenue

18. Nostrand Avenue-Kings Highway to Flatbush Avenue

19. Ocean Parkway-Church Avenue to Brighton Beach Avenue

20. Old Fulton Street-Furman Street to Cadman Plaza West

21. Prospect Expressway-Gowanus Expressway to Church Avenue

22. Sands Street-Navy Street to Adams Street

23. Smith Street-Atlantic Avenue to Fulton Street

24. Third Avenue-65th Street to Flatbush Avenue

25. Tillary Street-Cadman Plaza West to Navy Street

26. Willoughby Street-Carlton Avenue to Adams Street

Note: All service roads abutting highways, parkways, expressway, etc. are considered to be critical streets from 7:00 AM to 7:00 PM.

(B) **Restricted Access 7:00 AM to 10:00 AM/4:00 PM to 7:00 PM**

1. 17th Street-Third Avenue to Fifth Avenue

2. 39th Street-Second Avenue to Dahill Road

3. 65th Street-Second Avenue to Avenue P

4. 86th Street-Fourth Avenue to McDonald Avenue

5. 92nd Street-Seventh Avenue to Fourth Avenue

6. Atlantic Avenue-Furman Street to Eldert Lane

7. Avenue U-Ocean Parkway to Ralph Avenue

8. Bay Parkway-Shore Parkway to Ocean Parkway

9. Bay Ridge Avenue-Shore Road to Seventh Avenue

10. Bedford Avenue-Flatbush Avenue to Broadway

11. Borinquen Place-Union Avenue to Marcy Avenue

12. Brighton Beach Avenue-Ocean Parkway to Coney Island Avenue

13. Broadway-Kent Avenue to Jamaica Avenue

14. Bushwick Avenue-Jamaica Avenue to Metropolitan Avenue

15. Caton Avenue-Fort Hamilton Parkway to Bedford Avenue

16. Church Avenue-Chester Avenue to Kings Highway

17. Columbia Street-Atlantic Avenue to Hamilton Avenue

18. Coney Island Avenue-Park Circle to Brighton Beach Avenue

19. Cooper Street-Broadway to Irwin Avenue

20. Cropsey Avenue-14th Avenue to Neptune Avenue

21. Division Street-Kent Avenue to Williamsburg Street East

22. Eastern Parkway-Grand Army Plaza to Atlantic Avenue

23. Emmons Avenue-Shore Boulevard to Knapp Street

24. Empire Boulevard-Flatbush Avenue to Utica Avenue

25. Fifth Avenue-Fourth Avenue/97th Street to Flatbush Avenue
26. Flatbush Avenue-Grand Army Plaza to Gil Hodges Memorial Bridge
27. Flatlands Avenue-Kings Highway to Pennsylvania Avenue
28. Flushing Avenue-Carlton Avenue to Cypress Avenue
29. Fort Hamilton Parkway-92nd Street to Park Circle
30. Fulton Street-Flatbush Avenue to Broadway
31. Gerritsen Avenue-Avenue U to Nostrand Avenue
32. Grand Street-Roebling Street to Gardner Avenue
33. Greenpoint Avenue-Manhattan Avenue to Kingsland Avenue
34. Havemeyer Street-Broadway to Metropolitan Avenue
35. Highland Boulevard-Bushwick Avenue to Robert Place
36. Humboldt Avenue-Greenpoint Avenue to Maspeth Avenue
37. Jamaica Avenue-Broadway to Eldert Lane
38. Kent Avenue-Williamsburg Street West to Calver Street
39. Kings Highway-Avenue P to Eastern Parkway
40. Kingsland Avenue-Greenpoint Avenue to Maspeth Avenue
41. Knapp Street-Emmons Avenue to Nostrand Avenue
42. Liberty Avenue-Eastern Parkway to 75th Street
43. Linden Boulevard-Bedford Avenue to 78th Street
44. Manhattan Avenue-Broadway to Commercial Street
45. Marcy Avenue-Broadway to Metropolitan Avenue
46. Marcy Avenue-Fulton Street to Flushing Avenue
47. McGuinness Boulevard-Ash Street/Pulaski Bridge to Meeker Avenue
48. Meeker Avenue-Gardner Avenue to Metropolitan Avenue
49. Metropolitan Avenue-Kent Avenue to Scott Avenue
50. Myrtle Avenue-Carlton Avenue to Wychoff Avenue
51. Nassau Street-Flatbush Avenue to Carlton Avenue
52. Neptune Avenue-Cropsey Avenue to Shore Boulevard

53. New Utrecht Avenue-86th Street to 39th Street

54. New York Avenue-Foster Avenue to Fulton Street

55. North Conduit Avenue-Atlantic Avenue to Sutter Avenue

56. Nostrand Avenue-Emmons Avenue to Kings Highway

57. Ocean Avenue-Emmons Avenue to Flatbush Avenue

58. Park Avenue-Navy Street to Classon Avenue

59. Parkside Avenue-Park Circle to Ocean Avenue/Flatbush Avenue

60. Pennsylvania Avenue-Belt Parkway to Jamaica Avenue

61. Prospect Avenue-Fort Hamilton Parkway to Third Avenue

62. Ralph Avenue-Avenue U to Flatlands Avenue

63. Remsen Avenue-Seaview Avenue to Utica Avenue

64. Rockaway Parkway-Canarsie Veteran's Circle to East New York Avenue

65. Rodney Street-Broadway to Metropolitan Avenue

66. Roebling Street-South 5th Street to Metropolitan Avenue

67. Second Avenue-Wakeman Place to 60th Street

68. Seventh Avenue-86th Street to 65th Street

69. South Conduit Avenue-Atlantic Avenue to Sutter Avenue

70. Stillwell Avenue-Surf Avenue to Avenue P

71. Surf Avenue-West 17th Street to Ocean Parkway

72. Third Avenue-Shore Road to 65th Street

73. Utica Avenue-Flatbush Avenue to Eastern Parkway

74. Washington Avenue-Lincoln Road to Flushing Avenue

(C) **Restricted Access 7:00 AM to 10:00 AM**

1. Hicks Street-Atlantic Avenue to Old Fulton Street

2. Smith Street-Hamilton Avenue to Atlantic Avenue

(D) **Restricted Access 4:00 PM to 7:00 PM**

1. Court Street-Atlantic Avenue to Hamilton Avenue

2. Hicks Street West (southbound)-Congress Street to Hamilton Avenue

(iii) Bronx

(A) **Restricted Access 7:00 AM to 7:00 PM**

1. Bronx River Parkway-Bruckner Expressway to 238th Street

2. Bruckner Boulevard-Third Avenue to Bronx River Avenue

3. Bruckner Expressway-Major Deegan Expressway to Hutchinson River Parkway

4. Cross Bronx Expressway-Throgs Neck Expressway to Major Deegan Expressway

5. East 138th Street-Exterior Street to Bruckner Boulevard

6. Henry Hudson Parkway-Henry Hudson Bridge to Westchester County Line

7. Hutchinson River Parkway-Bronx-Whitestone Bridge to Westchester County Line

8. Major Deegan Expressway-Bruckner Expressway to Westchester County Line

9. Mosholu Parkway-Henry Hudson Parkway to Dr. Theodore Kazimiroff Boule- vard

10. New England Thruway-Hutchinson River Parkway to Westchester County Line

11. Sheridan Expressway-Bruckner Expressway to Cross Bronx Expressway

12. Throgs Neck Expressway-Throgs Neck Bridge to Bruckner Expressway

Note: All service roads abutting highways, parkways, expressway, etc. are considered to be critical streets from 7:00 AM to 7:00 PM.

(B) **Restricted Access 7:00 AM to 10:00 AM/4:00 PM to 7:00 PM**

1. Bailey Avenue-Sedgwick Avenue to Van Cortlandt Park South

2. Barretto Avenue-Garrisson Avenue to Bruckner Boulevard

3. Bartow Avenue-Gun Hill Road to Hutchinson River Parkway East

4. Baychester Avenue-East 241st Street to Hutchinson River Parkway West

5. Boston Road-Third Avenue to Ropes Avenue

6. Broadway-West 225th Street to West 262nd Street

7. Bronx Boulevard-East 233rd Street to Burke Avenue

8. Bronx Park East-Burke Avenue to White Plains Road

9. Bronx River Avenue-Story Avenue to Westchester Avenue

10. Bruckner Boulevard-Bronx River Avenue to Westchester Avenue

11. Brush Avenue-Cross Bronx Expressway to Lafayette Avenue

12. Burnside Avenue-Sedgwick Avenue to Webster Avenue

13. Castle Hill Avenue-East Tremont Avenue to Hart Street

14. City Island Avenue-Sutherland Street to Belden Street

15. City Island Road-Pelham Parkway to Sutherland Street

16. Conner Avenue-Tillotson Avenue to East 233rd Street

17. Co-op City Boulevard-Tillotson Avenue to Bartow Avenue

18. Dewey Avenue-Balcom Avenue to Hollywood Avenue

19. Dr. Theodore Kazimiroff Boulevard-East Fordham Road to Bronx Park East

20. Dyre Avenue-Lustre Street to Boston Road

21. East 149th Street-River Avenue to Southern Boulevard

22. East 161st Street-Jerome Avenue to Third Avenue

23. East 163rd Street-Webster Avenue to Bruckner Boulevard

24. East 177th Street-Ferris Avenue to Harding Avenue

25. East 177th Street-Rodman Place to Rosedale Avenue

26. East 222nd Street-Bronx Boulevard to Baychester Avenue

27. East 233rd Street-Jerome Avenue to Boston Road

28. East 241st Street-Bullard Avenue to Baychester Avenue

29. Eastchester Road-East 222nd Street to Williamsbridge Road

30. Edson Avenue-Boston Road to East Gun Hill Road

31. Edward L. Grant Highway-Jerome Avenue to University Avenue

32. Featherbed Lane-University Avenue to Macombs Road

33. Ferris Avenue-Bronx Whitestone Bridge Plaza to Lafayette Avenue

34. Fordham Road-Cedar Avenue to Boston Road

35. Garrisson Avenue-Leggett Avenue to Edgewater Road

36. Grand Avenue-Macombs Road to West 177th Street

37. Grand Concourse-138th Street to Mosholu Parkway

38. Gun Hill Road-Mosholu Parkway Service Road to Stillwell Avenue

39. Hunts Point Avenue-Halleck Street to Bruckner Boulevard

40. Hutchinson River Parkway East-Baychester Avenue to Bartow Avenue

41. Hutchinson River Parkway West-Baychester Avenue to Bartow Avenue

42. Jarvis Avenue-Burke Avenue to Country Club Road

43. Jerome Avenue-East 161st Street to East 233rd Street

44. Kingsbridge Road-Bailey Avenue to East Fordham Road

45. Lafayette Avenue-Brush Avenue to Ellsworth Avenue

46. Lafayette Avenue-Edgewater Road to Bruckner Boulevard

47. Leggett Avenue-Garrisson Avenue to Bruckner Boulevard

48. Longwood Avenue-Garrisson Avenue to Bruckner Boulevard

49. Melrose Avenue-East 149th Street to Brook Avenue

50. Metropolitan Avenue-Westchester Avenue to Castle Hill Avenue

51. Middletown Road-Westchester Avenue to Bruckner Boulevard

52. Morris Park Avenue-East 177th Street to Eastchester Road

53. Mosholu Avenue-West 254th Street to Broadway

54. Mosholu Parkway Service Road-Webster Avenue to West Gun Hill Road/Van Cortlandt Park South

55. Nereid Avenue-Bronx Boulevard to Seton Avenue

56. Pelham Parkway-Boston Road to Burr Avenue

57. Pelham Parkway-Hutchinson River Parkway to City Island Road

58. Riverdale Avenue-West 252nd Street to West 263rd Street

59. Rosedale Avenue-Sound View Avenue to East Tremont Avenue

60. Sedgwick Avenue (Dr. Martin Luther King Boulevard)-Jerome Avenue to Mosholu Parkway

61. Shore Road-City Island Road to Park Drive

62. Sound View Avenue-Metcalf Avenue to White Plains Road

63. Southern Boulevard-Bruckner Boulevard to East Fordham Road

64. Third Avenue-Bruckner Boulevard to Webster Avenue/West Fordham Road

65. Throgs Neck Boulevard-Harding Avenue to Layton Avenue

66. Tillotson Avenue-Eastchester Road to Hutchinson Avenue

67. Tremont Avenue-Sedgwick Avenue to Schurz Avenue

68. Union Port Road-White Plains Road to Westchester Avenue

69. University Avenue-Sedgwick Avenue (Dr. Martin Luther King Boulevard) to Kingsbridge Road

70. Van Cortlandt Park South-Broadway to Mosholu Parkway Service Road

71. Webster Avenue-Brook Avenue to Nereid Avenue

72. West 225th Street-Broadway to Bailey Avenue

73. West 230th Street-Broadway to Bailey Avenue

74. West 230th Street-East Henry Hudson Parkway to West Henry Hudson Parkway Service Roads

75. West 231st Street-Broadway to Bailey Avenue

76. West 232nd Street-East Henry Hudson Parkway to West Henry Hudson Parkway Service Roads

77. West 233rd Street-Broadway to Bailey Avenue

78. West 234th Street-Broadway to Bailey Avenue

79. West 238th Street-Broadway to Bailey Avenue

80. West 239th Street-East Henry Hudson Parkway to West Henry Hudson Parkway Service Roads

81. West 246th Street-East Henry Hudson Parkway to West Henry Hudson Parkway Service Roads

82. West 252nd Street-East Henry Hudson Parkway to West Henry Hudson Parkway Service Roads

83. West 256th Street-East Henry Hudson Parkway to West Henry Hudson Parkway Service Roads

84. Westchester Avenue-Third Avenue to Bruckner Expressway

85. White Plains Road-East 243rd Street to Sound View Avenue

86. Whitlock Avenue-Westchester Avenue to East 163rd Street

87. Williamsbridge Road-White Plains Road to Westchester Avenue

88. Willis Avenue-Bruckner Boulevard to 149th Street

(iv) Queens

(A) **Restricted Access 7:00 AM to 7:00 PM**

1. Belt Parkway-Laurelton Parkway to Brooklyn County Line

2. Brooklyn-Queens Expressway-Kosciusko Bridge to Grand Central Parkway

3. Clearview Expressway-Cross Island Parkway to Grand Central Parkway

4. Cross Island Parkway-Bronx-Whitestone Bridge Approach to Southern State Parkway

5. Grand Central Parkway-Triboro Plaza to Nassau County Line

6. Jackie Robinson Parkway-Brooklyn County Line to Grand Central Parkway/Van Wyck Expressway Interchange

7. JFK Expressway-Belt Parkway to JFK Airport

8. Laurelton Parkway-Southern State Parkway to Belt Parkway

9. Long Island Expressway-Brooklyn-Queens Expressway to Nassau County Line (*Restricted Access 6:00 AM to 8:00 PM)

10. Nassau Expressway-Rockaway Boulevard to Belt Parkway

11. Queens Plaza North-Northern Boulevard to Crescent Street

12. Queens Plaza South-Crescent Street to Jackson Avenue

13. Van Wyck Expressway-Grand Central Parkway/Whitestone Expressway to JFK Airport

14. Whitestone Expressway-Cross Island Parkway to Grand Central Parkway/Van Wyck Expressway Interchange

Note: All service roads abutting highways, parkways, expressway, etc. are considered to be critical streets from 7:00 AM to 7:00 PM.

(B) **Restricted Access 7:00 AM to 10:00 AM/4:00 PM to 7:00 PM**

1. 14th Avenue-College Point Boulevard to Francis Lewis Boulevard

2. 21st Street-Borden Avenue to Ditmars Boulevard

3. 27th Street-Queens Plaza South to 44th Drive

4. 31st Drive-Astoria Boulevard to Ditmars Boulevard

5. 31st Street-39th Avenue to Ditmars Boulevard

6. 34th Avenue-Vernon Boulevard to Northern Boulevard

7. 37th Avenue-108th Street to 114th Street

8. 37th Avenue-College Point Boulevard to Union Avenue

9. 38th Avenue-College Point Boulevard to Union Avenue

10. 39th Avenue-College Point Boulevard to Union Avenue

11. 39th Street-Northern Boulevard to Hunters Point Avenue

12. 44th Drive-Vernon Boulevard to Jackson Avenue

13. 48th Street-Greenpoint Avenue to Northern Boulevard

14. 49th Avenue-Vernon Boulevard to 21st Street

15. 50th Avenue-Vernon Boulevard to 21st Street

16. 51st Avenue-Hunters Point Avenue to 58th Street

17. 58th Street-Maspeth Avenue to Queens Boulevard

18. 69th Road-Queens Boulevard to Park Drive East

19. 69th Street-Broadway to Metropolitan Avenue

20. 73rd Avenue-Kissena Boulevard to Springfield Boulevard

21. 80th Street-Cooper Avenue to Furmanville Avenue

22. 82nd Street-Ditmars Boulevard to Roosevelt Avenue

23. 94th Street-Ditmars Boulevard to 32nd Avenue

24. 108th Street-Astoria Boulevard to Queens Boulevard

25. 114th Street-Northern Boulevard to 44th Avenue

26. 130th Avenue-238th Street to Brookville Boulevard

27. 130th Street-South Conduit Avenue to North Conduit Avenue

28. 150th Street-Rockaway Boulevard to South Conduit Avenue

29. 164th Street-Hillside Avenue to Northern Boulevard

30. 225th Street-North Conduit Avenue to South Conduit Avenue

31. Archer Avenue-138th Street to Merrick Boulevard

32. Astoria Boulevard-82nd Street to Northern Boulevard

33. Astoria Boulevard North-31st Street to 82nd Street

34. Astoria Boulevard South-31st Street to 82nd Street

35. Atlantic Avenue-Eldert Lane to 94th Avenue

36. Beach 20th Street-Seagirt Boulevard to Mott Avenue

37. Beach Channel Drive-Cronstone Avenue to Horton Avenue

38. Bell Boulevard-158th Street to 86th Avenue

39. Booth Memorial Avenue-College Point Boulevard to Long Island Expressway

40. Borden Avenue-Vernon Boulevard to Greenpoint Avenue

41. Braddock Avenue-Springfield Boulevard to Jericho Turnpike

42. Broadway-Vernon Boulevard to Queens Boulevard

43. Brookville Boulevard-South Conduit Avenue to Francis Lewis Boulevard

44. Caldwell Avenue-69th Street to Dry Harbor Road

45. Central Avenue-Mott Avenue to Virginia Street

46. College Point Boulevard-14th Avenue to Long Island Expressway

47. Commonwealth Boulevard-Littleneck Parkway to Hillside Avenue

48. Continental Avenue-Metropolitan Avenue to Queens Boulevard

49. Cooper Avenue-Irving Avenue to Woodhaven Boulevard

50. Crescent Street-39th Avenue to 44th Drive

51. Cronston Avenue-Beach 169th Street to Beach Channel Drive

52. Cross Bay Boulevard-Woodhaven Boulevard to Rockaway Beach Boulevard

53. Cypress Hills Street-Fresh Pond Road to Jamaica Avenue

54. Ditmars Boulevard-21st Street to Astoria Boulevard

55. Douglaston Parkway-Northern Boulevard to Winchester Boulevard

56. Dry Harbor Road-Furmanville Avenue to Woodhaven Boulevard

57. Edgemere Avenue-Fernside Place to Rockaway Beach Boulevard

58. Eliot Avenue-Metropolitan Avenue to Queens Boulevard

59. Elmhurst Avenue-108th Street to Broadway

60. Farmers Boulevard-Hollis Avenue to Rockaway Boulevard

61. Flushing Avenue-Cypress Avenue to Grand Avenue

62. Francis Lewis Boulevard-15th Avenue to Hooks Creek Boulevard

63. Fresh Pond Road-Maspeth Avenue to Myrtle Avenue

64. Grand Avenue-47th Street to Queens Boulevard

65. Greenpoint Avenue-Review Avenue to Queens Boulevard

66. Guy R. Brewer Boulevard-Jamaica Avenue to Rockaway Boulevard

67. Hempstead Turnpike-Jamaica Avenue to Cross Island Parkway

68. Hillside Avenue-Myrtle Avenue to Langdale Street

69. Hollis Avenue-Jamaica Avenue to Springfield Boulevard

70. Hollis Court Boulevard-Utopia Parkway to Francis Lewis Boulevard

71. Hollis Hill Terrace-73rd Avenue to 86th Avenue

72. Home Lawn Street-Hillside Avenue to 82nd Road

73. Hook Creek Boulevard-Francis Lewis Boulevard to Merrick Boulevard

74. Hoyt Avenue North-21st Avenue to 31st Street

75. Hoyt Avenue South-21st Avenue to 31st Street

76. Hunters Point Avenue-21st Street to 51st Avenue

77. Jackson Avenue-51st Avenue to Queens Boulevard

78. Jamaica Avenue-Eldert Lane to Jericho Turnpike

79. Jewel Avenue-108th Street to 73rd Avenue

80. Junction Boulevard-32nd Avenue to Queens Boulevard

81. Kissena Boulevard-Main Street to Parsons Boulevard

82. Laurel Hill Boulevard-Review Avenue to Queens Boulevard

83. Lefferts Boulevard-South Conduit Avenue to Queens Boulevard

84. Liberty Avenue-75th Street to Farmers Boulevard

85. Linden Boulevard-Rockaway Boulevard to Cross Island Parkway

86. Linden Place-23rd Avenue to Northern Boulevard

87. Little Neck Parkway-Jamaica Avenue to Marathon Parkway

88. Main Street-Northern Boulevard to Queens Boulevard

89. Marathon Parkway-Littleneck Parkway to Commonwealth Boulevard

90. Maurice Avenue-Maspeth Avenue to 69th Street

91. Merrick Boulevard-Hillside Avenue to Hook Creek Boulevard

92. Metropolitan Avenue-Onderdonk Avenue to Jamaica Avenue

93. Myrtle Avenue-Wychoff Avenue to Jamaica Avenue

94. North Conduit Avenue-Sutter Avenue to Hook Creek Boulevard

95. Northern Boulevard-Queens Plaza North to City Limits

96. Park Drive East-Union Turnpike to 136th Street

97. Parsons Avenue-Parsons Boulevard to Utopia Parkway

98. Parsons Boulevard-North Drive to Jamaica Avenue

99. Queens Boulevard-Jackson Avenue to Jamaica Avenue

100. Queens Plaza East-Queens Boulevard to 39th Avenue

101. Queens Plaza North-Crescent Street to 21st Street

102. Queens Plaza South-Vernon Boulevard to Crescent Street

103. Rockaway Beach Boulevard-Beach 149th Street to Beach Channel Drive

104. Rockaway Boulevard-Eldert Lane to 3rd Street

105. Rockaway Freeway-Beach Channel Drive to Regina Avenue

106. Rockaway Point Boulevard/Rockaway Breezy Boulevard-Beach 222nd Street to Beach 193rd Street

107. Roosevelt Avenue-Queens Boulevard to Northern Boulevard

108. Sanford Avenue-College Point Boulevard to Northern Boulevard

109. Seagirt Boulevard-Edgemere Avenue to Beach 6th Street

110. Skillman Avenue-Hunters Point Avenue to Roosevelt Avenue

111. South Conduit Avenue-Sutter Avenue to Hook Creek Boulevard

112. South Road-Sutphin Boulevard to Liberty Avenue

113. Spencer Avenue-86th Avenue to Springfield Boulevard

114. Springfield Boulevard-Northern Boulevard to 47th Avenue

115. State Road-Beach 193rd Street to Beach 169th Street

116. Steinway Street-Ditmars Boulevard to Northern Boulevard

117. Sutphin Boulevard-Hillside Avenue to Rockawy Boulevard

118. Thomson Avenue-Jackson Avenue to Van Dam Street

119. Union Street-Sanford Avenue to Willets Point Boulevard

120. Union Turnpike-City Limits to Myrtle Avenue

121. Union Turnpike-Myrtle Avenue to Langdale Street

122. Utopia Parkway-14th Avenue to 82nd Road

123. Van Dam Street-Greenpoint Avenue to Skillman Avenue

124. Vernon Boulevard-21st Street to 51st Avenue

125. West Alley Road-230th Street to Douglaston Parkway

126. Willets Point Boulevard-Union Street to Utopia Parkway

127. Woodhaven Boulevard-Queens Boulevard to Liberty Avenue

128. Yellowstone Boulevard-Woodhaven Boulevard to Queens Boulevard

(v) Staten Island

(A) **Restricted Access 7:00 AM to 7:00 PM**

1. Amboy Road-Richmond Road to Arden Avenue

2. Arthur Kill Road-Richmond Road to Bloomingdale Road

3. Bay Street-School Road to Richmond Terrace

4. Forest Avenue-Victory Boulevard to Richmond Avenue

5. Forest Hill Road-Richmond Avenue to Willowbrook Road

6. Hylan Boulevard-Midland Avenue to Tysens Lane

7. Richmond Road-Targee Street to Arthur Kill Road

8. Richmond Terrace-Bay Street to Morningstar Road

9. Staten Island Expressway-Verrazano Narrows Bridge to Goethals Bridge

10. Todt Hill Road-Richmond Road to Westwood Avenue

11. Travis Avenue-Richmond Avenue to South Avenue

12. Victory Boulevard-Bay Street to West Service Road

13. West Shore Expressway-Richmond Parkway to Staten Island Expressway

14. Woolley Avenue-Willowbrook Road to North Gannon Avenue

Note: All service roads abutting highways, parkways, expressway, etc. are considered to be critical streets from 7:00 AM to 7:00 PM.

(B) **Restricted Access 7:00 AM to 10:00 AM/4:00 PM to 7:00 PM**

1. Amboy Road-Arden Avenue to Main Street

2. Arden Avenue-Hylan Boulevard to Arthur Kill Road

3. Arthur Kill Road-Bloomingdale Road to Main Street

4. Bloomingdale Road-Amboy Road to Arthur Kill Road

5. Bradley Avenue-Brielle Avenue to Victory Boulevard

6. Brielle Avenue-Manor Road to Rockland Avenue

7. Castleton Avenue-Jersey Street to Port Richmond Avenue

8. Clarke AvenueAmboy Road to Arthur Kill Road

9. Clove Road-Hylan Boulevard to Richmond Road

10. Clove Road-Narrows Road South to Richmond Terrace
11. Dr. Martin Luther King Jr. Expressway-Victory Boulevard to Bayonne Bridge
12. Fahy Avenue-South Avenue to Richmond Avenue
13. Fingerboard Road-Hylan Boulevard to Bay Street
14. Forest Avenue-Richmond Avenue to South Avenue
15. Giffords Lane-Amboy Road to Arthur Kill Road
16. Goethals Road North-Richmond Avenue to Western Avenue
17. Howard Avenue-Clove Road to Louis Street
18. Huguenot Avenue-Hylan Boulevard to Arthur Kill Road
19. Hylan Boulevard-Bay Street to Midland Avenue
20. Hylan Boulevard-Tysens Lane to Arden Avenue
21. Jewett Avenue-Victory Boulevard to Richmond Terrace
22. Korean War Memorial Parkway/Richmond Parkway-Outerbridge Crossing to Arthur Kill Road
23. Little Clove Road-Clove Road to Victory Boulevard
24. Manor Road-Rockland Avenue to Forest Avenue
25. Midland Avenue-Father Capodanno Boulevard to Richmond Road
26. Morningstar Road-Forest Avenue to Richmond Terrace
27. Narrows Road North-Fingerboard Road to Clove Road
28. Narrows Road South-Clove Road to Lily Pond Avenue
29. Nelson Avenue-Hylan Boulevard to Amboy Road
30. New Dorp Lane-Mill Road to Richmond Road
31. North Gannon Avenue-Slosson Avenue to Victory Boulevard
32. Ocean Terrace-Manor Road to Milford Drive
33. Page Avenue-Hylan Boulevard to South Bridge Street
34. Port Richmond Avenue-Forest Avenue to Richmond Terrace
35. Richmond Avenue-Arthur Kill Road to Forest Avenue
36. Richmond Avenue-Hylan Boulevard to Arthur Kill Road
37. Richmond Hill Road-Richmond Road to Richmond Avenue

38. Richmond Terrace-South Avenue to Morningstar Road

39. Rockland Avenue-Richmond Road to Richmond Avenue

40. Schmidts Lane-Manor Road to Slosson Avenue

41. Seguine Avenue-Hylan Boulevard to Amboy Road

42. Slosson Avenue-Westwood Avenue to Martling Avenue

43. South Avenue-Chelsea Road to Richmond Terrace

44. South Gannon Avenue-Victory Boulevard to Manor Road

45. West Fingerboard Road-Hylan Boulevard to Richmond Road

46. Western Avenue-Gulf Avenue to Richmond Terrace

47. Willowbrook Road-Victory Boulevard to Forest Avenue

48. Windsor Road-Little Clove Road to Slosson Avenue

(C) **Restricted Access 7:00 AM to 10:00 AM**

1. Father Capodanno Boulevard (northbound)-Midland Avenue to Ocean Avenue

2. Lily Pond Avenue (northbound)-Ocean Avenue to Tompkins Avenue

3. School Road (northbound)-Tompkins Avenue to Bay Street

4. Targee Street-Richmond Road to Van Duzer Street

(D) **Restricted Access 4:00 PM to 7:00 PM**

1. Ebbitts Street-Mill Road to Hylan Boulevard

2. Father Capodanno Boulevard (southbound)-Ocean Avenue to Lincoln Avenue

3. Lily Pond Avenue (southbound)-Tompkins Avenue to Ocean Avenue

4. Lincoln Avenue-Father Capodanno Boulevard to Hylan Boulevard

5. School Road (southbound)-Bay Street to Tompkins Avenue

6. St. Paul's Avenue-Hyatt Street to Van Duzer Street

7. Tysens Lane-Mill Road to Hylan Boulevard

8. Van Duzer Street-St. Paul's Avenue to Richmond Terrace

HISTORICAL NOTE

Section amended City Record Dec. 21, 2001 §3, eff. Jan. 20, 2002. [See Note 1]

Subd. (a) par (5) amended City Record June 7, 2007 §10, eff. July 7, 2007. [See T34 §2-02 Note 5]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 21, 2001:

Section 2-07 of the Highway Rules is being amended in order that the Agency may better monitor the opening of underground street access covers, gratings and transformer vaults during emergencies in restricted areas (now called critical roadways) during restricted times. The access covers were changed from "utility" to "underground street" to reflect the fact that many of these covers now belong to entities other than utilities, such as cable and telecommunications companies. The proposed rules require permittees to fax their emergency number requests to the Department. Permittees are also required to notify the Department as well as the Police and Fire Departments when the work results in a full roadway closing. Permittees must post a flagperson or utilize an approved traffic maintenance and protection plan for enhanced traffic mitigation and vehicular/pedestrian safety while actively working where the work results in the closing of a traffic lane.

The proposed rules amend §2-07(c)(5)(i), which lists the times and days on which work in subsurface installations is restricted on critical streets in the City. This revision is part of the Department's ongoing efforts to improve air quality and should significantly contribute to attainment of National Ambient Air Quality Standards since traffic congestion resulting from lane closures due to access cover openings will decrease. These proposed changes will afford permittees increased access as fewer streets will remain restricted and time of day restrictions have been decreased for some streets.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-08 Newsracks.

(a) **Definitions.** For purposes of this section, the following terms shall have the following meanings:

(1) Newsrack. "Newsrack" shall mean any self-service or coin-operated box, container or other dispenser installed, used or maintained for the display, sale or distribution of newspapers or other written matter to the general public.

(2) Person. "Person" shall mean a natural person, partnership, corporation, limited liability company or other association.

(3) Sidewalk. "Sidewalk" shall mean that portion of a street between the curb lines or the lateral lines of a roadway and the adjacent property lines, but not including the curb, intended for the use of pedestrians.

(4) Crosswalk. "Crosswalk" shall mean that part of a roadway, whether marked or unmarked, which is included within the extension of the sidewalk lines between opposite sides of the roadway at an intersection.

(5) Crosswalk area. "Crosswalk area" shall mean that area of the sidewalk bounded by the extension of the lines of a crosswalk onto the sidewalk up to the building or property line.

(6) Corner area. "Corner area" shall mean that area of a sidewalk encompassed by the extension of the building lines to the curb on each corner.

(7) Board. "Board" shall mean the environmental control board of the city of New York.

(8) Multiple-vending newsrack. A newsrack designed to hold two or more different publications.

(9) Owner. When applied to newsracks, "owner" shall mean a person who owns or is in control of one or more newsracks placed, installed or maintained on a sidewalk. Each newsrack shall have a single owner for purposes of complying with this section and the provisions of §19-128.1 of the New York City Administrative Code.

(b) **Placement.** (1) **Manner.**

(i) Newsracks shall be weighted down on all sidewalks in such a way as to insure that the newsrack cannot be tipped over.

(ii) Newsracks shall not be bolted to the sidewalk, except that multiple-vending newsracks may be bolted pursuant to a permit from the Department, except as provided in paragraph 2 of this subdivision b.

(iii) A newsrack may not be chained to property owned or maintained by the city, except that newsracks may be chained to lampposts (except for decorative lampposts). A newsrack so chained must not be in an unlawful location as specified in subdivision (c) of this section. To the extent an owner seeks to chain such newsrack to property not owned or maintained by the city, the consent of the owner of or person responsible for such property is required. In all cases where the use of chains to secure newsracks is permitted, such chains shall be made of galvanized steel with a plastic or rubber protective coating, at least 0.14 inches thick, and shall allow a distance of no more than eight (8) inches between the newsrack and the street furniture to which it is chained.

(2) **Distinctive sidewalks.** Multiple-vending newsracks may be bolted to sidewalks comprised of distinctive material, including, but not limited to, granite, terrazzo or bluestone, pursuant to a permit from the Department and provided that the written permission of the property owner or other entity that installed the distinctive sidewalk is obtained in advance of such bolting.

(3) **Sidewalk repair and restoration.** An owner shall be responsible for any damage caused or repairs necessitated by the installation, presence or maintenance of such newsrack. Such owner also shall be responsible for any damage caused or repairs necessitated by the removal of a newsrack by either such owner or by an authorized officer or employee of the Department or of any city agency who is designated by the Commissioner, or by a police officer. Such repairs shall be made promptly and in accordance with the Department's specifications.

(4) **Notification to the Department of location of newsracks.**

(i) Where a newsrack has been placed or installed on a sidewalk before September 13, 2004, the owner shall, by November 1, 2004, have notified the Department by facsimile, electronically or by other means as directed by the Commissioner and on a form approved or provided by the Commissioner, of

(A) the location of such newsrack;

(B) the name of the newspaper(s) or written matter to be offered for distribution in such newsrack; and

(C) the name, address, telephone number, and e-mail address of the owner. The name and address shall be identical to the name and address for mailing of process in the owner's Certificate of Incorporation or Application for Authority to do business in New York State. The owner shall represent that such newsracks comply with the provisions of this section and §19-128.1 of the New York City Administrative Code.

(ii) Any other owner shall, at least seven (7) days prior to the installation of its first newsrack, provide to the Department the indemnification notification and insurance certification required pursuant to subdivision f of this section and the information required in clauses (B) and (C) of subparagraph (i) of this paragraph.

(iii) Subsequent to the initial notification required by subparagraphs (i) and (ii) of this paragraph, notification shall

be made on an annual basis by November 1 of each year and shall include the information in clauses (A), (B), and (C) of subparagraph (i) of this paragraph.

(iv) If the number of newsracks owned or controlled by an owner increases or decreases by ten (10) percent or more of the number of newsracks that have been included in the most recent notification required to be submitted by such owner, such owner shall also be required to submit the information in clauses (A), (B), and (C) of subparagraph (i) of this paragraph within seven (7) days of such change.

(v) An owner shall advise the Department of any change in his, her or its name, address, telephone number, or email address within seven (7) days of such change including any changes to the Certificate of Incorporation or Application for Authority to do business in New York State.

(c) **Unlawful locations.** No owner shall install, use or maintain any newsrack in any of the following locations:

(1) within fifteen (15) feet of any fire hydrant;

(2) in any driveway or within five (5) feet of any driveway;

(3) in any curb cut designed to facilitate street access by disabled persons or within two feet of any such curb cut;

(4) within fifteen (15) feet of the entrance or exit of any railway station or subway station, except that a newsrack that otherwise complies with this subdivision may be placed against the rear of the station entrance or exit, but not against the sides;

(5) within any bus stop;

(6) within a crosswalk area;

(7) within a corner area or within five (5) feet of any corner area;

(8) on any surface where such installation or maintenance will cause damage to or interference with the use of any pipes, vault areas, telephone or electrical cables or other similar locations;

(9) on any cellar door, grating, utility maintenance cover or other similar locations;

(10) on, in or over any part of the roadway of any public street;

(11) unless eight (8) feet of sidewalk width is preserved for unobstructed pedestrian passage;

(12) in any park or on any sidewalk immediately contiguous to a park where such sidewalk is an integral part of the park design;

(13) on any area of lawn, flowers, shrubs, trees or other landscaping or in such a manner that use of the newsrack would cause damage to such landscaping;

(14) where such placement, installation or maintenance endangers the safety of persons or property;

(15) at any distance less than eighteen (18) inches or more than twenty-four (24) inches from the face of the curb, measured to the side of the newsrack closest to the curb (This paragraph shall not apply to a newsrack placed against the rear of the entrance or exit of a subway or railway as provided in paragraph 4, above.);

(16) within five (5) feet of a canopy; and

(17) within fifteen (15) feet of a sidewalk newsstand.

(d) **Size, shape and appearance.**

(1) **Dimensions.** No newsrack may be higher than fifty (50) inches, wider than twenty-four (24) inches or deeper than twenty-four (24) inches. Notwithstanding the above, no multiple-vending newsrack shall be higher than sixty (60) inches, wider than ninety (90) inches or deeper than thirty-six (36) inches.

(2) **Identifying information required.** The owner shall affix his, her or its name, address, telephone number and e-mail address, if any, on the newsrack in a readily visible location and shall conform such information to any changes required to be reported to the department in accordance with the provisions of paragraph (4) of subdivision (b) of this section. In no event shall a post office box be considered an acceptable address for purposes of this paragraph.

(3) **Advertisements prohibited.** The surfaces of the newsrack shall not include any advertisement, whether painted, posted, or otherwise affixed thereto, or be used for promotional purposes, except for announcing the name and/or website of the newspaper or other written matter offered for distribution in such newsrack.

(4) **Electricity.** No electricity shall be run into a newsrack nor shall any connection for electrical purposes be installed in or on a newsrack.

(e) **Maintenance.** The owner shall be responsible for the following:

(1) **Certification.** The owner shall certify to the commissioner on forms prescribed by the commissioner that each newsrack has been repainted, or that best efforts have been made to remove graffiti and other unauthorized writing, painting, drawing or other markings or inscriptions, at least once during the immediately preceding four (4) month period. Such certification shall be submitted on January 15, May 15 and September 15 of each year for the four (4) month period ending on the last day of the preceding month. A separate certification form shall be submitted for the newsracks dispensing a particular publication.

(2) **Logs and records.** Each owner shall maintain for each publication a separate log in which the measures taken to remove graffiti and other unauthorized writing, painting, drawing or other markings or inscriptions and the dates and times when they are taken are recorded in accordance with a format approved or set forth by the commissioner. Records shall be maintained for a period of three (3) years documenting the use of materials, employees, contractors, other resources and expenditures used for the purpose of demonstrating the repainting or best efforts to remove graffiti and other unauthorized writing, painting, drawing or other markings or inscriptions. Such logs and records shall be made available to the department for inspection and copying during normal and regular business hours and shall be delivered to the department upon request.

(3) **Refuse.** No refuse shall accumulate in a newsrack nor shall any newsrack deteriorate into an unsanitary condition. The owner shall remove refuse within forty-eight (48) hours of receipt of a notice of correction from the Commissioner, which shall be deemed to have been received five (5) days from the date on which it was mailed by the Commissioner.

(4) **Damage.** A damaged newsrack or one in need of repair shall be repaired, replaced or removed within seven (7) business days of receipt of a notice of correction regarding such damage or need for repair, except that if such damaged newsrack poses a danger to persons or property, it shall be made safe within twenty-four (24) hours following receipt of such notice of correction, which shall be deemed to have been received five (5) days from the date on which it was mailed by the Commissioner.

(5) **Continuous use.** In no event shall the owner fail to keep such newsrack supplied with written matter for a period of more than seven (7) consecutive days without securing the door so as to prevent the deposit of refuse therein. Notwithstanding the securing of the door, in no event shall such newsrack remain empty for a total period of more than thirty (30) consecutive days. Any newsrack empty for longer than such period shall be deemed abandoned.

(f) **Indemnification and insurance.**

(1) **Indemnification.** The owner of a newsrack placed or installed on any sidewalk shall indemnify and hold the City harmless from any and all losses, costs, damages, expenses, claims, judgments or liabilities that the City may incur by reason of the placement, installation or maintenance of such newsrack, except to the extent such damage results from the negligence or intentional act of the city. In addition to the insurance certificate submitted pursuant to paragraph 3 of this subdivision f, the owner shall submit by regular mail an indemnification notification on a form provided by the Commissioner.

(2) **Insurance.** The owner shall procure and maintain, for as long as the newsrack remains on City property, a commercial general liability insurance policy from an insurer licensed to do business in the State of New York in his or her or its name, which names the City of New York, its departments, boards, officers, employees and agents as additional insureds for the specific purpose of indemnifying and holding harmless those additional insureds from and against any losses, costs, damages, expenses, claims, judgments or liabilities that result from or arise out of the placement, installation and/or maintenance of such newsrack. The minimum limits of such insurance coverage shall be no less than $300,000 combined single limit for bodily injury, including death, and property damage, dedicated exclusively to the liabilities relating to such newsracks, except that any person who maintains an average of 100 or more newsracks at any one time shall maintain a minimum insurance coverage of $1 million dedicated exclusively to such liabilities. All insurance policies shall be endorsed to provide that (a) the City shall have no obligation whatever to provide notice to the insurance company of any occurrence or claim, and that the City's notice to the insurance company of the commencement of a lawsuit against the City, if required, shall be deemed timely if received within 180 days thereof; and (b) notice by any other insured of the commencement of any lawsuit against such insured shall constitute notice on behalf of the City as well.

(3) **Insurance certificate.** An insurance certificate shall be submitted to the Commissioner by the owner within sixty (60) days after the effective date of §19-128.1 of the New York City Administrative Code, and thereafter, by December 31 of each year or by the expiration date of the policy, whichever is earlier, certifying that the insurance required by paragraph 2 of this subdivision f is in place for all newsracks owned by such person. When a newsrack that is not covered by such insurance is placed or installed on a sidewalk after the effective date of such §19-128.1, the owner shall, within sixty (60) days after the effective date of §19-128.1 of the New York City Administrative Code or within ten (10) days of the installation of such newsrack, whichever is later, provide to the Department the insurance certification required pursuant to this subdivision f. Acceptance by the Commissioner of any insurance certificate, whether or not conforming to the requirements of paragraph 2 of this subdivision f, shall not relieve the owner of his, her or its obligation to actually provide such insurance. The certificate shall provide that no cancellation, termination or alteration shall be made without thirty (30) days' advance written notice to the Department.

(g) **Violations and removal.** Violations of the provisions of §19-128.1 of the Administrative Code or these rules shall be enforced and the newsracks shall be removed by the Commissioner pursuant to provisions of subdivision f of such §19-128.1 and any other applicable provisions of law. The City shall charge the owner for the cost of removal and storage. The charge for removal shall be $50 per newsrack. The storage charge shall be $1.40 per newsrack per day.

(h) **Notices.** All notices of violation required to be served on the owner pursuant to these rules or §19-128.1 of the Administrative Code shall be served as required by law. Notices of correction shall be served upon the address provided pursuant to the registration provisions in these rules. In the absence of the required registration information, service shall be made on the entity identified on the newsrack or in the publication found in the newsrack.

HISTORICAL NOTE

Section repealed and added City Record Mar. 7, 2003 eff. Apr. 6, 2003. [See Note 1]

Section in original publication July 1, 1991.

Subd. (a) par (9) added City Record Oct. 20, 2004 §1, eff. Nov. 19, 2004. [See Note 2]

Subd. (b) par (1) subpar (iii) amended City Record Oct. 20, 2004 §2, eff. Nov. 19, 2004. [See Note 2]

Subd. (b) pars (3), (4) amended City Record Oct. 20, 2004 §3, eff. Nov. 19, 2004. [See Note 2]

Subd. (c) open par amended City Record Oct. 20, 2004 §4, eff. Nov. 19, 2004. [See Note 2]

Subd. (d) par (2) amended City Record Oct. 20, 2004 §5, eff. Nov. 19, 2004. [See Note 2]

Subd. (e) amended City Record Oct. 20, 2004 §6, eff. Nov. 19, 2004. [See Note 2]

Subd. (f) amended City Record Oct. 20, 2004 §7, eff. Nov. 19, 2004. [See Note 2]

Subd. (g) amended City Record Oct. 20, 2004 §8, eff. Nov. 19, 2004. [See Note 2]

Subd. (h) amended City Record Oct. 20, 2004 §9, eff. Nov. 19, 2004. [See Note 2]

DERIVATION

Section 2-08 derived generally from former §§2-08 and 2-09 from original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 7, 2003:

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter.

On August 27, 2002, Mayor Bloomberg signed Local Law 23, adding a new §19-128.1 which provides for the regulation of newsracks. The law goes into effect 180 days after its enactment. The Department of Transportation is authorized to take any administrative actions necessary prior to that date to put the provisions of the law into effect. These rules serve to clarify and add detail to the provisions of Local Law 23, specifically with respect to chaining, notification and insurance.

2. Statement of Basis and Purpose in City Record Oct. 20, 2004: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. On July 12, 2004, Mayor Bloomberg signed Local Law No. 36, which amended §19-128.1 of the Administrative Code. These rules serve to conform the Department's rules to the new law. Subdivision (a) of §2-08 is being amended to include a definition of the term "owner" in order to ensure that only one entity/individual is responsible for all Department requirements regarding newsracks. Subparagraph (iii) of paragraph (1) and paragraph (3) of subdivision (b), subdivision (c), subdivision (f), subdivision (f), subdivision (g) and subdivision (h) of §2-08 are being amended to conform with the new definition of "owner." Paragraph (4) of subdivision (b) of §2-08 is being amended to reduce the number of times that the Department must be notified of the location of newsracks in accordance with Local Law No. 36. Paragraph (2) of subdivision (d) of §2-08 is being amended to require conformance with all notification requirements regarding the location of newsracks. Subdivision (e) of §2-08 is being amended to eliminate previous cleaning requirements and to require a newsrack owner to certify that best efforts have been taken to maintain the newsrack(s) and to keep logs and records detailing the measures taken to maintain such newsrack(s) in accordance with Local Law No. 36.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

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Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-09

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-09 Sidewalk, Curb and Roadway Work.

(a) **Compliance with requirements.** Owners or builders installing or repairing roadway pavement, sidewalk and curb in connection with uses other than those requiring a Certificate of Occupancy (C of O) or letter of completion from the New York City Department of Buildings shall comply with the following requirements:

(1) The Sidewalk, Curb & Roadway Application (SCARA) and all appropriate forms, plans and certifications shall be submitted to the Department.

(2) All public infrastructure work shall be designed and installed in compliance with current highway engineering practice, the latest version of this publication, and the latest versions of these other Department publications: Standard Details of Construction, Standard Specifications, and Instructions for Filing Plans & Guidelines for the Design of Sidewalks, Curbs, Roadways and Other Infrastructure Components.

(b) **Professional self-certification.** (1) A property owner may install the required street infrastructure without prior review of the plan(s) by the Department under a process of professional self-certification. Plan review by the Department will not be required when a Professional Engineer, Registered Architect or Registered Landscape Architect self-certifies that the proposed infrastructure work complies strictly with the requirements of the publications listed above in paragraph (2) of subdivision (a) of this section and meets or exceeds the Department's standards and specifications.

(2) If a submittal is not professionally self-certified, full Department review and approval must be obtained before work can begin.

(c) **Coordination with capital projects-all city, state and federal agencies and public authorities.** In some cases, the required infrastructure work may be proposed for installation by an agency or authority under a capital improvement project. It shall be the sole responsibility of every applicant to examine all capital plans to see whether any such work is planned. If so, the applicant shall coordinate the improvements with the appropriate agency or authority.

(d) **Required submissions.** (1) Every applicant shall submit three (3) original SCARAs (no photocopies) for each project. See Instructions for Filing Plans & Guidelines for the Design of Sidewalk, Curbs, Roadways and Other Infrastructure Components.

(2) Every applicant shall submit the following:

(i) The correct Plan Type as required by SCARA.

(ii) The correct Certification Block as required by SCARA.

(iii) Written approval from the Landmarks Preservation Commission or the Art Commission of the City of New York, if applicable (applicant must check to see if the project is in a landmarked area or historic district).

(iv) Material testing, if required by SCARA.

(v) Maintenance agreement, if required by SCARA.

(vi) Statement of Professional Certification to accompany SCARA (optional).

(e) **Waiver.** (1) A property owner may request a waiver of any requirement of the Department.

(2) The request shall be prepared in writing by a professional architect, engineer or landscape architect and shall have an original seal and signature affixed.

(3) It shall be submitted to the Department's Bureau of Permit Management & Construction Control.

(4) Supplementary materials must be submitted to support the waiver request, such as maps, drawings, traffic reports, calculations, affidavits, etc. No consideration will be given without complete and adequate documentation.

(5) A waiver may be granted at the discretion of the Commissioner, except where prohibited by law.

(f) **Sidewalk.** (1) **Property owners' responsibility.** Property owners shall, at their own cost, install, repave, reconstruct and maintain in good repair, at all times, the sidewalk abutting their properties, including, but not limited to the intersection quadrant for corner property, in accordance with the specifications of the Department. Upon failure of a property owner to install, repave, reconstruct or repair the sidewalk pursuant to a Notice of Violation issued by the Department after an inspection, the Department may perform the work or cause it to be performed and shall bill the property owner pursuant to §19-152 of the New York City Administrative Code. If the property owner wishes to protest the violation, he/she may make a request at the appropriate borough office within the time specified in the notice of violation and the Department shall provide a reinspection by a different departmental inspector than the one who conducted the first inspection. The findings of the second inspection supersede the findings of the first inspection.

(2) **Permit required.**

(i) A permit is required to install, repave, reconstruct or repair any sidewalk where the work involves an area of more than twenty-five square feet. Where the work involves an area of twenty-five square feet or less, a permit is only required where the purpose of the work is to remove a violation.

(ii) A sidewalk closing permit shall be required if a minimum width of five feet cannot be maintained on the

sidewalk for unobstructed pedestrian passage.

(iii) An applicant shall file:

(A) An application for a sidewalk construction permit stating the location of the sidewalk work, including driveway, if applicable, and the start and estimated completion dates. All subway gratings, utility covers and castings situated in the sidewalk area which are not at proper grade or are in a dangerous condition shall be noted in the application;

(B) A plan for the restoration of the sidewalk, approved by the Department of Buildings, where the existing sidewalk is the structural roof of a vault or other opening.

(iv) An owner of the abutting property who files an affidavit stating therein that he/she will not employ any person or persons to repair the sidewalk for him/her, shall not be required to submit a commercial general liability insurance policy or workers' compensation insurance.

(3) **Permit requirements.** All permits are subject to applicable provisions contained in §2-02 of these rules.

(4) **General sidewalk requirements.**

(i) Except as otherwise authorized, all sidewalks shall be concrete. Sidewalks shall consist of a single course of concrete, 4" in thickness, laid upon a foundation 6" in thickness; in driveways and corner quadrants the concrete slab shall be 7" in thickness.

(ii) The foundation material shall consist of clean $^{3}/_{4}$" broken stone, recycled concrete, gravel or clean granular materials meeting the standard specifications. The foundation material shall be tamped and compacted according to the specifications.

(iii) The sidewalk shall be constructed of New York City Mix Design Number B3200 concrete mix as per the specifications. The concrete shall be bought from a concrete plant approved by the New York State Department of Transportation or from an approved volumetric mixer. Any permittee placing 150 square feet or less of sidewalk may request approval to use a portable mixer from the Department.

(iv) **Sidewalk cores.**

(A) Cores shall be required for all sidewalks in excess of 100 lineal feet. A core shall be required for each 500 square feet of sidewalk or fraction thereof. A minimum of 2 cores is required. Core evaluation reports by an approved laboratory shall be submitted to the Department.

(B) In the case of a one- or two-family dwelling on a corner lot and/or where the length of the sidewalk on each side is less than 100 lineal feet, the cores may be waived, provided that an affidavit of a Professional Engineer or Registered Architect who supervised the construction certifies that the work conforms with the specifications, and material delivery slips are submitted. (Delivery slips are to be signed by an authorized representative of the contractor.)

(C) If the results of the cores meet the Department's requirements, the applicant shall file an affidavit from a Licensed Surveyor, Registered Architect or Professional Engineer certifying that the sidewalk, curb and roadway have been installed in conformance with the submitted SCARA plan. A final survey showing the actual grades as built shall be filed with the Department and the topographical Bureau of the office of the applicable Borough President.

(v) Expansion joints are typically placed at 20' intervals and at the property or lot line. Expansion joints shall be placed between curb and sidewalk. Expansion joints shall be placed between concrete of different thicknesses or to match existing expansion joints. Every effort shall be made to isolate sidewalk hardware or other fixed objects in the sidewalk such as fire hydrants and electrical boxes with expansion material. Expansion joint filler material shall be

placed to full depth of sidewalk.

All expansion joints shall be recessed $^1/_2$" below finished sidewalk surface and sealed with Department specified sealer as soon as practical. The sealer should be applied carefully to avoid over-spilling onto sidewalk surface area. The joints are to be flush with the finished surface. Joints shall not be sealed during freezing temperatures.

(vi) The concrete shall be poured and finished in accordance with the specifications.

(vii) Flags shall be 5' × 5' where feasible. The following methods of scoring shall be employed unless otherwise approved by the Commissioner: The frontage of each building shall be divided by five. If it is exactly divisible, all flags shall be 5' wide; if not, the flags shall be plus or minus in an amount which will make them as near to 5' as possible. Cross flag scoring shall be at 90 degrees to the building line and curb. The flag markings along the sidewalk between the curb and property line shall be parallel with the property line and curb and be uniformly 5' apart commencing at the property line, with the odd flag width, if any, nearest the curb.

(viii) All flags containing substantial defects shall be fully replaced. Patching of individual flags is not permitted.

(ix) When an existing concrete sidewalk is to be replaced and the foundation material meets specifications, the foundation material can be retained and graded to the required subgrade. Any foundation material not meeting specification shall be removed.

(x) Sidewalk grades: Unless the Department grants a waiver of grade, permanent sidewalks shall be laid to the legal curb grades.

(xi) Transverse slope: Sidewalks shall be laid to pitch from the building line toward the curb except in special cases as noted. The minimum slope, calculated on a line perpendicular to the curb, shall be 1" in 5', and the maximum shall be 3" in 5'. Minimum slopes shall be used wherever possible.

Note: The maximum transverse slope permitted for vault lights, covers, gratings and other sidewalk structures is $1^3/_4$" in 5'.

(xii) **Longitudinal slope:** The longitudinal slope of the sidewalk shall be uniform and parallel to the curb at the curb's proper grade.

(xiii) **Corner treatment:** The two slope lines meeting at the intersection of the two building lines shall drop from a common point at the building corner toward their respective curbs at a rate within the limits prescribed by these regulations. If this is not possible, the applicant shall submit sketches or drawings, in duplicate, showing the method of treatment proposed, to the Commissioner for approval.

(xiv) **Pedestrian ramps:** Any person constructing, reconstructing or repairing a corner shall install pedestrian ramps in accordance with the specifications and in accordance with the latest revision of Standard Drawing H-1011.

(xv) **Adjoining existing and new sidewalks:** Junctions and transitions between new sidewalk and existing walk shall conform to the specifications.

(xvi) **Distinctive sidewalk:**

(A) A sidewalk of a distinctive design or material may be permitted and shall harmonize with the architecture of the abutting building and/or area. The property owner or designated representative shall submit to the Department for approval: detailed plans, applicable fee, the Distinctive Sidewalk Improvement Maintenance Agreement (DSIMA) and material samples of the proposed sidewalk.

(B) The distinctive sidewalk shall be repaired in kind or be replaced in its entirety with concrete. Changes to

existing materials require a new DSIMA.

(C) The distinctive sidewalk shall be approved by the Art Commission prior to installation.

(xvii) **Sidewalk hardware and structures:**

(A) Cellar doors, gratings, underground street access covers or other similar items shall not be placed in the sidewalk unless they are of a type approved by the Department of Buildings.

(B) Any abandoned structures shall be removed and replaced with concrete side- walk.

(C) Where the existing sidewalk is the structural roof of a vault or other opening, a plan approved by the Department of Buildings, along with vault plans as required by §2-13 of these rules, shall be filed for the restoration of the sidewalk.

(D) If a sidewalk improvement is in the vicinity of subway gratings or over a subway structure, the permittee shall obtain the approval of the New York City Transit Authority prior to the commencement of any work.

(xviii) **Historic Districts:**

(A) In Historic Districts, property owners shall obtain written approval from the Landmarks Preservation Commission prior to the repair or replacement of sidewalks. All work shall be done in compliance with the rules of the Landmarks Preservation Commission, and in accordance with the specifications.

(B) In Historic Districts gratings, bullseyes, vault lights, iron doors and other similar structures situated in the sidewalk shall not be removed without the authority of the Landmarks Preservation Commission.

(xix) No person shall deface any sidewalk by painting, printing or writing names or advertisements, placing other inserts, attaching, in any manner, any advertisement or other printed matter, or by drawing, painting or discoloring such sidewalk, except as required by State of New York Industrial Code Rule 53 relating to Construction, Excavation and Demolition Operations at or near Underground Facilities.

(xx) **Tree pits and trees:**

(A) No trees shall be planted in the sidewalk area unless a Street Opening Permit is issued by the Department. No such permit shall be issued by the Department unless the prior written consent of the Department of Parks and Recreation authorizing the tree planting is furnished. Tree pits shall be constructed in accordance with the specifications.

(B) The soil level in the completed tree pits, including any paved surface, shall be flush with the sidewalk area and the maximum dimensions of the tree pit shall be 5' × 5'.

(C) No trees within the sidewalk area shall be disturbed or removed without the permission of the Department of Parks and Recreation.

(D) No trees or tree pits shall be installed in Historic Districts without a report from the Landmarks Preservation Commission.

(5) **Substantial defects.** Any of the following conditions shall be considered a substantial defect.

(i) One or more flags missing or sidewalk never built.

(ii) One or more flag(s) cracked to such an extent that one or more pieces of the flag(s) may be loosened or readily

removed.

(iii) An undermined flag below which there is a visible void or a loose flag that rocks or seesaws.

(iv) A trip hazard where the vertical differential between adjacent flags is greater than or equal to $^1/_2$" or where a flag contains one or more surface defects of one inch or greater in all horizontal directions and is $^1/_2$" or more in depth.

(v) Improper slope, which shall mean (i) a flag that does not drain toward the curb and retains water, (ii) flag(s) that shall be replaced to provide for adequate drainage or (iii) a cross slope exceeding established standards.

(vi) Hardware defects, which shall mean (i) hardware or other appurtenances not flush within $^1/_2$" of the sidewalk surface or (ii) cellar doors that deflect greater than 1" when walked on, are not skid resistant or are otherwise in a dangerous or unsafe condition.

(vii) A defect involving structural integrity, which shall mean a flag that has a common joint, which is not an expansion joint, with a defective flag and has a crack that meets the common joint and one other joint.

(viii) Non-compliance with Department specifications for sidewalk construction.

(ix) Patchwork, which shall mean (i) less than full-depth repairs to all or part of the surface area of broken, cracked or chipped flag(s) or (ii) flag(s) partially or wholly constructed with asphalt or other unapproved non-concrete material; except that patchwork resulting from the installation of canopy poles, meters, light poles, signs and bus stop shelters shall not be subject to this provision unless the patchwork constitutes a substantial defect as set forth in subparagraphs (i) through (viii) of this paragraph.

(g) **Curb (concrete, steel faced, stone).** (1) **General permit conditions.**

(i) The permittee shall complete all curb construction or installation before commencing any roadway paving operation or sidewalk construction, unless otherwise permitted by the Department.

(ii) All curbs more than 20 feet in length shall be built according to specifications. A Street Opening Permit is required.

(iii) Curbs less than 20 feet in length shall be built in accordance with Standard Detail H-1054. No Street Opening Permit is required if done in conjunction with a sidewalk repair permit.

(iv) Permits for the construction or installation of drop curbs and concrete driveways shall not be issued unless authorized by a permit from the Department of Buildings.

(v) All curbs shall be built according to specifications.

(2) **Recess in vault for curbs.** Where a vault extends to the curb line, the permittee shall provide a recess for its entire length in which the curb may be set or reset. See the Standard Drawing on file with the Department.

(3) **Permit requirements.** All permits are subject to applicable provisions contained in §2-02 of these rules.

(4) No person shall deface any curb by painting, printing or writing names or advertisements, placing other inserts, attaching, in any manner, any advertisement or other printed matter, or by drawing, painting or discoloring such curb.

(5) **General provisions for construction.** Concrete curbs shall be 6 inches wide at the top, 8 inches wide at the bottom and 18 inches deep, or equal to the standards, measured on the back. All construction is to be at legal line and grade, or at any other line and grade approved by a Department engineer, and according to the specifications. Penetration of broken stone base will not be allowed unless the outside temperature is 50 degrees Fahrenheit or above.

(h) **Roadway.** (1) Roadway pavement shall be 2 inches of asphaltic concrete wearing surface on a 4-inch penetrated broken stone base or a 4-inch compacted plant mixed binder base. Where the existing roadway is asphaltic concrete wearing course on a concrete base, restoration shall consist of matching the existing thickness but in no case shall there be less than 3 inches of asphaltic concrete wearing course on a 6-inch concrete base on compacted earth. Where soil conditions require, the base shall be constructed of such materials and depth as is acceptable to the Department.

(2) The roadway shall be paved at a minimum from the curb line to 5 feet beyond the center of the legal roadway width in front and on the sides of the property of the applicant. In no case shall the width of required roadway paving be less than 20 feet. Beyond the front of the property, there shall be access over a hard surface road to the nearest completed paved street system. If this does not exist, the applicant shall provide a pavement of at least 2 inches of asphaltic concrete graded to meet the existing paved street system. The width of such paving shall be at least 20 feet.

(3) **Roadway cores.**

(i) Cores shall be required for all roadway pavement in excess of 100 lineal feet. A core shall be taken by the applicant for every 700 square yards of paved roadway or fraction thereof, in such manner as directed by the supervising engineer. A minimum of 2 cores is required. Core evaluation reports by an approved laboratory shall be submitted to the Department or self certified by a Professional Engineer or Registered Architect.

(ii) Where the length of roadway pavement is less than 100 lineal feet, the requirement of cores may be waived provided that an affidavit of a Professional Engineer or Registered Architect who supervised the construction certifies that the work conforms with the specifications, and material delivery slips are submitted. (Delivery slips are to be signed by an authorized representative of the contractor.)

(iii) If the results of the cores meet the Department's requirements, the applicant shall file an affidavit from a Licensed Surveyor, Registered Architect or Professional Engineer certifying that the sidewalk, curb and roadway have been installed in conformance with the legally established grades as built under the terms of the permit. A final survey showing the actual grades as built shall be filed with the Department's borough office and the Topographical Bureau of the office of the applicable Borough President.

(4) The Department will issue a letter of acceptance for maintenance subject to the guarantee period of the roadway pavement, to the builder or developer if the roadway pavement meets the requirement of the permit and the specifications.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section amended City Record Mar. 17, 2000 §2, eff. Apr. 16, 2000. [See Note 1]

Section in original publication July 1, 1991.

Subd. (b) par (1) amended City Record June 7, 2007 §11, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (f) par (2) amended City Record May 7, 2001 §6, eff. June 6, 2001. [See Note 2]

Subd. (f) par (2) subpar (iii) amended City Record June 7, 2007 §12, eff. July 7, 2007. [See T34

§2-02 Note 5]

Subd. (f) par (4) subpar (iii) amended City Record June 7, 2007 §13, eff. July 7, 2007. [See T34

§2-02 Note 5]

DERIVATION

Section 2-09 was derived in part from former §§2-02, 2-16 and 2-31 from original publication July

1, 1991. Former §2-02 was amended in City Records Apr. 10, 1991 and July 10, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Mar. 17, 2000:

Section 2-09 is being amended and §2-16 is being deleted to reflect the streamlining of the unit and process formerly known as builders pavement. Many of the provisions of §2-16 have been incorporated into §2-09, including all the SCARA requirements. Obsolete provisions in §2-16 were deleted.

2. Statement of Basis and Purpose in City Record May 7, 2001: Section 2-09 is being amended to require property owners to obtain a permit for sidewalk work, even if the area of work is less than 25 square feet, where the purpose of the work is to remove a violation, thus enabling the Department to inspect and remove sidewalk violations.

FOOTNOTES

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[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an

opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-10 Street Furniture.

(a) **Permit Required.** (1) See Revocable Consent Rules, Chapter 7 of this Title 34, for street furniture other than bicycle racks, small planters and non-electrical sidewalk sockets.

(2) The Commissioner may issue permits for the placement or installation of bicycle racks, planters smaller than four square feet or two feet in diameter, as measured on a horizontal plane, non-electrical sidewalk sockets and temporary structures placed on sidewalks for security purposes.

(3) It shall be a violation of these rules to erect, place or install street furniture without a revocable consent pursuant to Chapter 7 of this Title or a permit pursuant to this section.

(b) **Permit Requirements.** All permits are subject to applicable provisions contained in §2-02 of these rules.

(c) **General Conditions.** (1) Eight feet or one-half the sidewalk width, whichever is greater, shall be maintained by the permittee for unobstructed pedestrian passage.

(2) Street furniture shall not be placed at the curb directly opposite a building entrance or cellar door. Street furniture at the building line shall not be installed within three feet of a building entrance or cellar door.

(3) Unless otherwise authorized by the Commissioner in writing, street furniture shall not be installed within:

15 feet of Subway Entrance and Exit Stairs

15 feet of Bus Stop Zone

15 feet of Newsstand

15 feet of Fire Hydrant

10 feet of either side of the area created by extending the building line to the curb (the "corner")

8 feet of Bicycle Rack

7 feet of Driveway

5 feet of Cafe

5 feet of Bench

5 feet of Tree (without tree pit)

5 feet of Standpipe

4 feet of Telephone Booth/Pedestal

4 feet of Mailbox

4 feet of Street Light

4 feet of Parking Meter

4 feet of News Racks

4 feet of Utility Poles

4 feet of other street furniture authorized by applicable law or rule

3 feet of Canopy

3 feet of Utility Hole or Transformer Vault Cover

3 feet of Grating

3 feet of Sign Pole

3 feet of Edge of Tree Pit

(4) Street furniture shall be placed at least eighteen inches but no more than twenty-four inches from the face of the curb.

(5) Permittees shall be responsible for all repairs to streets damaged due to the placement, installation or removal of street furniture.

(6) Permittees shall be responsible for all street furniture maintenance.

(7) Placement of street furniture on distinctive sidewalks requires the written approval of the property owner.

(8) Permits shall expire one year after date of issuance, unless revoked sooner by the Commissioner.

(9) Permits are subject to review and approval each year prior to renewal.

(10) All street furniture permits are subject to the requirements of the Americans With Disabilities Act.

(d) **Application.** (1) Applications shall be reviewed individually for each location, shall be subject to approval by the Commissioner, and shall include a sketch with the following information:

(i) lot and block number(s) and address(es) of the property;

(ii) property lines and sidewalk dimensions;

(iii) existing topographical conditions, including but not limited to items listed in (c)(3); and

(iv) existing vaults and areaways.

(2) Written approval from the Arts Commission and/or Landmarks Preservation Commission shall be obtained where required.

(3) Permittees shall obtain the written approval of the property owner.

(e) **Design Criteria.** (1) Advertisements shall not be placed on street furniture.

(2) Street furniture finishes shall be graffiti retardant.

(3) Street furniture design shall be such that both the body and base are not conducive to trapping debris.

(f) **Planters.** (1) Planters shall be no more than three feet in height and shall be spaced at intervals of four feet or more unless otherwise directed.

(2) Planters shall not occupy an area of more than four square feet or two feet in diameter. For larger planters see Revocable Consent Rules, Chapter 7 of this title.

(3) Planters shall be placed with the face or outer edge eighteen inches from the face of the curb or no more than three feet from the building line.

(4) Applicants shall adhere to the New York City Department of Parks and Recreation's applicable standards for acceptable trees in planters.

(5) Planters shall be maintained with live plants at all times and be kept free of debris.

(g) **Non-electrical Sidewalk Sockets.** Veteran organizations of the Armed Services may, with the consent of the Commissioner and owners of the abutting property, place flagpole sockets at least five feet apart and at least eighteen inches, but no more than twenty-four inches, from the face of the curb. When the sidewalk socket does not have a flagpole in it, it shall be capped or covered and flush with the sidewalk.

(h) **Bicycle Racks.** No person shall install a bicycle rack without a permit. All racks shall be installed in compliance with the bicycle rack clearances, which may be obtained from the Department's permit office. Based on sound engineering judgment and where pedestrian volume will allow, the minimum clearances may be waived. A site request that adheres to minimum clearances shall be denied where the bicycle rack would interfere with the safe passage of pedestrians.

(i) **Maintenance Required by the Permittee or Property Owner.** (1) Street furniture shall be maintained in a safe condition at all times.

(2) Street furniture shall be graffiti and litter free at all times.

(3) The Department may order the repair, replacement or removal of unsafe or defective street furniture.

(4) Non-compliance shall result in permit revocation pursuant to §2-02 of these rules.

(j) **Temporary security structures.**

(1) Notwithstanding any inconsistent provision of these or any other rules, the Commissioner may issue a permit for a period of one year for temporary structures placed on sidewalks for security purposes. Such structures shall include, but not be limited to, concrete barricades, large planters and fencing.

(2) Notwithstanding any inconsistent provision of these rules, for the purposes of this subdivision, the standards and clearances in Chapter 7 of this title shall apply. For concrete barricades the standards for planters in Chapter 7 shall apply.

(3) A permit issued pursuant to this subdivision may be revoked or modified at will by the Department.

(4) Such permit may be renewed for a maximum of two consecutive six-month periods. The approval of the New York City Art Commission shall be obtained prior to the grant of a renewal.

(5) At the expiration of the permit and any renewal, if applicable, the person or entity wishing to continue to maintain such structures shall do so only pursuant to a revocable consent obtained from the Department pursuant to the provisions of Chapter 7 of this title.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record Oct. 27, 2003 eff. Nov. 26, 2003. [See Note 1]

Subd. (j) amended City Record June 27, 2005 §2, eff. July 27, 2005. [See Note 2]

Subd. (j) added City Record Oct. 27, 2003 eff. Nov. 26, 2003. [See Note 1]

DERIVATION

Section 2-10 derived generally from former §§2-07 and 2-08 from original publication July

1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 27, 2003:

The Commissioner of Transportation is authorized to promulgate regulations regarding City streets and sidewalks pursuant to section 2903 of the New York City Charter and Title 19 of the New York City Administrative Code.

The Commissioner is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of the New York City Charter.

Section 2-03 is being amended to add a fee for installation of temporary security structures. Section 2-10 is being

amended to add temporary security structures to the list of items for which the Commissioner may issue permits. Section 7-04 is being amended to add a reference to permits for temporary security structures.

There has recently been increased interest from property owners in placing concrete structures on the sidewalk for security purposes. The Department wishes to oversee and respond relatively promptly to what is being placed on the sidewalks without creating a process that is overly time-consuming and onerous. A non-renewable, one-year permit will allow these items, which are generally of a temporary, stopgap nature intended to meet legitimate security concerns, to be placed on sidewalks expeditiously, while more planned and permanent structures are pursued. At the expiration of the one-year period, a revocable consent must be obtained for the more planned and designed security structure as for other street furniture.

2. Statement of Basis and Purpose in City Record June 27, 2005: The Commissioner of Transportation is authorized to promulgate regulations regarding City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Section 2-03 is being amended to add a fee for the renewal of permits for the installation of temporary security structures. Subdivision j of §2-10 is being amended to allow for a maximum of two six-month permit renewals, provided Art Commission approval is obtained first. The Department has determined that the process for obtaining revocable consents can be lengthy since both the Department of City Planning and the Art Commission are involved in providing approvals. Consequently, the Department wishes to allow entities to have additional time to complete the consent process by allowing for limited renewals of the temporary security structure permits.

FOOTNOTES

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[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-11 Street Openings and Excavations.

(a) **Permit Required.** (1) No excavations shall be made in any street unless a Street Opening Permit is obtained.

(i) For plumbing work requiring a street opening or excavation, a Street Opening Permit will only be issued to a licensed master plumber as defined in §26-141 of the Administrative Code.

(A) The licensed master plumber shall be required to provide a valid New York City licensed master plumber's certificate issued by the New York City Department of Buildings. The licensed master plumber shall also present a copy of any documentation issued by the New York City Department of Environmental Protection regarding the plumbing work that is to be conducted. These items must be submitted to the Department before the Department approves the Street Opening Permit.

(B) The Commissioner may suspend review of applications for permits under this subparagraph, revoke or refuse to renew a permit, or refuse to issue a permit to any applicant, pursuant to the provisions of §2-02(j), 2-02(k), or 2-02(l) of these rules.

(ii) Notwithstanding the provisions of subparagraph (i) of this paragraph, for any work performed pursuant to a valid contract with a local or state governmental entity requiring a street opening or excavation, a Street Opening Permit will be*2 only be issued to the contractor retained by the local or state governmental entity to perform the work requiring the street opening or excavation.

(2) Prior to any excavation or street opening pursuant to a franchise or revocable consent, all permits required by

these rules shall be obtained.

(3) Street Construction in Historic Districts. No planned street construction, reconstruction or maintenance operation shall be undertaken in a designated historic district unless preapproved in writing by the Landmarks Preservation Commission. The provisions of subdivision (g) of this section also apply.

(b) **Permit requirements.**

(1) All permits are subject to applicable provisions contained in §2-02 of these rules.

(2) A Permittee shall obtain a separate permit for each 300 linear feet of a block segment and for each intersection where work is to be performed.

(c) **Conditions.** (1) **Proper notification.** Permittees and owners of underground facilities shall comply with State of New York Industrial Code Rule 53 relating to Construction, Excavation and Demolition Operations at or near Underground Facilities. Permittees shall take the precautions necessary to protect such pipes, mains, conduits, and other appurtenances at their own expense.

(2) All work shall be done in accordance with the specifications and the provisions of this §2-11.

(3) All debris on the street shall be removed at the expiration of the permit, unless otherwise stipulated.

(d) **Application.** (1) Applications shall include:

(i) a description of the work to be performed;

(ii) the reason for the work;

(iii) the street address including the nearest cross streets where the excavation or street opening is to be made;

(iv) a sketch indicating the size and location of the proposed opening(s) which shall include:

(A) the distance in feet from the nearest intersection and from the nearest curbline;

(B) the dimensions of the opening including length and width; and

(C) the existing parking restrictions.

(v) the start and estimated completion dates;

(vi) the type of pavement or surface to be opened;

(vii) whether the proposed work will be on a protected street (if so, the provisions of the subdivision (f) of this section apply);

(viii) the name and address of the compaction testing company or laboratory, as required;

(ix) the name of the contracting City agency, contract number, and OCMC reference number, if applicable; and

(x) whether the proposed work will be within 100 feet on, above or below or in either direction of any portion of a bridge, tunnel, underpass or overpass (if so, approval from the Division of Bridges shall be obtained). For purposes of this section "portion" shall include, but not be limited to, approach slabs, retaining walls, and column supports. The method of excavation and final restoration shall be determined by the Division of Bridges.

(2) No trees within the sidewalk area shall be disturbed or removed without the permission of the Department of Parks and Recreation.

(3) A permittee performing curb to curb restoration on more than fifty (50) percent of a block segment on a non-protected street shall submit a protected street determination form to the Department for approval prior to obtaining any necessary permits. Such form shall be attached to the permit application. This requirement shall not apply to permittees performing work for the Department or for the Department of Design and Construction.

(e) **Excavation and Restoration Requirements.** (1) **Proper Notice.**

(i) Permittees shall notify the Police Department and the Communications Centers of the Fire Department and the Department of Transportation of construction and street operations which require street closing permits at least twenty-four hours in advance of the commencement of non-emergency work.

(ii) All permittees shall comply with the provisions of subdivision (g) of §2-02 of these rules, if applicable.

(2) **Breaking Existing Pavement.** Precutting of pavement wearing course and base shall be required for pavement removal. The use of a "Ram Hoe" or truck mounted pavement breaker is not permitted, unless otherwise authorized. Only hand held tools may be used for this purpose. This applies to all streets at all times. The permittee shall be responsible for keeping the construction area as clean and neat as possible during the permit life. No material shall restrict water flow in gutters. All possible arrangements for the safety of the general public shall be maintained. Every effort shall be made to keep the pavement opening dimensions to an absolute minimum.

(3) **Excavation.**

(i) Sheeting and Bracing. The sides of every open excavation five feet or more in depth shall be securely held by adequate timber, sheeting and bracing where the earth is not sloped to the angle of repose of the material, and where unsafe conditions are created due to composition of the soil, climatic conditions, depth of excavation or construction operations.

(ii) Tunneling or Jacking. No person shall make any installation or repair between two or more street openings by means of tunneling or jacking, without a permit.

Tunneling or jacking may be permitted for the installation or replacement of a lateral connection provided the opening does not exceed eight inches in diameter. Full trenching shall be required for all waste line repair/connections.

(4) **Traffic Maintenance.**

(i) No more than one lane of traffic may be obstructed, except as provided by OCMC stipulations, or as otherwise authorized by the Commissioner.

(ii) All unattended street openings or excavations in a driving lane, including intersections, shall be plated, except as otherwise directed by the Commissioner. The Commissioner may require all street openings and excavations at any location to be plated when no work is in progress. In the case of gas or steam leaks, barricades in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices shall be used until the leak is corrected.

(iii) Barricades, signs, lights and other approved safety devices shall be displayed in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices.

(iv) The permit may restrict street operations and construction within critical areas to nights, weekends, or off-traffic hours. (Hours other than weekdays 7 a.m.-6 p.m. will require a noise variance granted by OCMC.)

(v) **Flagpeople.** Permittees whose work results in the closing of a moving traffic lane, which requires traffic to be

diverted to another lane, shall, at all times while actively working at the site, post a flagperson or utilize an authorized plan for the maintenance and protection of traffic at the point where traffic is diverted to assist motorists and pedestrians to proceed around the obstructed lane.

(5) **Temporary Closing of Sidewalks.** A minimum of five feet sidewalk width of unobstructed pedestrian passageway shall be maintained at all times. Where openings and excavations do not allow for five feet of unobstructed pedestrian passageway, a temporary sidewalk closing permit is required.

(6) **Work Site Maintenance.**

(i) All excavated material shall be either removed from the site or stockpiled at a designated curb, properly barricaded in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices and stored to keep gutters clear and unobstructed in accordance with §2-05 of these rules.

(ii) All obstructions on the street shall be protected by barricades, fencing, or railing, with flags, lights, or signs in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices placed at proper intervals and during the hours prescribed. During twilight hours the flags shall be replaced with amber lights.

(7) **Storage of Materials.**

(i) A street opening permit includes permission to store construction materials in a designated area adjacent to the permitted worksite.

(ii) No separate permit shall be required for the storage of equipment, excluding cranes, in a designated area in compliance with any applicable stipulations on the permit.

(iii) The designated storage area(s) are subject to review and approval by OCMC.

(8) **Backfill and Compaction.**

(i) Upon completion of repairs in a street, permittees shall backfill street openings and excavations in a manner in accordance with the specifications. All materials used for backfill shall be free from bricks, blocks, excavated pavement materials and/or organic material or other debris. Notwithstanding the above, asphalt millings may be used as a backfill material.

(ii) Backfill material shall be deposited in horizontal layers not exceeding twelve inches in thickness prior to compaction. A minimum of ninety-five percent of Standard Proctor Maximum Density will be required after compaction.

(iii) When placing fill or backfill around pipes, layers shall be deposited to progressively bury the pipe to equal depths on both sides. Backfill immediately adjacent to pipes and conduits shall not contain particles larger than three inches in diameter.

(iv) Compaction shall be attained by the use of impact rammers, plate or small drum vibrators, or pneumatic button head compaction equipment. Hand tamping shall not be permitted except in the immediate area of the underground facility, where it shall be lightly hand tamped with as many strokes as required to achieve maximum density. The definition of the "immediate area" shall be a maximum of eighteen inches from the facility.

(v) Where sheeting has been used for the excavation it shall be pulled when the excavation has been filled or backfilled to the maximum unsupported depth allowed by the New York State Department of Labor, Industrial Code Rule 23 and Title 29, Code of Federal Regulations, Part 1926, Safety and Health Regulations for Construction. Where a difference exists between regulations, the more stringent requirements shall apply.

(vi) As a measure of maximum density achieved for restoration, the pavement surface shall not sink more than two inches from the surrounding existing surface during the life of the restoration. More than two inches of settlement shall be deemed a failure of the compaction of the backfill and cause the removal of said backfill to the subsurface facility and new fill installed and properly compacted.

(vii) The permittee shall be required to furnish the Department with copies of in-process compaction reports certified by a Professional Engineer as to the compliance with the requirement of the aforementioned backfill requirements. This certified compaction report shall be submitted along with the cutform for every tenth street opening permit issued to the permittee or as directed by the Commissioner.

(9) **Temporary Asphaltic Pavement.**

(i) Immediately upon completion of the compaction of the backfill of any street opening, the permittee shall install a temporary pavement of an acceptable asphalt paving mixture not less than four inches in thickness after compaction, flush with the adjacent surfaces.

(ii) The permittee has the option of installing full depth pavement using an acceptable asphalt paving mixture immediately upon completion of the compaction of the backfill, excluding reconstructed protected streets and full-depth concrete roadways.

(iii) Upon the expiration of the permit, all equipment, construction materials and debris shall be removed from the site, unless otherwise stipulated.

(iv) When final restoration is to be done, the materials are to be removed with hand tools to a depth necessary to accomplish the final restoration.

(10) **Plating and Decking.**

(i) All plating and decking installed by the permittee shall be made safe for vehicles and/or pedestrians and shall be adequate to carry the load.

(ii) The size of the plate or decking must extend a minimum of 12 inches beyond the edge of the trench, be firmly placed to prevent rocking, and be sufficiently ramped, covering all edges of the steel plates to provide smooth riding and safe condition.

(iii) All plating and decking shall be fastened by splicing, spiking, pinning, countersinking or otherwise protected to prevent movement. When the plates are removed all pins and spikes must be removed and the holes must be filled with a fine asphalt concrete mix.

(iv) Where deflection is more than $^{3}/_{4}$", heavier sections of plates or decking or intermediate supports shall be installed.

(v) All permittees who install plating and decking during the winter months shall either post signs at the site indicating "Steel Plates Ahead Raise Plow" or shall countersink said plates flush to the level of the roadway. All signs shall be of the size and type specified in the most current edition of the Federal Manual on Uniform Traffic Control Devices. These signs shall be placed on the sidewalk, adjacent to the curb, facing vehicle traffic five feet prior to the plates. On two-way streets, signs shall be placed on both sides of the street five feet prior to the plates.

(vi) All plating and decking shall have a skid-resistant surface equal to or greater than the adjacent existing street or roadway surface, but in no event less than a New York State skid resistance number of 0.36.

(11) **Base.**

(i) Concrete and asphalt base material shall conform with Department specifications.

(ii) Concrete base shall be properly plated except where other stipulations have been granted in writing by OCMC.

(iii) Concrete for base shall be plated in a driving lane and intersections or barricaded in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices in a parking lane for a minimum of three days to permit proper cure of concrete, unless otherwise specified by the Department.

(iv) Hot asphalt binder materials may be used in place of concrete for non-protected and/or resurfaced streets at a thickness ratio of one and one-half inch of asphalt for every inch of concrete.

(v) The concrete base shall be restored at the same grade as the existing base; at no time may it be brought up to the asphalt course unless authorization has been granted by the Commissioner.

(vi) At no time will asphalt other than binder be permitted as a base course, unless otherwise authorized by the Commissioner.

(vii) Conduit or pipes shall be installed at a minimum depth of 18 inches from the surface of the roadway, or below the base, whichever is greater. Where conduits and pipes cannot be installed at the required minimum depth, protective plating shall be installed over the facilities upon written request from the permittee and receipt of written approval of the Department.

(12) **Wearing Course.**

(i) Wearing course material shall conform to the Department's specifications.

(ii) The finished grade of the wearing course shall be flush with surrounding pavement on all sides of the cut; the restored wearing course shall extend for a distance of six inches (6") beyond the edge of the base course. In the event a permanent restoration pavement installed settles more than two inches (2") below the surrounding existing surface during the life of the guarantee period, this shall be deemed a failure of the backfill compaction, in which case, the permittee shall remove all of the failed backfill, down to the subsurface facility, and install new, properly compacted backfill.

(iii) The minimum thickness of the wearing course on full depth asphalt restoration shall be two inches (2").

(iv) When more than one roadway opening is made against a single permit and the openings are less than three feet apart after the required cutbacks, the existing wearing course between such openings shall be restored integrally with the opening wearing course restoration, in accordance with the current Standard Detail H-1042.

(v) When a street opening is twelve inches or less from the curb, the entire pavement between the opening and the curb shall be excavated and replaced in kind, in accordance with the current Standard Detail H-1042. The pavement base shall be inspected and repaired where necessary and a new wearing course shall be installed from the curb to the street opening. The areas described above shall be included in the permittee's guarantee.

(vi) Whenever any street is excavated, the permittee shall restore such street in kind as to material type, color, finish or distinctive design.

(vii) Pavements shall be restored in kind in designated historic districts and on streets constructed with cobblestones or other distinctive pavements, or as directed by the Commissioner.

(viii) The wearing course shall be properly sealed completely at the edges of the cut with liquid asphaltic cement ironed in with a heated smoothing iron or by means of infrared treatment to prevent water seepage into the pavement.

(ix) Permittees shall be required to obtain a permit for any changes to, or installation of temporary roadway pavement markings and temporary construction, parking or regulatory signs and supports, including, but not limited to, crosswalks and lane lines. Unless otherwise directed by the Commissioner, all roadway pavement markings, including but not limited to, crosswalks and lane lines, and any parking or regulatory signs or supports shall be replaced in kind to Department specifications. All construction signs and supports and pavement markings shall be removed prior to the expiration of the permit.

(x) Final (permanent) restorations shall be completed within ten (10) working days of the expiration of the permit. During winter months, temporary asphalt and pavement markings shall be placed at the expiration of the permit and maintained until such time as the final restoration may be completed.

(xi) For trenches on protected streets, six inches (6") of base and six inches (6") of the wearing course shall be cut back on both sides of the trench. For trenches on non-protected streets, six inches (6") of the wearing course shall be cut back on both sides of the trench, provided, however, that the total cut is a minimum of eighteen inches (18") wide.

(xii) Any permittee performing work on a street pursuant to paragraph (3) of subdivision (d) of this section shall notify the Department within twenty-four (24) hours of the completion of the work on the same protected street determination form as submitted with the permit application pursuant to such paragraph (3) of subdivision (d) of this section.

(13) **Concrete Pavements.**

(i) When street openings are made in concrete pavements, the pavements shall be saw cut full depth for the entire perimeter of the street opening.

(ii) The concrete restoration shall have the same depth, strength and finish as the original pavement.

(iii) The restoration area shall be plated and maintained until enough strength has developed to sustain traffic without deleterious effect to the roadway.

(iv) Reinforcing shall be replaced in kind and spliced as per specifications for reinforced concrete pavement.

(v) Asphalt restorations will not be permitted in concrete streets or concrete bus stop areas.

(14) **Color Coding.**

(i) At each excavation, the permittee shall either paint temporary circles or install permanent colored markers as required in this paragraph, for the purpose of easily identifying the permittee's openings and restorations.

(ii) If the work is not complete, upon leaving the site the permittee shall paint three inch (3") circles adjacent to the cut, in the area closest to the curb line, in accordance with the placement and color requirements as specified below.

(iii) Upon completion of the restoration, the permittee shall install colored markers as specified below, unless another method is approved by the Department. Permittees shall be required to maintain these markers throughout the guarantee period.

(iv) **Placement of Coding and Markers.**

(A) Permanent markers shall be imbedded at zero grade tolerance, or slightly below, in the new asphalt or concrete without the use of nails and shall be of one piece construction.

(B) For cuts or trenches ten feet (10') or less, one temporary painted circle or permanent colored marker shall be placed in the linear center of the cut.

(C) For cuts or trenches up to fifty feet (50'), one temporary painted circle or permanent colored marker shall be placed at each end of the excavation.

(D) For cuts or trenches over fifty feet (50'), temporary painted circles or permanent colored markers shall be placed every twenty-five (25) linear feet maximum and one shall be placed at each end of the excavation.

(v) Such markers shall be in the shape of a circle measuring between one and one-half inches ($1\frac{1}{2}$") and three-inches (3") in diameter, color-coded as specified below, and shall include only the permittee's five-digit identification number and the two-digit year, unless other information is approved by the Department. The two-digit year shall be placed in the center of the marker, and the five-digit identification number shall be placed above the two-digit year.

(vi) **Specifications.** Such markers shall also be UV-stable and designed not to fade significantly.

(vii) Color codes shall be assigned through Quality Control Procedure Q.P. 3 for permittees other than those listed below. Final pavement markers may be used as an alternative to color codes provided such use is approved by the Department.

(A) Verizon-Cherry red marker

(B) Empire City Subway-Chrome yellow marker

(C) Consolidated Edison Co.-Light blue marker

(D) Keyspan-White marker

(E) Plumbers (water or sewer)-Green marker

(F) Signals and Street Lights-Orange marker

(G) Long Island Power Authority-Yellow marker

(H) Metropolitan Transit Authority-Purple marker

(I) Buckeye Pipe Line-Chrome yellow marker

(J) Fire Department-Purple marker

(K) Cable T.V.-Regal blue marker

(15) **Quality Control Program Requirement for Roadways.**

(i) All permittees engaged in street openings, shall complete the work so as to provide smooth riding surfaces throughout the guarantee period on their respective restorations.

(ii) A documented quality history of restoration shall be maintained by the responsible permittee. This information should show that inspections are made at some optimum intervals to assure conformance to the guarantee.

(iii) Quality Control Program information shall be made available to the Bureau upon request.

(iv) The use of experimental methods or materials may be authorized under selective conditions, upon application to the Bureau for approval prior to use on the City streets.

(v) Any permittee may file a proposed Quality Control Program with the Commissioner for approval. The

Commissioner may waive any of the foregoing specification requirements as part of an approved program of Quality Control. Any waiver so granted shall remain in effect as long as the approved program is implemented in a manner satisfactory to the Commissioner or until the Commissioner's approval is rescinded.

(16) **Other Requirements.**

(i) Street Opening Location Form ("Cutforms")

(A) Permittees shall maintain a street opening location form ("cutform") at their office and shall provide this form to the department upon request. Such cutform shall include the following information:

1. a sketch showing the exact dimensions and location of the restored area, and a description of the opening or trench defined by distance in feet from the nearest intersection and from the nearest curbline;

2. the street opening permit number;

3. the date of completion of the final restoration;

4. the name of the final pavement restoration contractor; and

5. a compaction report certified by a New York State licensed professional engineer.

(B) Failure to submit a cutform upon request may jeopardize future permit requests and may subject permittees to summonses.

(ii) **Guarantee period.** Permittees shall be responsible for permanent restoration and maintenance of street openings and excavations for a period of three years on unprotected streets, and up to five years on protected streets commencing on the restoration completion date. This period shall be the guarantee period.

(iii) Permittees shall comply with all applicable sections of these rules, the specifications, and all other applicable laws or rules.

(f) **Excavations and Street Openings in Protected Streets.** No street opening activity shall be allowed, except for emergency work or as authorized by the Commissioner, in a protected street for a period of five years from the completion of the street improvement. In addition to this subdivision (f), all provisions of §2-11 shall apply to protected streets.

(1) **Permit Issuance.** No permit to use or open any street, except for emergency work, shall be issued to any person within a five year period after the completion of the construction of a capital project relating to such street requiring resurfacing or reconstruction unless such person demonstrates that the need for the work could not have reasonably been anticipated prior to or during such construction. Notwithstanding the foregoing provision, the Commissioner may issue a permit to open a street within such five year period upon a finding of necessity therefor.

(2) **Conditions.** Permittees shall be responsible for contacting the Department of Design and Construction to determine whether a street is scheduled to be rebuilt under a street reconstruction project. Notwithstanding the foregoing provision, a permittee performing emergency work need not contact such Department.

(3) **Application.**

(i) Permittees shall include on the application the justification for any street opening activities on protected streets.

(ii) The permittee shall attach the "Protected Street Opening Permit Application Attachment" to the Street Opening permit application prior to obtaining the permit.

(4) **Restorations.**

(i) No backfill of any opening or excavation on a protected street shall be performed unless the permittee notifies the Department at least two hours prior to the scheduled start time for the backfill except as otherwise authorized by the Commissioner. In no case shall the permittee commence the backfill prior to the scheduled start time. For the base and wearing course, the permittee shall fax its daily paving schedule to the Department prior to commencing work. In addition, during the backfill and compaction phase of the work, permittees must provide, on site, a certified compaction tester from an approved laboratory or a licensed certified tester to test that the compaction of the backfill is in accordance with the Department's rules and specifications.

(ii) The Department may inspect any phase of the work, including but not limited to, initial excavation, backfill and compaction, performance of required cut backs, and final restoration.

(iii) A certification issued by a New York State licensed professional engineer shall be provided to the Department within thirty days of completion of work on protected streets. The certification shall state that the type of work performed was as described in the permit application, and that all phases of the restoration were performed in accordance with Department rules and specifications.

(iv) Permittees shall be responsible for the proper repair of the street opening or excavation for a period of three years from the date of completion or for the duration of the protected street guarantee period, whichever is longer.

(v) All restorations shall conform with the latest version of Department standard details 1042A and 1042B.

(vi) Where street openings cannot be confined to within 8 feet of the curb line, including the required cut back, and/or within the sidewalk area, full curb to curb roadway restoration shall be required where protected street status has been in effect for 18 months or less, unless otherwise directed by the Commissioner.

(vii) The permanent restoration shall be flushed with the surrounding pavement on all sides of the restoration. In the event a permanent restoration pavement installed in violation of the provisions of subparagraph (i) of this paragraph (4) settles more than two inches (2") below the surrounding existing surface during the life of the guarantee period, this shall be deemed a failure of the backfill compaction, in which case, the permittee shall remove all of the failed backfill, down to the subsurface facility, and install new, properly compacted backfill.

(g) **Emergency Street Openings and Excavations.** (1) **Permit Requirements.**

(i) No person shall perform emergency work without obtaining an emergency number from the Department. Permittees shall fax the Emergency Street Opening Permit request form to the Department's Emergency Authorization Unit to obtain an emergency permit number, unless otherwise directed by the Commissioner.

(ii) An emergency permit number may be requested only for emergency work performed on existing services. An emergency permit number shall not be obtained for work to be performed pursuant to a CAR.

(2) **Conditions.**

(i) A permittee shall begin emergency work within two hours after obtaining an emergency permit number.

(ii) A permittee shall perform emergency work on an around-the-clock basis until the emergency is eliminated, unless otherwise directed by the Commissioner. Once the emergency is eliminated on a critical roadway listed in subdivision (c) of §2-07 of these rules, the permittee shall suspend work, restore the full width of the roadway and resume work, if necessary, during the nonrestricted hours indicated in that subdivision. Such resumption of work shall only be undertaken within the 48-hour duration of the emergency permit number. A permittee working with an emergency number on a roadway other than a critical roadway may suspend or resume work at any time within the

48-hour period covered by the emergency number.

(iii) No more than one lane of traffic may be obstructed, however, if an emergency street opening is larger than 8 feet by 10 feet, permittee may occupy up to a maximum of 12 feet on one side of the opening and a maximum of 6 feet on the other side.

(iv) All unattended street openings or excavations in a driving lane, including intersections, shall be plated, except as otherwise directed by the Commissioner. The Commissioner may require all street openings and excavations at any location to be plated when no work is in progress. In the case of gas or steam leaks, barricades in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices shall be used until the leak is corrected.

(v) Barricades, signs, lights and other approved safety devices shall be displayed in accordance with the New York State or Federal Manual on Uniform Traffic Control Devices.

(vi) A minimum of five feet sidewalk width of unobstructed pedestrian passageway shall be maintained at all times. Where openings and excavations do not allow for five feet of unobstructed pedestrian passageway, pedestrians shall be directed by signs to the opposite sidewalk.

(vii) No private vehicles shall be kept within the work area.

(viii) A permittee shall submit an application for a regular permit, and for Landmarks Preservation Commission permits if applicable, within two business days of receiving an emergency permit number.

(ix) Restorations shall be made with in-kind materials.

(x) Emergency work in the African Burial Ground and Commons Historic District areas, requires the permittee excavate with utmost caution and the permittee shall not remove any excavation or debris from the site prior to Landmarks Preservation Commission's review of the excavation.

(xi) If any emergency street opening results in a width of less than 11 feet in each direction for vehicular traffic, this shall be deemed a full roadway closure. In such case, the Police Department, the Communication Centers of the Fire Department and the Department of Transportation shall be notified simultaneously with the closing.

(xii) Emergency permit numbers shall be kept on site and shall be presented upon the request of any police officer or other City employee authorized by the Commissioner to enforce these rules. Any additional information regarding the emergency work that is requested at the site by a Department inspector shall be provided by the permittee and/or the persons performing such work.

(xiii) Flagpeople. Permittees whose work results in the closing of a moving traffic lane, which requires traffic to be diverted to another lane, shall, at all times while actively working at the site, post a flagperson or utilize an authorized plan for the maintenance and protection of traffic at the point where traffic is diverted to assist motorists and pedestrians to proceed around the obstructed lane.

(xiv) All permittees shall comply with the provisions of subdivision (g) of §2-02 of these rules, if applicable.

(3) **Application.** When applying for an emergency permit number by fax, a permittee shall submit all information required by the Department. This information includes, but is not limited to, the following:

(i) Name of permittee

(ii) Permittee ID #

(iii) Location of emergency (including borough)

(iv) Type of emergency (including interruption of service)

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Subd. (a) par (1) amended City Record Sept. 7, 2006 eff. Oct. 7, 2006. [See Note 4]

Subd. (b) amended City Record May 7, 2001 §7, eff. June 6, 2001. [See Note 2]

Subd. (d) amended City Record June 7, 2007 §14, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (d) par (1) subpar (ix) amended City Record Feb. 25, 2000 §10, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (d) par (1) subpar (x) amended City Record Sept. 1, 2009 §1, eff. Oct. 1, 2009. [See Note 5]

Subd. (e) par (1) amended City Record Dec. 21, 2001 §4, eff. Jan. 20, 2002. [See Note 1]

Subd. (e) par (4) subpars (i), (iv) amended City Record Feb. 25, 2000 §11, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (e) par (4) subpar (v) amended City Record Dec. 21, 2001 §5, eff. Jan. 20, 2002. [See Note 1]

Subd. (e) par (7) subpar (iii) amended City Record Feb. 25, 2000 §12, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (e) par (8) subpars (i), (vi) amended City Record June 7, 2007 §15, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (e) par (10) amended City Record June 7, 2007 §16, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (e) par (10) subpar (vi) added City Record May 7, 2001 §8, eff. June 6, 2001. [See Note 2]

Subd. (e) par (11) subpar (ii) amended City Record Feb. 25, 2000 §13, eff. Mar. 26, 2000. [See T34 §2-01 Note 1]

Subd. (e) par (11) subpar (vii) amended City Record May 7, 2001 §9, eff. June 6, 2001. [See Note 2]

Subd. (e) par (12) amended City Record June 7, 2007 §17, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (e) par (14) amended City Record June 7, 2007 §18, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (e) par (16) subpar (i) amended City Record Mar. 12, 2004 eff. Apr. 11, 2004. [See Note 3]

Subd. (f) par (4) amended City Record May 7, 2001 §10, eff. June 6, 2001. [See Note 2]

Subd. (f) par (4) subpar (vii) amended City Record June 7, 2007 §19, eff. July 7, 2007. [See T34 §2-02 Note 5]

Subd. (g) amended City Record Dec. 21, 2001 §6, eff. Jan. 20, 2002. [See Note 1]

DERIVATION

Section 2-11 derived from former §2-13 from original publication July 1, 1991. Former §2-13 was amended in City Records Sept. 19, 1996 and Jan. 22, 1997.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 21, 2001:

Section 2-11(e) has been revised to reflect that a flagperson or an authorized plan for traffic maintenance and protection is required at all times while actively working, in the interests of public safety.

Section 2-11(g) has been revised to change the name of the DOT unit which receives requests for emergency numbers from the Communications Center to the Emergency Authorization Unit. Requests will be received on a 24 hour basis. In addition, many of the requirements added to §2-07 regarding emergency work have been added to §2-11 and permittees working with emergency permit numbers have been given more flexibility regarding emergency work.

2. Statement of Basis and Purpose in City Record May 7, 2001: Subdivision b of §2-11 is being amended to alert Permittees to the necessity of obtaining separate permits for each block segment and intersection. Paragraph 10 of subdivision e of §2-11 is being amended to provide for the safe movement of pedestrians, cyclists and others around work sites that contain steel plates and decks. Paragraph 11 of subdivision e of §2-11 is being amended to establish a minimum depth for the installation of conduits and pipes beneath the surface of roadways. This amendment will ensure that conduits and pipes are protected from damage caused by excavation, street openings, resurfacing, reconstruction and vehicular traffic. The Department has become aware of an increase in the number of non-emergency street openings in protected streets. Paragraph 4 of subdivision f of §2-11 is being amended to allow the Department to better monitor restoration activity in protected streets. A new subparagraph vi is proposed in order to maximize the integrity of protected streets by setting forth opening and restoration guidelines for streets which have been reconstructed within 18 months of the present street opening. Where work cannot be performed within 8 feet of curbs or be confined to sidewalks, permittees will be required to restore the street from curb to curb. Finally, a new subparagraph vii is proposed to require permittees to maintain permanent restorations of protected streets in the same manner that they are required to maintain permanent restorations of non-protected streets.

3. Statement of Basis and Purpose in City Record Mar. 12, 2004: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to section 2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Subparagraph (i) of paragraph (16) of subdivision (e) of section 2-11 is being amended to require permittees to retain cutforms at their offices instead of submitting them to the Department. This will reduce the amount of paperwork and record keeping for the Department and reduce the filing burden on permittees.

4. Statement of Basis and Purpose in City Record Sept. 7, 2006: The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code. Paragraph (1) of subdivision (a) of §2-11 is being amended to add subparagraphs (i) and (ii). Subparagraph (i) provides that Street Opening Permits will only be issued to a company affiliated with a master plumber's license and outlines the circumstances under which the Department may suspend review of an application for a permit, revoke or refuse to renew a permit, or refuse to issue a permit to a licensed master plumber or affiliated companies of the licensed master plumber company pursuant to specific provisions contained within existing rules. Subparagraph (i) also requires a licensed master plumber or a company affiliated with the master plumber's license to provide the certificate issued to such company by the New York City Department of Buildings and additional documentation from the New York City Department of Environmental Protection before the Department issues a Street Opening Permit. Subparagraph (ii) provides that where a Street Opening Permit is necessary for any work performed pursuant to a valid contact with a local or state governmental entity, the Street Opening Permit will be issued to the general contractor performing work. Currently, when a street requires excavation for the purposes of conducting plumbing work, a permit is issued directly to the excavators. These subcontractors performing excavation work are not required to hold professional licenses and sometimes do not restore the streets that they have excavated to the satisfaction of the Department. This amendment is being proposed to change the Department's permit process in order to ensure stricter compliance with agency requirements for restoring the

streets, and to impose this responsibility directly upon licensed master plumbers in the manner similar to requirements already imposed upon other corporate entities.

5. Statement of Basis and Purpose in City Record Sept. 1, 2009: The Commissioner of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903(b) of the New York City Charter and Title 19 of the New York City Administrative Code. There are many structures that constitute bridges within the City, but this designation is not always obvious to a contractor who may wish to perform excavations in the vicinity thereof. This rule is being amended to provide additional safeguards to the structural integrity of bridges, tunnels, underpasses and overpasses under the jurisdiction of the Department, and to better regulate excavations and restorations performed near bridges and on their outlying support structures.

CASE NOTES

¶ 1. The rule does not limit a contractor's common-law liability for affirmative acts of negligence which result in the creation of a dangerous condition upon a public street or sidewalk. Ingles v. City of New York, 309 A.D.2d 835, 766 N.Y.S.2d 80 (2d Dept. 2003).

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).
2

[Footnote 2]: * So in original.

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Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-12 Vacant Lots.

(a) **Property owners' responsibility.** Whenever the Commissioner shall so order or direct, property owners shall, at their own expense:

(1) fence any vacant lot(s);

(2) fill any sunken lot(s) in compliance with §2-06 or other requirements of these rules;

(3) cut down any raised lot(s) in accordance with the specifications of the Department and §2-02 of these rules.

(b) **Failure to comply.** Upon the property owner's failure to comply with the requirements of paragraph (a), above, the Department may perform the work or cause it to be performed, the cost of which, together with the administrative expenses, shall constitute a debt recoverable from the owner by lien on the property affected, pursuant to §19-152 of the Administrative Code.

(c) **Reinspection.** Upon request of the property owner to the appropriate borough office, the Department shall provide a reinspection by a different departmental inspector than the one who conducted the first inspection.

(d) **Permit requirements.** The property owner shall obtain a permit from the Department before performing any work pursuant to this section. All permits are subject to applicable provisions contained in §2-02 of these rules.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

DERIVATION

Section 2-12 was derived from former §2-11 from original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

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In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

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Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on

the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-13

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-13 Vaults.

(a) **Vault defined.** A vault is any opening below the surface of the street and outside the property line that is covered over.

(b) **Exceptions.** This §2-13 shall not apply to:

(1) Openings that are used exclusively as places for egress or ingress by means of steps to the cellar or basement of any building.

(2) Openings that are used primarily for light and ventilation.

(3) Openings constructed or maintained by utility companies, which are regulated under a separate agreement with the City.

(4) Subways, railroads and related structures that are controlled by a public authority.

(c) **License required.** A license shall be obtained prior to construction of a new vault or enlargement of an existing vault. A revocable consent shall be required for any vault that extends further than the line of the sidewalk or curbstone of any street.

(d) **Permit required.** No vault shall be constructed, altered or repaired unless a street opening permit is obtained from the Department upon payment of the established fee.

(e) **Applications.** (1) All applicants for a license and/or permit to construct, maintain, alter or repair a vault shall file a written application signed by the applicant, stating the dimensions of the vault, the number of square feet required and four $8^{1}/_{2}$" × 14" cloth copies of a plan. For existing vault repairs, blueprints may be submitted in lieu of cloth copies of the plan at the discretion of the Commissioner. Plans shall include:

(i) The address and the tax lot and block number of the vault property location.

(ii) The distance from the lot property line to the nearest corner property line.

(iii) All frontages, lot lines, and line of building abutting the street.

(iv) All distances from the lot line to the existing curb line (existing width of sidewalk).

(v) The dimensions of the vault at the outer perimeter of the walls, the depth of the vault, and the composition and thickness of the vault walls (top and cross sections).

(vi) Location of all existing or proposed steps, gratings, open areas, coal holes/chutes/slides, entrances, cellar doors, building encroachments, and all other installations in the sidewalk area.

(vii) Details and location of all manhole access covers to a boiler or underground tank, to be installed in accordance with the specifications.

(viii) Approved Department of Buildings plan.

(ix) For existing vaults, verification of annual vault charge return.

(x) For a new vault or an enlargement of an existing vault, a copy of the license agreement filed with the Division of Franchises, Concessions and Consents of the Depart- ment.

(2) All applicants shall comply with the requirements of §2-02 of these rules.

(f) **Adjustments to license fee.** When subsequent measurements indicate that more or less space has been taken for the construction of a vault than that originally paid for, an adjustment of fees shall be made pursuant to §19-117(e) and (f) of the Administrative Code.

(g) **Limitations.** No vault shall extend closer than seven feet to the established curb line unless otherwise authorized by the Commissioner. Such authorization may be granted based upon:

(1) Special conditions cited by the applicant and,

(2) Additional construction requirements, including, but not limited to:

(i) A waterproofed recess in the vault roof adequate to receive a standard curb for the entire length at which the curb may be set or reset in accordance with the Department's standard sidewalk width even in cases where the existing or proposed sidewalk width does not conform to that standard width.

(ii) A strengthening of the vault roof to sustain live loads of six hundred pounds or more per square foot.

(iii) Adequate waterproofed recesses to accommodate existing or proposed street lights, hydrants, traffic signals and other street appurtenances to the Department's standard sidewalk width even in cases where the existing or proposed curb line does not conform to that standard width.

(h) **Curb.** No vault shall extend beyond the established line of the curb.

(i) **Arched or covered vault.** No new vault is to be arched or covered unless the owner or applicant shall have had the vault first measured by a duly licensed surveyor who shall deliver to the Department a certificate signed by him or her specifying the area of the vault, together with a diagram showing the dimensions thereof, including its sustaining walls, the location of the vault in relation to the building, curb line, and the nearest street corner intersection, the house number, the tax lot and the block numbers of the plot and all details as to sidewalk covering; in the case of an existing vault, the person claiming the right to the use thereof shall furnish a similar certificate and diagram, except that in such case the measurement shall exclude the sustaining walls if it is impracticable for the surveyor to measure the thickness. See §19-117(d) of the Administrative Code.

(j) **Hoistway openings.** No opening in the sidewalk area shall be constructed for the accommodation of any elevator or lift, whether manually or power operated. Existing hoistway openings in the sidewalk may be continued but shall not be enlarged in buildings erected before July first nineteen hundred fifty-seven, provided such openings are equipped with approved type doors located flush with the sidewalk and equipped with elevators. These hoistway openings with elevators may be relocated provided the total number of sidewalk elevators serving the building is not increased. Relocated elevators may not project more than five feet from the building line into the sidewalk area.

(k) **Boiler room exit.** An exit in the sidewalk area may be constructed and maintained above a steam boiler room. The door over such exit shall be three feet parallel to the building line and two feet at right angles thereto. The cover shall be adjacent to the building line and shall be hinged on the side nearest the curb allowing for it to be open slightly less than ninety degrees with the horizontal. An iron ladder permanently fixed in position shall be installed.

(l) **Sidewalks over vaults.** (1) A standard specification concrete sidewalk of four inch minimum thickness shall be installed over the structural roof slab of the vault and in conjunction with the structural roof slab shall be able to sustain a minimum live load of six hundred pounds per square foot. In no case shall the new sidewalk serve as the structural roof of the vault.

(2) The licensee shall be responsible for repairing and maintaining the sidewalk covering the roof of a vault in a safe condition. The Commissioner may order a licensee to repair defects in vault coverings, including defective sidewalk flags, in accordance with subdivision (b) of §19-151 of the Administrative Code.

(m) **Doors and gratings.** (1) All gratings or doors covering openings or roofs of vaults on the sidewalk shall be so constructed as to sustain a minimum live load of six hundred pounds per square foot.

(2) Doors and gratings in sidewalk are not permitted in front of any entrances, including building, store and delivery.

(3) All doors and grating and related hardware shall be flush with the sidewalk.

(4) Door and grating material and design shall be approved by the Department of Buildings.

(n) **Defective covers.** The Commissioner may order defective vault covers, doors, gratings and adjacent areas which are broken or present a slippery surface to be made safe immediately by the owner and replaced in accordance with Department standards in accordance with subdivision (b) of §19-151 of the Administrative Code.

(o) **Abandoned vaults.** The Commissioner may order the vault licensee and/or the owner of the premises to fill in an abandoned vault in accordance with subdivision (b) of §19-151 of the Administrative Code as hereinafter provided. The vault shall be filled in with clean, incombustible material, attaining proper compaction standards. Where such structures adjoin the curb, the enclosing walls shall be cut down to a depth of two feet below the curb and the roof shall be removed. Proper steps shall be taken to allow for the drainage of water through the vault floor.

(p) **Historic districts.** All work on vaults in historic districts shall be approved by the Landmarks Preservation Commission prior to the commencement of the work.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

DERIVATION

Section 2-13 was derived from former §2-24 from original publication July 1, 1991.

FOOTNOTES

1

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Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-14

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-14 Miscellaneous.

(a) **Public pay telephones.** (1) An application for a permit for public pay telephones and related equipment shall be made to the Department of Information Technology and Telecommunications (DOITT) pursuant to Chapter 4 of Title 23 of the Administrative Code and pursuant to Chapter 6 of Title 67 of the Rules of the City of New York.

(2) A street opening permit for installation of a public pay telephone line or stanchion shall be obtained from the Department, pursuant to §2-02, after obtaining a permit from DOITT. Fees shall be paid pursuant to §2-03 of these rules.

(3) A street opening permit shall be obtained for the removal of a public pay telephone stanchion and the restoration of the sidewalk. Such sidewalk restoration shall be performed in accordance with the Department's specifications.

(b) **Banners.** (1) **Permit required.**

(i) The Commissioner may issue permits for the display of banners promoting cultural exhibits and events or public or historical events which foster tourism and/or enhance the image of the City. The Commissioner may issue permits to business improvement districts (BIDs), local development corporations (LDCs) or other organizations that have received Commercial Revitalization Program funds (CRP fund recipients) from the Department of Business Services within the past year for the display of banners within the BID, LDC or CRP fund recipient's area that are designed to provide information about such BID, LDC or CRP fund recipient's area to the general public.

(ii) No person shall install, place, affix or attach a banner on any property within the jurisdiction of the Department without first obtaining a permit from the Commissioner.

(iii) No person shall install, place, affix or attach a banner on any property within the jurisdiction of the Department which contains a sponsor trade name or logo without the specific prior authorization of the Commissioner.

(2) **General conditions.**

(i) The number of banners to be installed and the location of each banner shall be approved by the Commissioner prior to installation. All requested locations may not be approved.

(ii) Banners shall be placed within a one block radius of the event unless otherwise authorized by the Commissioner.

(iii) Horizontal banners, including banners hung across a street, are not permitted.

(iv) Vertical banners shall be not more than 3 feet wide and not more than 8 feet in height. All such banners shall have 6 slits to allow air passage. Two banners per pole are allowed only if they collectively do not exceed 24 square feet. For existing banners only, two banners per pole not exceeding 30 square feet collectively may be allowed by the Commissioner in his/her discretion. Each such banner shall have 3 slits to allow air passage. The bottom portion of a banner shall be not less than 18 feet above the roadway.

(v) Banners shall contain no advertisements. The trade name(s) or logo(s) of the sponsor(s) of the event may be placed on the banner but shall occupy no more than 10% of the banner in total. Corporate sponsor's trade name(s) or logo(s) shall be located on the lower portion of the banner.

(vi) All applicants shall submit a final graphic of the banner prior to the issuance of a permit. It shall be a condition of each permit that the banner is in compliance with the final graphic.

(vii) Applications for banner permits shall be submitted no fewer than 45 days prior to the planned installation date.

(viii) Applicants shall be responsible for inspecting banners and poles and replacing and/or removing banners that are torn, defaced or in general disrepair, including rigging.

(3) **Installation, maintenance and removal.**

(i) Drilling of lamppost or welding of bracket supports is not permitted. All mounting hardware must be of a corrosion resistant material.

(ii) Banners shall not be attached to any traffic signal posts containing an electrical traffic control device. Banners shall not be installed so as to obstruct the visibility of signs or signals which may be attached to other lampposts.

(iii) Banners shall not be placed on lampposts designated as landmarks by the Landmarks Preservation Commission. Banners shall not be placed on ornamental signposts without meeting specific permit stipulations.

(iv) Banners and any installation apparatus shall be removed immediately upon the expiration of the term of the permit, except where a permit extension has been granted by the Commissioner.

(4) **Duration and renewal of permits.** Banner permits shall remain in effect for a period of 30 days including installation and removal, and may be renewed up to two times at the discretion of the Commissioner.

(5) **Duration and renewal of permits granted to BIDs, LDCs or CRP fund recipients.** Permits granted to BIDs,

LDCs or CRP fund recipients may remain effective for up to 90 days and may be renewed at the discretion of the Commissioner.

(6) **Revocation.** Banner permits are revocable at will by the Commissioner.

(c) **Bandstands and temporary platforms.** (1) No person shall erect or maintain a temporary platform or bandstand on the street unless the structure has been approved by the Department of Buildings and a permit has been issued by the Commissioner.

(2) Applicants for a permit to erect or maintain a temporary platform or bandstand shall file a commercial general liability insurance policy, as provided in §2-02, with the Commissioner.

(d) **Helicopter lifts.** A street closing permit for the closing of streets along the route of a helicopter lift shall be required for contractors with licensed operators performing helicopter rigging operations on construction sites. The permit is subject to the following requirements:

(1) a permit for Aviation Operation, External Lift Operation, from the Public Transportation Safety Unit of the Fire Department and

(2) a signed and notarized Indemnification and Hold Harmless Agreement.

(e) **Temporary Festoon/Holiday Lighting and/or other Temporary Lighting.**

(1) No individuals shall be permitted to hang temporary festoon/holiday lighting and/or other temporary lighting from lampposts or poles containing electrical traffic control devices.

(2) Groups, including but not limited to, Business Improvement Districts, Block Associations and Chambers of Commerce shall be permitted to hang temporary festoon/holiday lighting and/or other temporary lighting from lampposts, provided the following conditions are met:

(i) All temporary festoon/holiday lighting and/or other temporary lighting, their attachments, accessories, installations, and methods of attachment shall be in compliance with the applicable requirements of these rules, the New York City Electrical Code (Chapter 3 of Title 27 of the Administrative Code) and the rules of the New York City Department of Buildings.

(ii) A letter requesting permission to hang temporary festoon/holiday lighting and/or other temporary lighting shall be sent to the Department's Street Lighting Unit each year, 60 days before the holiday or event by the sponsoring group. Such letter shall state the anticipated installation and removal dates of the lighting, the proposed location(s) where the lights shall be installed including the number of block faces of streets to be used, and the number of lampposts to be affected, including those from which power is to be drawn and those that are to be used only as an attachment for the temporary lighting.

(iii) The Street Lighting Unit shall provide a disposition in writing. If approved, the sponsoring group or its electrical contractor shall submit such disposition from the Street Lighting Unit to the Department of Buildings when applying for a Certificate of Electrical Inspection.

(iv) The sponsoring group shall hire an electrical contractor licensed by the City to furnish and install a Ground Fault Circuit Interrupter (GFCI) weatherproof receptacle and install the lighting fixtures and supporting equipment. The GFCI shall be installed near the top of the shaft of the lamppost from which the power is to be drawn.

(v) The sponsoring group or its electrical contractor shall be responsible for the maintenance and replacement, as necessary, of the weatherproof receptacles.

(vi) The sponsoring group or its electrical contractor shall obtain a Certificate of Electrical Inspection from the Department of Buildings prior to applying for a permit from the Department.

(vii) The sponsoring group shall make arrangements with the appropriate electric utility company to pay for the electricity that will be used to illuminate the temporary festoon/holiday lighting and/or other temporary lighting.

(viii) The sponsoring group shall obtain and maintain in force an insurance policy as provided in §2-02 of these rules and shall indemnify and hold the City harmless from any and all claims for personal injury or property damage arising from the installation, maintenance, operation and eventual removal of the temporary festoon/holiday lighting and/or other temporary lighting.

(ix) A permit to hang temporary festoon/holiday lighting and/or other temporary lighting shall be obtained from the Department of Transportation, prior to commencing work, upon the showing of the letter of consent from the Street Lighting Unit and the Certificate of Electrical Inspection from the Department of Buildings pursuant to subparagraphs (iii) and (vi) of this paragraph.

(x) Temporary festoon/holiday lighting and/or other temporary lighting with necessary feed wires and supports may be permitted over sidewalks for a period not to exceed 90 days, provided they do not interfere with the free use of fire escapes and drop ladders. All such electrical construction shall be removed within the time stated on the permit, excluding the authorized GFCI weatherproof receptacle. The receptacle shall be permitted to remain provided that it is properly maintained. Any receptacle(s) not properly maintained shall be removed, within one (1) to ten (10) days of notice from the Department, as directed by the Department, by the sponsoring group at its sole cost and expense. In the event that the sponsoring group fails to remove the receptacle(s) or in the case of an emergency, the Department may remove such receptacle(s) and charge the cost of removal to the sponsoring group.

(xi) Prior to commencing any work, the electrical contractor shall test each pole for stray voltage. if a pole tests positive, the electrical contractor shall contact the Department and Con Edison immediately and shall report such test result and the location of the pole. The electrical contractor shall wait for clearance from the Department and Con Edison prior to the commencement of work.

(xii) After completing the installation of the temporary festoon/holiday lighting and/or other temporary lighting, the electrical contractor shall retest each pole for stray voltage. If a pole tests positive, the electrical contractor shall contact the Department and Con Edison immediately and shall report such test result and the location of the pole.

(xiii) The electrical service shall not exceed 120 volts and shall not be fused larger than fifteen (15) amperes.

(xiv) The installation of temporary festoon/holiday lighting and/or other temporary lighting shall comply with the minimum height clearances below:

Nature ofCrossing Conductors Guys, Spans, Messengers

Under300 Volts 300 Volts to750 Volts 750 Volts to15,000 Volts 15,000 Volts to33,000 Volts

Above track rails of freightrailroads. 27 feet 27 feet 28 feet 30 feet

Above track rails of elevated railways. 25 feet 25 feet 25 feet 25 feet

Above track rails of surface railways. 22 feet 22 feet 25 feet 25 feet

Above roadways of streets, etc. 18 feet 18 feet 20 feet 22 feet

Above spaces or ways accessible to pedestrians only, i.e., sidewalks and alleyways. 14 feet**For guys, 8 feet shall be sufficient for anchor guys not crossing pathways. 18 feet 20 feet 22 feet

(xv) Temporary festoon/holiday lighting and/or other temporary lighting, strings or messengers shall not be supported by or secured to any fire escape or drainpipe. They shall be insulated from their supports by strain insulators.

(xvi) Streamers, messengers or supports shall not be attached to or supported from electric, light, telephone, communications or trolley poles or lines without permission from the owners.

(xvii) Any sponsoring group and/or electrical contractor who fails to comply with the requirements of this subdivision shall be excluded from the permit process for temporary festoon/holiday lighting and/or other temporary lighting for the following year or seasonal cycle, or other period of time as determined by the Department.

(xviii) Requests to make adjustments to the work performed shall be approved by the Department.

(xix) The Department may mandate that changes be made to the work performed.

(xx) The electrical contractor shall test each pole for stray voltage after removing the temporary festoon/holiday lighting and/or other temporary lighting equipment in compliance with the permit limits. If a pole tests positive, the electrical contractor shall contact the Department and Con Edison immediately and shall report such test result and the location of the pole.

(xxi) At the completion of the work, a letter shall be sent to the Department certifying that the work was conducted in accordance with all rules and regulations.

(f) **Commercial refuse containers.** Commercial refuse containers are containers to be placed on the public roadways temporarily, the use of which is not related or connected to any use or activity for which a construction activity permit shall be obtained from the Department. Commercial refuse containers shall not be used for the storage of putrescible waste.

(1) No commercial refuse container shall be placed on the street unless the owner has registered the container and obtained a permit from the Department.

(2) Upon registration, the Department shall issue a permit to the owner of the container company which lists identification numbers for each registered container. The identification numbers shall be printed on stickers which shall be obtained by container company owners, validated at the nearest Department borough permit office and shall be placed conspicuously on two sides of the containers. Specifications for the stickers shall be available at the permit offices.

(3) Permits to place commercial refuse containers on the street temporarily shall be valid for one year. Information regarding the number of containers owned by each company shall be updated as necessary and the permit shall be updated containing the new registration numbers for any additional containers.

(4) Commercial refuse containers shall not be stored or placed within:

(i) any "No Stopping," "No Standing" or "No Parking Anytime" areas;

(ii) fifteen feet of hydrants;

(iii) the area created by extending the building line to the curb (the "corner") or the area from ten feet from either side of the corner (the "corner quadrant");

(iv) four feet of lampposts;

(v) five feet of railroad tracks.

In exceptional circumstances, the Commissioner may grant permission to store or place containers in the areas specified in items (i) through (v), above. An application for such permission shall be made to OCMC indicating the need for such placement.

(5) Storage of commercial refuse containers shall not interfere in any way with subway facilities, hydrants, fire alarms, traffic signals, street signs, bus stops or shelters, trees, parking meters, emergency telephones, water main valves or gas shut-off valves, unless permission is obtained from the appropriate City Department.

(6) The name, address and telephone number of the owner shall be printed on two sides of each container.

(7) Each container shall be stored flush with the curb and extend no more than eight feet.

(8) The street under all containers shall be shielded by roadway protection to prevent damage to streets.

(9) All containers shall be clearly marked on all four sides with high intensity reflective paint, reflectors, or other markings capable of producing a warning glow when struck by the head lamps of a vehicle or other source of illumination at a distance of three hundred feet.

(10) No container shall be left in one location for more than seventy-two continuous hours.

(11) Sidewalks, gutters, crosswalks and driveways shall at all times be kept clear and unobstructed and all dirt, debris and rubbish shall be promptly removed therefrom.

(g) **Storage boxes.** No person shall place on any street a box for the purpose of storing written matter or any other type of material or attach such box to any item of street furniture or to the pavement in any way.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

Subd. (e) amended City Record Apr. 13, 2005 §2, eff. May 13, 2005. [See T34 §2-03 Note 4]

Subd. (f) par (4) closing par amended City Record Feb. 25, 2000 §14, eff. Mar. 26, 2000. [See T34

§2-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02,

Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

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Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

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Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 2-15

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-15 Removal of Unauthorized Encroachments.

(a) The Commissioner may serve an order upon a property owner to remove or alter any unauthorized projection, encroachment or encumbrance on or in front of his premises within a period to be specified in such order; such order shall be served personally, or by leaving it at the house or place of business of the owner, occupant or person having charge of the house or lot in front of which the projection, encroachment or encumbrance may be, or by posting such order thereon.

(b) Where a property owner fails to alter or remove the encroachment, encumbrance or projection within the time specified in the order, the Commissioner may remove or alter or cause such encroachment, encumbrance or projection to be removed or altered at the expense of the owner or constructor thereof, who shall be liable to the City for all expenses that it may incur by such removal or alteration, together with the penalties prescribed by §19-150 of the Administrative Code, to be recovered with costs of suit.

(1) In addition to any other remedies or penalties, whenever such removal, alteration, repair and restoration is undertaken by the Commissioner he or she may certify separately the cost and expense of such removal, alteration, repair and restoration to the Commissioner of Finance, who shall charge the amount of such costs and expenses against the property upon and with respect to which the work was performed. Each such charge shall be a lien upon the property or premises in respect to which the same shall have been made, which lien shall have priority over all other liens and encumbrances except taxes and assessments for other public or local improvements, sewer rents, water rents and interest or penalty thereon levied or charged pursuant to law.

(2) As an alternative to the remedies prescribed above, the Commissioner may in his or her discretion institute

through the Corporation Counsel any appropriate action or proceeding at law against such owner for the recovery of the costs and expenses of such removal, alteration, repair and restoration undertaken by the Commissioner, as provided in §19-133 of the Administrative Code.

(c) In addition, failure to comply with an order issued by the Commissioner may result in criminal or civil penalties in accordance with §19-149 or 19-150 of the Administrative Code.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

FOOTNOTES

1

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Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

34 RCNY 2-16

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-16 Street Closings Lasting More Than 180 Days.

(a) Prior to the issuance of a permit that will result in a publicly mapped street being fully closed for more than 180 consecutive calendar days an applicant shall submit a Community Reassessment, Impact and Amelioration (CRIA) statement to the Department for its approval. Without such approval by the Department, the Department may refuse to issue a permit. This provision shall apply to single permits or to a combination of permits that would result in such full street closure for a total of more than 180 consecutive calendar days.

(b) Any individual or entity that effectuates the closure of a street for more than 180 consecutive calendar days for which a permit from the Department is not required, with the exception of such street closures initiated by a local law enforcement agency, shall comply with all provisions of this section.

(c) The CRIA statement shall contain the following:

(1) the objectives of the closure and the reasons why the continued street closure is necessary to attain those objectives;

(2) identification of the least expensive alternative means of attaining those objectives and the costs of such alternatives, or a statement and explanation as to the unavailability of such alternatives;

(3) how the continued street closure will impact access and traffic flow to and within the surrounding community, including but not limited to, access to emergency vehicles, residences, businesses, facilities, paratransit transportation and school bus services; and

(4) any recommendations to mitigate adverse impact and increase access to and within the area.

(d) The requirement for the issuance of a CRIA statement as described in this subdivision may be satisfied by delivery of an environmental assessment statement or environmental impact statement conducted pursuant to CEQR rules, that has been approved by the Department.

(e) The individual or entity requesting a street closure as provided for in this section shall attend and assist the Department at the public forum held pursuant to the requirements of §19-107(b) of the Administrative Code of the City of New York and any other public forum resulting from the street closure upon request from the Department, and shall assist the Department in producing responses to any and all issues raised pursuant to such public forum(s).

(f) The Department may require the individual or entity requesting such street closure to issue the Department approved CRIA, environmental assessment statement or environmental impact statement to the community board and the council member in whose district the street is located.

HISTORICAL NOTE

Section added City Record Aug. 30, 2005 §2, eff. Sept. 29, 2005. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 30, 2005:

The Commissioner of the Department of Transportation is authorized to regulate work taking place on City streets and sidewalks pursuant to §2903 of the New York City Charter and Title 19 of the New York City Administrative Code.

Section 19-107(b) of the Administrative Code of the City of New York was recently amended to require the production of a CRIA statement, or, in the alternative, an environmental assessment statement or environmental impact statement whenever there is a planned full street closing that lasts a total of more than 180 consecutive calendar days. Accordingly, §2-02(b) is being amended and a new §2-16 is being added to require entities wishing to close a street for more than 180 consecutive calendar days to produce the CRIA statement, or, in the alternative, an environmental assessment statement or environmental impact statement.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2 included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

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Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

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34 RCNY 2-16

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-16 Builders' Pavements. [Repealed]

HISTORICAL NOTE

Section repealed City Record Mar. 17, 2000 §3, eff. Apr. 16, 2000. Section was incorporated into

§2-09. [See Note to §2-09]

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

FOOTNOTES

1

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and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

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34 RCNY 2-17

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-17 Adjudications.

New York City Department of Transportation adjudications regarding the fitness and discipline of agency employees will be conducted by the Office of Administration Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commissioner.

HISTORICAL NOTE

Section repealed and added City Record May 1, 1998 eff. May 31, 1998.

Section in original publication July 1, 1991.

DERIVATION

Section 2-17 was derived from former §2-35 from original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2

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34 RCNY 2-18

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-18 Newsstands.

Incorporation by Reference of Rules Promulgated by the New York City Department of Consumer Affairs. The rules related to newsstands promulgated by the Department of Consumer Affairs in Subchapter G of Chapter 2 of Title 6 of the Rules of the City of New York are hereby incorporated by reference into this Chapter as rules of the Department of Transportation.

HISTORICAL NOTE

Section added City Record Feb. 29, 2008 §1, eff. Mar. 30, 2008. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 29, 2008:

Local Law No. 64 for the year 2003, which became effective October 29, 2003, revised requirements governing the siting, construction and process for approving applications for licenses to operate newsstands or for renewals thereof. It also authorized the granting of a franchise to construct, install and maintain newsstands in the City of New York, and the procedure for such franchise to replace the stands used by newsstand licensees. To implement the revisions enacted by Local Law No. 64, the Department of Consumer Affairs repeals the current Subchapter G of Chapter 2, Title 6 of the Rules of the City of New York governing newsstands, and promulgates a new Subchapter G.

The Department of Transportation incorporates by reference the Rules concerning newsstands promulgated by the

Department of Consumer Affairs since these Rules implicate the Department of Transportation's responsibilities concerning newsstands. Specifically, the Department of Transportation must inspect proposed and existing newsstand locations to conduct pedestrian levels of service analyses and ensure the maintenance of a clear path for unobstructed pedestrian traffic on the sidewalk. The Department of Transportation must also inspect newsstands in connection with applications submitted to the Department of Consumer Affairs for the renewal of licenses permitting the operation of such newsstands. Thus, the Department of Transportation adopts the following Rule.

FOOTNOTES

1

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***** Current through December 2009 ****

34 RCNY 2-19

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 2*1 HIGHWAY RULES

§2-19 Bicycle Access in Office Buildings.

(a) **Definitions.** For purposes of this section, the following terms shall have the following meanings:

(1) Accessible Level. "Accessible level" shall mean one that facilitates the approach, entry or use for bicyclists on whose behalf the tenant or subtenant has requested bicycle access.

(2) Available. "Available" shall mean accessible for use by bicyclists on whose behalf the tenant or subtenant has requested bicycle access.

(3) Control. "Control" shall mean to exercise legal authority over through deed, permit, lease, contract or otherwise.

(4) Covered. "Covered" shall mean enveloped by a roof or functional equivalent. For purposes of this definition, "roof" shall mean the outer cover and its supporting structures on the top of a building.

(5) Indoor. "Indoor" shall mean situated in the interior of or within a building that is within three blocks or seven hundred fifty feet, whichever is less, of the building for which a bicycle access plan is requested.

(6) Off-street. "Off-street" shall mean located in an area other than the roadway or the public sidewalk within three blocks or seven hundred fifty feet, whichever is less, of the building for which a bicycle access plan is requested.

(7) Secure. "Secure" shall mean that (i) the entry to or exit from the alternate bicycle parking is locked or supervised by building personnel and permitted only to (A) the owner, lessee, manager or such other person who

controls such building and their agents, and (B) bicycle owners on whose behalf the tenant or subtenant has requested bicycle access, and (ii) a bicycle owner can lock a bicycle to a fixed object (including, but not limited to, a bicycle rack) such that the bicycle is protected from damage or theft.

(b) **Bicycle Access Plan.**

(1) **Request for Bicycle Access.**

(i) The tenant or subtenant of an office building, as defined in Administrative Code §28-504.1, may submit a request for bicycle access, in writing on a form provided by the Department, to the owner, lessee, manager or other person who controls such office building. Such request shall be submitted by certified mail, return receipt requested.

(ii) The tenant or subtenant shall file a copy of any request for bicycle access with the Department. Such request may be filed electronically by submitting it through the Department's website (www.nyc. govbikesinbuildings) or by submitting such request by regular mail to the Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041, Attention: Bikes in Buildings Program.

(iii) The owner, lessee, manager, or other person who controls such office building shall complete and implement a bicycle access plan for such building within thirty (30) days after receipt of a written request from such tenant or subtenant of such building.

(iv) The owner, lessee, manager or other person in control of the building may request an exception to the requirements of Administrative Code §28-504.3 in accordance with subdivision (d) of this section.

(2) **Contents of Bicycle Access Plan.**

(i) **Requirements.** The bicycle access plan prepared by the owner, lessee, manager or other person who controls a building shall, for bicyclists on whose behalf the tenant or subtenant has requested bicycle access, include but not be limited to:

A. the location of entrances within or to the building;

B. the route to elevator(s) that accommodate bicycle access;

C. the regular hours of operation of the elevator(s);

D. such other information as is deemed to be appropriate by and for the particular building; and

(ii) For purposes of these rules it shall be presumed that if a freight elevator in the building is available for carrying freight, it is available for carrying a bicycle for purposes of providing bicycle access.

(iii) Bicycle access shall be available, at minimum, during the regular operating hours of the freight elevator in the event that such elevator is used for bicycle access.

(iv) Upon receiving and reviewing its copy of a request for a bicycle access plan that has been filed in accordance with subparagraph (ii) of paragraph one of subdivision (b) of this section, the Department may require that additional information be included in the plan because it has determined that such information is appropriate for the particular building in question.

(c) **Amendments to plan.** The owner, lessee, manager, or other person who controls a building shall either create a new plan or amend a plan as needed (1) to address changed circumstances which warrant a revision in a particular tenant's or subtenant's plan, or in a plan that is applicable to all tenants; or (2) to accommodate new requests from other tenants or subtenants requesting bicycle access. Should such owner, lessee, manager, or other such person who controls

a building elect to amend a bicycle access plan pursuant to this section, such plan shall be amended within thirty (30) days of receiving a request for bicycle access. Any amendments that may materially affect the bicycle access plan shall be completed and implemented within thirty (30) days of the changed circumstances or to accommodate new requests from other tenants or subtenants requesting bicycle access, and do not preclude the requirement to comply with the provisions of this section. All amendments shall be filed with the Department pursuant to the provisions of subdivision (h) of this section.

(d) **Exceptions.**

(1) Bicycle access need not be provided if an owner, lessee, manager or other person who controls a building applies to the Commissioner for, and is granted, a letter of exception as set forth below. Such request shall be sent by certified mail, return receipt requested within fifteen (15) days of receipt of a request for a bicycle access plan to the Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041, Attention: Bikes in Buildings Program, and certifies the following:

(i) the building's freight elevator is not available because unique circumstances exist involving substantial safety risks directly related to the use of such elevator pursuant to Administrative Code §28.504.4(1) ("Exception 1"); or

(ii) there is sufficient secure alternate covered off-street no-cost bicycle parking within three blocks or seven hundred fifty (750) feet, whichever is less; or there is sufficient secure alternate indoor no-cost bicycle parking available on the premises or within three blocks or seven hundred fifty (750) feet, whichever is less, of such building to accommodate all tenants or subtenants of such building requesting bicycle access pursuant to Administrative Code § 28.504.4(2) ("Exception 2"). The number of bicycle parking spaces available shall be at least equal to the number of bicycles contained in the bicycle access tenant requests.

(2) A request for Exception 1 shall include the basis for requesting such an exception and shall also include but not be limited to the following supporting documentation:

(i) A certification from a professional engineer who is licensed and registered in New York State. Such certification shall include but not be limited to the following facts:

(A) The date the building was constructed;

(B) The date the elevator was installed;

(C) The method of elevator door closing;

(D) Whether the elevator is self-service or there is an operator;

(E) Whether there is a car top;

(F) Whether there is a car gate or door; and

(G) The professional engineer's license number.

(ii) Upon receiving and reviewing a request based on Exception 1, the Department may require that additional information be submitted in support of the request because it has determined that such information is appropriate for the particular building in question.

(3) A request for Exception 2 shall include the basis for requesting such an exception and shall also include but not be limited to the following supporting documentation:

(i) Proof that secure alternate covered off-street no-cost bicycle parking or secure alternate indoor no-cost bicycle

parking is available to or under the control of the owner, lessee, manager or other person who controls the building. Such proof may include but not be limited to a copy of a deed, lease, title, permit or contract evidencing such control.

(ii) The route to the secure alternate covered off-street no-cost bicycle parking that is within three blocks or seven hundred fifty (750) feet, whichever is less; or the route to the secure alternate indoor no-cost bicycle parking available on the premises or is within three blocks or seven hundred fifty (750) feet, whichever is less, of such building.

(iii) Upon receiving and reviewing a request based on Exception 2, the Department may require that additional information be submitted in support of the request because it has determined that such information is appropriate for the particular building in question.

(4) Pending the Department's inspection, review and determination of a request for a letter of exception, an owner, lessee, manager or other person who controls a building shall be exempt from complying with the requirements of this section.

(e) **Inspection and Determination.**

(1) If Exception 1 is sought: After conducting an inspection of the building and freight elevator, the Commissioner of the Department of Buildings shall thereafter issue a final determination to the Department as to whether to grant Exception 1. Such final determination shall be included in the Department's letter of exception or denial sent to the owner, lessee, manager, or other person who controls the building.

(2) If Exception 2 is sought: After conducting an inspection in consultation with the Department of Buildings of the secure alternate covered off-street no-cost bicycle parking or the secure alternate indoor no-cost bicycle parking, the Commissioner shall thereafter issue a final determination as to whether to grant Exception 2.

(3) A letter of exception or denial shall be sent by the Department by certified mail, return receipt requested, to the owner, lessee, manager, or other person who controls the building.

(4) If a letter of denial is sent, a bicycle access plan shall be posted within twenty (20) days of receipt of such letter.

(f) **Posting.**

(1) Every owner, lessee, manager or other person who controls a building for which a bicycle access plan has been adopted shall post in such building either a current bicycle access plan or a notice in the building lobby indicating that the plan is available in the building manager's office upon request. The posting of such plan or notice shall be made within five (5) days of implementation of such plan.

(2) Every owner, lessee, manager or other person who controls a building for which an exception to the bicycle access plan requirement has been granted shall post in such a building the letter of exception provided by the Commissioner pursuant to subdivision (d) of this section, or a notice in the building lobby indicating that such letter of exception is available in the building manager's office upon request. The posting of such letter or notice shall be made within five (5) days of receipt of such letter of exception.

(3) Bicycle access plans, letters of exception and notices of availability of either such documents shall be made available to the Department, the Department of Buildings or authorized representatives of any other City agency upon request.

(g) **Filing of bicycle access plan and subsequent amendments with the Department.** A bicycle access plan shall be filed with the Department by electronic submission through the Department's website (www.nyc.gov/bikesinbuildings) or by regular mail to the Department of Transportation 55 Water Street, 6th Floor,

New York, NY 10041, Attention: Bikes in Buildings Program, within ten (10) days of implementation of such plan. Should the owner, lessee, manager or other person who controls a building amend their bicycle access plan pursuant to subdivision (c) of this section, such amendment shall be filed with the Department as outlined above within ten (10) business days of completion and implementation of such amendment.

HISTORICAL NOTE

Section added City Record Dec. 11, 2009 §1, eff. Dec. 11, 2009 per City Record notice. [See

Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 11, 2009:

The Commissioner of the New York City Department of Transportation (DOT) is authorized to promulgate rules pursuant to Section 2903 of the New York City Charter.

Chapter 2 of Title 34 of the Rules of the City of New York (RCNY) is being amended to comply with Local Law 52 of 2009, which statute relates to bicycle access to office buildings. DOT is promulgating these rules to set forth the procedures for implementing bicycle access as contemplated in Local Law 52. Furthermore, in response to comments received at the public hearing, DOT revised the rule to provide building owners with the option of either amending an existing bicycle access plan or creating a new plan to address changed circumstances or new tenant requests. Finally, this rule will be codified in newly created §2-19 of Title 2, Chapter 34 of the Rules of the City of New York.

Finding of Substantial Need for Earlier Implementation

Chapter 5 of Title 28 of the New York City Administrative Code was amended by Local Law No. 52 of 2009, signed into law on August 13, 2009 and effective December 11, 2009. Local Law 52 added a new Article 504 that relates to the provision of bicycle access in office buildings. These rules set forth the process that commercial buildings must follow in providing bicycle access to tenants, or obtaining an exception from these requirements, as set forth in the new law. A public hearing on these proposed rules was held on November 23, 2009.

The City wishes to further encourage both the use of bicycles as a mode of transportation and the reduction of vehicular traffic within New York City, consistent with the goals described in PlaNYC. Thus, immediate implementation of this rule amendment is necessary to effectuate the purpose of the local law, and also facilitate the prompt enforcement of these rules by the New York City Departments of Transportation and the New York City Department of Buildings at the time Local Law 52 takes effect.

Therefore, pursuant to section 1043(e)(1)(c) of the New York City Charter, the Department of Transportation finds that there is a substantial need for the earlier implementation of the Rules Relating to Providing Bicycle Access in Office Buildings. Consequently, the attached "Rules Relating to Providing Bicycle Access in Office Buildings", containing amendments incorporated after the public hearing and explained in the Statement of Basis and Purpose, shall be effective upon its final publication in the **City Record,** and the requirement that thirty days first elapse after such publication shall not apply.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record May 1, 1998 eff. May 31, 1998. Former Chapter 2

included §§2-01-2-35.

Note: Statement of Basis and Purpose of Proposed Rule.

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903 of the New York City Charter and §19-105 of the New York City Administrative Code. Chapter 2 of Title 34 of the Official Compilation of Rules of the City of New York, the Highway Rules, has been revised and is being repealed and reenacted. A major purpose of the revision is to reorganize the rules so as to present them in a more orderly and coherent manner. For example, new §2-02, Permits, contains information and requirements which pertain to all permits issued by the Department, thereby eliminating the need to search through the rules for requirements for specific kinds of permits.

In addition to organizational changes, some substantive changes have been made as well. In particular, rules have been added which emanate from provisions contained in Title 19 of the Administrative Code, which became effective on 12/28/93. These are as follows:

Section 2-02(a)(5) provides that the commissioner may require cash deposits in addition to or instead of a bond from permit applicants pursuant to 19-103(c) of the Code.

Section 2-02(j) provides that the commissioner may suspend review of permit applications pending payment of outstanding fines, pursuant to §19-103(d) of the Code.

Section 2-02(k) provides that the commissioner may revoke or refuse to renew a permit after notice and opportunity to be heard pursuant to §19-103(e)(1) of the Code.

Section 2-02(k)(3) provides that the commissioner may revoke a permit without affording the permittee an opportunity to be heard prior to the revocation if he/she determines that an imminent peril to life or property exists pursuant to §19-103(e)(2) of the Code.

Section 2-02(d) provides that the commissioner may notify permittees of conditions which violate terms of permits, the Administrative Code, orders, rules, etc., and ask that conditions be corrected. Permittees may contest the commissioner's finding. A fee may be assessed for administrative expenses associated with notices and inspections pursuant to §19-103(h) of the Code.

Section 2-13(n) provides that the commissioner may order the removal and replacement of vault covers which are broken or unsafe pursuant to §19-120.

Section 2-14(f) provides for permits to be obtained for the placement of commercial refuse containers on the streets by owners of the containers, and requires the name and address of the owner and registration numbers to be posted on the containers. All containers must be painted with phosphorescent substance so as to be clearly discemible at night. All permittees are required to place protective coverings on streets where containers are to be placed pursuant to §19-123 of the Code. The annual permit fee for commercial refuse containers shall be $30. The application review fee for placement of containers in restricted areas shall be $30. Placement of containers in restricted areas is subject to review and approval from MTCCC, and adherence to MTCCC stipulations. Both fees have been added to the fee section (2-03).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-01 Words and Phrases Defined.

(a) **Vehicle and Traffic Law definitions apply.** Whenever any words and phrases used in these rules are not defined herein but are defined in Article 1 of the New York State Vehicle and Traffic Law, any such definition shall be deemed to apply to such words and phrases used herein.

(b) **Definitions.** The following words and phrases, when used in these rules, shall, for the purpose of these rules, have the meanings respectively ascribed to them as follows:

Bicycle. A "bicycle" shall mean every two- or three-wheeled device upon which a person or persons may ride, propelled by human power through a belt, a chain or gears, with such wheels in a tandem or tricycle, except that it shall not include such a device having solid tires and intended for use only on a sidewalk by pre-teenage children.

Bus. A "bus" shall mean every motor vehicle having a seating capacity of more than fifteen adults, in addition to the operator, and used for the transportation of persons, and every charter bus, interstate bus, intrastate bus, school bus and sight-seeing bus, regardless of seating capacity, as defined below.

(i) **Charter bus.** A "charter bus" shall mean a bus engaging in a specific or special trip in the nature of an excursion or outing, for which it has been hired or otherwise engaged by oral or written contract for the exclusive use of the charterer.

(ii) **Interstate bus.** An "interstate bus" shall mean a bus which operates between a point within the City of New York and a point outside the State of New York.

(iii) **Intrastate bus.** An "intrastate bus" shall mean a bus which operates only in the State of New York between a point within the City of New York and a point outside the City of New York.

(iv) **School bus.** A "school bus" shall mean every motor vehicle regardless of seating capacity owned by a public or governmental agency or private school and operated for the transportation of pupils, teachers and other persons acting in a supervisory capacity, to or from school or school activities or privately owned and operated on a regular basis for compensation for the transportation of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities.

(v) **Sight-seeing bus.** A "sight-seeing bus" shall mean a bus for hire carrying passengers from a fixed point in the City of New York, at which point the passengers embark and are generally discharged to a place or places of interest or amusement in the City of New York, and including a charter bus, as defined in these rules, when engaged in a sight-seeing operation.

Commercial vehicle. (i) For purposes of parking, standing and stopping rules, a vehicle shall not be deemed a commercial vehicle or a truck unless:

(A) it bears commercial plates; and

(B) it is permanently altered by having all seats and seat fittings, except the front seats, removed to facilitate the transportation of property, except that for vehicles designed with a passenger cab and a cargo area separated by a partition, the seating capacity within the cab shall not be considered in determining whether the vehicle is properly altered; and

(C) it displays the registrant's name and address permanently affixed in characters at least three inches high on both sides of the vehicle, with such display being in a color contrasting with that of the vehicle and placed approximately midway vertically on doors or side panels.

(ii) For the purposes of rules other than parking, stopping and standing rules, a vehicle designed, maintained, or used primarily for the transportation of property, or for the provision of commercial services and bearing commercial plates shall be deemed a commercial vehicle.

(iii) Vehicles bearing commercial or equivalent registration plates from other states or countries shall not be deemed trucks or commercial vehicles unless they are permanently altered and marked as required in (i)(B) and (C) of this definition, above.

Commissioner. The "Commissioner" shall mean the Commissioner of the New York City Department of Transportation or his/her authorized designee.

Commuter Van. A van, which: (i) is used as part of a commuter van service as defined in section 19-502(q) of the New York City Administrative Code; (ii) has a seating capacity of at least nine passengers but not more than twenty passengers or such greater capacity as the Taxi and Limousine Commission may establish by rule; (iii) carries passengers for hire in the City; (iv) is duly licensed as a commuter van by the Taxi and Limousine Commission; and (v) is not permitted to accept hails from prospective passengers in the street.

Crosswalk.

(i) **Marked crosswalk.** That part of a roadway defined by two parallel lines or highlighted by a pattern of lines (perpendicular, parallel or diagonal used either separately or in combination) that is intended to guide pedestrians into proper crossing paths.

(ii) **Unmarked crosswalk.** That part of a roadway, other than a marked crosswalk, which is included within the

extensions of the sidewalk lines between opposite sides of the roadway at an intersection, provided that (A) the roadway crosses through the intersection rather than ending at the intersection, and/or (B) all traffic on the opposing roadway is controlled by a traffic control device.

Cruising. The term "cruising" shall mean the movement of any vehicle on any street in search of prospective passengers who may wish to hire the vehicle.

Driveway. Every entrance or exit authorized pursuant to applicable law and used by vehicular traffic to or from lands or buildings abutting a roadway.

D/S Decals. "D/S Decals" shall mean valid non-transferable service vehicle decals or delivery vehicle decals issued by the City of New York that are affixed to the inside of the operator's side of the windshields of vehicles bearing "A", "C" or "D" series license plates issued by the U.S. Department of State.

Emergency vehicle (authorized). An "emergency vehicle (authorized)" shall mean every police vehicle, fire vehicle, emergency ambulance service vehicle, and every other emergency vehicle as defined in §101 of the Vehicle and Traffic Law.

For-hire vehicle. A "for-hire vehicle" shall mean a motor vehicle, licensed by the Taxi and Limousine Commission, for hire in the City, used for the carriage of passengers by prearrangement only and designed to carry fewer than nine passengers, including but not limited to livery vehicles, and excepting taxis or wheelchair accessible vans.

High Occupancy Vehicle (HOV). HOV shall mean a vehicle, except a truck as defined in §4-13(a)(1) of these rules, with two or more occupants, the number of which is specified by signs placed on express lanes on highways or bridges, pursuant to §4-07(k) of these rules.

Holidays. A "holiday," when used on traffic control devices, shall mean the days on which the following holidays are officially celebrated: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Horse drawn vehicle. A "horse drawn vehicle" shall mean a vehicle drawn by a horse and used for the carriage of passengers for compensation. Where signs limit parking to horse drawn vehicles, only those vehicles licensed by the New York City Department of Consumer Affairs will be permitted.

Impounded vehicle. A vehicle is considered "impounded" when the City of New York takes it into custody by taking any action inconsistent with the free use of the vehicle by the motorist, including, but not limited to, beginning to attach an immobilization device such as a "boot" or a hook on a Department of Transportation tow truck to the vehicle.

Law enforcement officer. A "law enforcement officer" shall mean a police officer or any authorized agent of the Department of Transportation.

Limited use vehicle. A "limited use vehicle" shall mean a motor vehicle, other than a motorcycle, which has a maximum performance speed of not more than forty miles per hour.

Marginal street. A "marginal street" shall mean any street, road, place, area or way adjoining or adjacent to waterfront property and designated as a marginal street, wharf or place on a plan or map adopted pursuant to law.

Motor vehicle. A "motor vehicle" shall mean every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power, except as otherwise provided in §125 of the Vehicle and Traffic Law.

Official time standard. The term "official time standard" shall mean whenever certain hours are named in these

rules or on traffic control devices they shall mean standard time or daylight-saving time, whichever may be in current use in this city.

Parking. "Parking" shall mean the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

Passenger car. The term "passenger car" when used on traffic control devices, shall mean a motor vehicle designed and used for conveying not more than eight people and shall include motorcycles designed and used only for conveying people.

Service vehicle. A "Service vehicle" shall mean a commercial vehicle used for providing commercial services other than making pickups and deliveries, but shall not include a vehicle bearing "A", "C" or "D" series license plates issued by the U.S. Department of State and displaying a valid non-transferable service vehicle decal issued by the City of New York that is affixed to the inside of the operator's side of the windshield.

Sidewalk. A "sidewalk" shall mean that portion of a street, whether paved or unpaved, between the curb lines or the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians. Where it is not clear which section is intended for the use of pedestrians, the sidewalk will be deemed to be that portion of the street between the building line and the curb.

Standing. The term "standing" shall mean the stopping of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

Stopping. The term "stopping" shall mean any halting, even momentarily of a vehicle, whether occupied or not.

Taxi. A "taxi" shall mean a motor vehicle used for the carriage of passengers for compensation, equipped with a taxi meter, painted yellow and displaying a current medallion issued by the New York City Taxi and Limousine Commission.

Transitway. A "transitway" shall mean any roadway or series of roadways designated for the exclusive use of buses or taxis or such other designated high occupancy vehicles as may be permitted, during certain hours of the day, with access to such roadway(s) limited to one block thereof to other vehicles for the purpose of delivery of goods or services or the picking up or dropping off of passengers.

Truck. For the purposes of parking, standing and stopping rules, a "truck" is a commercial vehicle, as defined in paragraph (i) of the definition of commercial vehicle, above, except that, for the purposes of parking, standing and stopping rules in the area bounded by 35th Street on the south, 41st Street on the north, Avenue of the Americas on the east, and 8th Avenue on the west, all inclusive, in the Borough of Manhattan, between the hours of 7 a.m. to 7 p.m., a vehicle shall not be deemed a truck unless it complies with the provisions of §4-13(a)(1) of these rules.

Vehicle. A "vehicle" shall mean every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

Waterfront property. The term "waterfront property" shall mean all waterfront property, city or privately owned, between salt water and the next adverse owner. An adverse owner is the first private owner of property not designated as waterfront property.

Wharf property. The term "wharf property" shall mean all wharves, piers, decks and bulkheads and structures thereon and slips and basins, the land beneath any of the foregoing, and all rights, privileges and easements appurtenant thereto and land under water in the port of the City of New York, and such upland or made land adjacent thereto owned by the City of New York as is vested in or may be assigned to the Department of Business Services of the City of New

York.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (b) Crosswalk amended City Record Nov. 26, 2008 §1, eff. Dec. 26,

2008. [See Note 6]

Subd. (b) Commercial Vehicle par (i) amended City Record Dec. 12, 2005 §1, eff. Jan. 11, 2006.

[See Note 5]

Subd. (b) Commercial Vehicle par (iii) amended City Record Mar. 28, 2005 §1, eff. Apr. 27, 2005.

[See Note 2]

Subd. (b) "Commuter Van" definition added City Record Oct. 7, 1996 eff. Nov. 6, 1996. [See

Note 1]

Subd. (b) Crosswalk amended City Record June 8, 2005 §1, eff. July 8, 2005. [See Note 4]

Subd. (b) Driveway added City Record Apr. 12, 2005 §1, eff. May 12, 2005. [See Note 3]

Subd. (b) D/S Decals added City Record May 9, 2003 §2 eff. June 8, 2003. [See T34 §4-08 Note 27]

Subd. (b) High Occupancy Vehicle (HOV) added City Record Jan. 25, 2002 §1, eff. Feb. 24, 2002.

[See T34 §4-07 Note 1]

Subd. (b) Service vehicle amended City Record May 9, 2003 §1, eff. June 8, 2003. [See T34 §4-08

Note 27]

Subd. (b) Truck amended City Record Mar. 28, 2005 §1, eff. Apr. 27, 2005. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 7, 1996:

The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter.

Sections 4-01(b), 4-08(c) and 4-11(c) are being amended to establish regulations for commuter vans similar to those for bus stops. In certain congested areas of the City, many types of vehicles such as buses, vans, taxis, liveries and delivery trucks, compete for curb space to load and unload passengers and goods. The large number of these vehicles has created safety hazards for people who utilize these services in these areas. The proposed rules are intended to eliminate the competition among the different types of vehicles by setting aside space specifically for vans and for-hire vehicles. The stops will allow van and for-hire vehicle operators to load and unload passengers safely without having to compete with all the other vehicles.

Section 4-10(c) is being amended to specify that for safety reasons, whenever possible, buses should only pick up and discharge passengers within twelve inches of the curb.

2. Statement of Basis and Purpose in City Record Mar. 28, 2005: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. Subdivision b of §4-01, subdivisions a, g, k, l and m of §4-08 and subdivision f of §4-15 are being amended to delete or amend incorrect references. Subdivision b of §4-02 is being amended to delete the public health restriction on the commissioner's discretion to suspend these rules, as it does not really apply to this department, and to add public convenience as a reason the commissioner may suspend rules. Subdivision f of §4-08 is being amended to delete the references to §4-08(e) as it is not possible to be in compliance with (f)(1) and (e)(1) and (9) at the same time. Subdivisions h and i of §4-08 are being amended to clarify the requirements in areas controlled by Muni-Meters. Paragraph 3 of subdivision h is also being amended to reflect that electronic meters, which are more common now, are more likely to fail than to have broken parts.

3. Statement of Basis and Purpose in City Record Apr. 12, 2005: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking in the City pursuant to §2903 of the New York City Charter. Subdivision (b) of §4-01 is being amended to add a definition of "driveway." Paragraph (2) of subdivision (f) of §4-08 is being amended to facilitate parking in front of driveways that have been rendered unusable by building renovation.

4. Statement of Basis and Purpose in City Record June 8, 2005: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. The definition of "crosswalk" in subdivision (b) of §4-01 is being amended to separate marked from unmarked crosswalks. Paragraph (4) of subdivision (e) of §4-08 of Title 34 of the Rules of the City of New York prohibits stopping, standing or parking at intersections, except for "T"-intersections. However, paragraph (5) of that same subdivision (e) prohibits stopping, standing or parking in crosswalks. Separating the definition of crosswalk into marked and unmarked crosswalks makes clear that unmarked crosswalks do not exist at two of the three crossings in a "T"-intersection. This is because the roadway that ends at a "T"-intersection has no "opposite side" across the intersection. Therefore, in the absence of a marked crosswalk, parking is permitted all along the top of a "T"-intersection, which is not interrupted by another roadway.

5. Statement of Basis and Purpose in City Record Dec. 12, 2005: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. Subdivision (b) of §4-01 and subdivision (k) of §4-08 are being amended to clarify that a vehicle that has a cab with a rear bench or seat(s) behind the front seats is still properly altered and may be considered a commercial vehicle for the purposes of these rules. These types of vehicles are increasingly common. Therefore, these amendments are being proposed to eliminate any confusion in enforcement of the commercial vehicle parking rules.

6. Statement of Basis and Purpose in City Record Nov. 26, 2008: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. The definition of "Crosswalk" set forth in subdivision (b) of §4-01 of the Traffic Rules and Regulations is being amended to more clearly define unmarked crosswalks, differentiating pedestrian ramps that lead to such crosswalks from other pedestrian ramps for enforcement purposes. Paragraph (7) of subdivision (f) of §4-08 of Title 34 of the Rules of the City of New York prohibits stopping, standing or parking in front of pedestrian ramps intended for the crossing of individuals. The amendment to this paragraph clarifies that the prohibition only applies to pedestrian ramps that lead people to crosswalks, and that motorists may park their vehicles in front of other pedestrian ramps. The amendment will improve enforcement of the Traffic Rules and Regulations with respect to such pedestrian ramps by making such enforcement more clear and consistent.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-02 Compliance With and Effect of Traffic Rules.

(a) **Applicability of rules.** The provisions of these rules apply to all vehicles, operators of vehicles, bicycles, operators of bicycles and pedestrians upon highways, parkways, shopping center parking lots and municipal areas including public housing, public hospital parking lots, and municipal lots and garages. These rules also apply on wharf property and marginal streets, in off-street parking facilities operated by the Department of Transportation, on vacant lots, and upon private roads open to public motor vehicle traffic, which for the purpose of application of these rules shall be considered streets, highways or parkways, except where a different place is specifically referred to.

(b) **Suspension of rules.** The Commissioner may, at his/her discretion, suspend any regulation contained herein in situations involving public safety and convenience.

(c) **Dangerous driving.** No person shall operate a vehicle in a manner that will endanger any person or property.

(d) **All persons are required to comply with traffic rules.**

(1) **Exceptions.** It is a traffic infraction for any person, including government employees, to do any act forbidden by or fail to perform any act required by these rules, except as otherwise provided herein.

(i) **Authorized emergency vehicles.** The operator of an authorized emergency vehicle when involved in an emergency operation as defined in §114-b of the Vehicle and Traffic Law may exercise the privileges set forth in §1104 of the Vehicle and Traffic Law, subject to the conditions set forth therein.

(ii) **Traffic/parking control vehicles.** Unless specifically made applicable, the provisions of these rules shall not apply to operators of designated traffic or parking control vehicles, including, but not limited to, tow trucks, while actually engaged in activities necessary to perform their duties.

(iii) **Snow plows, sand spreaders, sweepers and refuse trucks.**

(A) The operator of a New York City Department of Sanitation snow plow, sand spreader, or sweeper, and the operator of a Department of Transportation vehicle when performing the same function, while in the performance of his/her duty and acting under the orders of his/her superior may make such turns as are necessary and proceed in the direction required to complete his/her cleaning, snow removal, or sand spreading operations subject to §1102 of the Vehicle and Traffic Law. The provisions of this subparagraph shall not apply while traveling to or from such work locations.

(B) The operator of a New York City Department of Sanitation refuse truck may temporarily stand on the roadway side of a vehicle parked at the curb, provided that no curb space is available within fifteen feet, while expeditiously loading refuse, subject to §1102 of the Vehicle and Traffic Law.

(iv) **Highway workers.** Unless specifically made applicable, the provisions of these rules shall not apply to persons, teams, motor vehicles, and other equipment actually engaged in work authorized by the City of New York, the State of New York or the federal government while on a highway. Section 1103 of the Vehicle and Traffic Law is applicable to any person or team or any operator of a motor vehicle or other equipment while actually engaged in work on a highway. As §1103 of the Vehicle and Traffic Law provides, such persons are not relieved from the duty to proceed at all times during all phases of such work with due regard for the safety of all persons nor shall the foregoing provisions of this subparagraph protect such persons or teams or such operators of motor vehicles or other equipment from the consequences of their reckless disregard for the safety of others.

(v) **Highway inspection and quality assurance vehicles, compliance inspection unit and street assessment unit vehicles.** Unless specifically made applicable, the provisions of these rules which relate to parking and standing shall not apply to operators of New York City Department of Transportation highway inspection vehicles, compliance inspection vehicles, and street assessment vehicles while actually engaged in activities necessary to perform their duties.

(2) **Public employees.** The provisions of these rules shall apply to the operator of any vehicle owned by or used in the service of the United States Government, New York State, New York City, or other states, cities, or any borough, and it shall be unlawful for any such operator to violate any of the provisions of these rules except as otherwise permitted by law.

(e) **State law provisions superseded.** Pursuant to authority provided by §1642 of the Vehicle and Traffic Law, the following provisions of such law shall not be effective in the City of New York: §§1112, 1142(b), 1150, 1151, 1152, 1153, 1156(b), 1157, 1171, 1201, 1202, and 1234.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (b) amended City Record Mar. 28, 2005 §2, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (d) par (1) amended City Record Feb. 28, 2000 eff. Mar. 29, 2000. [See Note 1]

Subd. (d) par (1) subpar (iv) amended City Record Sept. 18, 2007 §1, Oct. 18, 2007. [See Note 4]

Subd. (e) amended City Record May 9, 2003 eff. June 8, 2003. [See Note 3]

Subd. (e) amended City Record Nov. 23, 1998 eff. Dec. 23, 1998. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Feb. 28, 2000:

The Commissioner of the Department of Transportation is authorized to promulgate rules relating to the movement of vehicles pursuant to §2308 of the New York City Charter and §1642 of the State Vehicle and Traffic Law.

This rule is being proposed in order to facilitate the enforcement by the Department of applicable laws and rules relating to street construction. The functions performed by the operators of Highway Inspection and Quality Assurance (HIQA) vehicles are similar to those performed by the Traffic Intelligence Division (TID) of the Police Department. This rule will afford HIQA vehicles the same privileges accorded to TID vehicles while in the performance of their duties. In addition to the enforcement of rules and laws regarding construction, which contributes to vehicular as well as pedestrian safety, the HIQA unit responds to emergencies such as street collapses, water main breaks, building operations, falling debris, and any other emergency condition which would hinder the flow of traffic and/or cause closure of major roadways. As such, exempting these vehicles from compliance to the Traffic rules will greatly enhance the performance of the duties of the operators of these vehicles. The Compliance Inspection Unit and the Street Assessment Unit vehicles perform tasks such as collection of field information about streets and sidewalks, such as travel times, vehicle classifications, turning movements at intersections and pothole identification surveys.

2. Statement of Basis and Purpose in City Record Nov. 23, 1998: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to secton 2903(a) of the New York City Charter. Currently there are no enforceable provisions requiring pedestrian use of sidewalks or regulating driving on controlled-access highways in the City. The provisions of sections 1130 and 1156(a) of the Vehicle and Traffic Law (VTL) that regulate such activities throughout the rest of the State do not apply in New York City. These sections of the VTL are currently superseded by City rules adopted pursuant to VTL section 1642. The purpose of this proposed rule is to conform City traffic regulations with State law by deleting these VTL provisions from the list of VTL provisions which are superseded by City rules. This rule also deletes subdivisions (l) and (m) of section 4-07 from the City traffic rules. Subdivision (l) relates to the designation of special use lanes on the Gowanus. This provision is no longer necessary because the Gowanus now has a contraflow lane. Subdivision (m) relates to a pilot program that expired in 1997.

3. Statement of Basis and Purpose in City Record May 9, 2003: The Commissioner of Transportation is authorized to regulate vehicular traffic pursuant to section 2903(a) of the New York City Charter. A review of the provisions of section 1642 of the Vehicle and Traffic law (VTL) has shown that section 1642 does not allow cities with a population in excess of one million to supersede provisions regarding speed, unless it is to establish minimum speed limits. Consequently, the City cannot supersede the provisions of section 1180 regarding maximum speeds and that section would apply in the City. Paragraph 3 of section 4-06 is being deleted because this paragraph duplicates the provisions of VTL section 1180(a) and is, therefore, unnecessary.

4. Statement of Basis and Purpose in City Record Sept. 18, 2007: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding traffic operations in the City pursuant to §2903(a) of the New York City Charter. Subparagraph (iv) paragraph (1) of subdivision (d) of §4-02 is being amended to clarify the applicability of §1103 of the Vehicle and Traffic Law in the City of New York. More specifically, the rule is being amended to make clear that the recklessness standard set forth in §1103 applies to highway workers.

CASE AND ADMINISTRATIVE NOTES

¶ 1. See Tapia v. Royal Bus Tours, 2008 N.Y. Slip Op. 51292U, 2008 N.Y. Misc. Lexis 3694 (Sup.Ct. Queens Co.), discussed in note 1 of 34 RCNY 4-07.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-03 Traffic Signals.

(a) **Traffic control signals.** Whenever traffic is controlled by traffic control signals exhibiting different colored lights successively, the following colors shall indicate and apply to operators of vehicles and to pedestrians, except as superseded by pedestrian control signals, as follows:

(1) **Green alone:** (i) Vehicular traffic facing such signals may proceed straight through or turn right or left unless a sign at such place prohibits any such movement. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(ii) Pedestrians facing such signal may proceed across the roadway within any crosswalk.

(2) **Steady yellow alone, dark period, or red-green combined when shown following the green signal:**

(i) Vehicular traffic facing such signal is thereby warned that the red signal will be exhibited immediately thereafter and such vehicular traffic shall not enter the intersection when the red signal is exhibited.

(ii) Pedestrians facing such signal are thereby warned that there is insufficient time to cross the roadway, and shall not enter or cross the roadway. Pedestrians already in the roadway shall proceed to the nearest safety island or sidewalk.

(3) **Steady red alone:** (i) Vehicular traffic facing such signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to

proceed is shown.

(ii) Notwithstanding the foregoing provisions of this subdivision (a), or any provisions of state law, an operator approaching an intersection where a sign authorizes right or left turns on red signal may make such turn after coming to a complete stop, but shall yield the right of way to all vehicles and pedestrians lawfully within the intersection.

(iii) Pedestrians facing such signal shall not enter or cross the road way.

(4) **Arrows.** When colored lights shaped as arrows are used as traffic control signals, arrows pointing to the right shall apply to operators intending to enter the intersection to turn to the right, arrows pointing vertically shall apply to operators intending to enter the intersection to proceed straight through, and arrows pointing to the left shall apply to operators intending to enter the intersection to turn to the left. The colors of arrows shall have the same meanings as colors of traffic signal lights, but shall apply only to operators intending to enter the intersection to proceed in the direction controlled by the arrow.

(5) **Signs.** Operators shall comply with signs that refer to traffic control signals at places other than the intersections at which such signals are located, for example, "Stop here on red."

(6) **Signals not at intersections.** In the event an official traffic control signal is erected and maintained at a place other than an intersection, all the provisions of this subdivision (a) shall be applicable, except those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(7) **Nonfunctioning signals.** Vehicular traffic facing a signal that is not working shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall proceed with caution through the intersection.

(b) **Blinking traffic control signals.** (1) **Red.** Vehicular traffic facing such signals shall come to a complete stop and shall proceed only after yielding to any vehicles approaching from the cross street.

(2) **Yellow.** Vehicular traffic facing such signals shall proceed with caution through the intersection.

(c) **Pedestrian control signals.** Whenever pedestrian control signals are in operation, exhibiting the words "WALK" and "DON'T WALK" successively, the international green or red hand symbols, figures or any other internationally recognized representation concerning the movement of pedestrians, such signals shall indicate as follows:

(1) **WALK, green hand symbol or green walking figure.** Pedestrians facing such signal may proceed across the roadway in the direction of the signal in any crosswalk. Vehicular traffic shall yield the right of way to such pedestrians.

(2) **Flashing DON'T WALK, red hand symbol or red standing figure.** Pedestrians facing such signal are warned that there is insufficient time to cross the roadway and no pedestrian shall enter or cross the roadway. Pedestrians already in the roadway shall proceed to the nearest safety island or sidewalk. Vehicular traffic shall yield the right of way to such pedestrians.

(3) Steady DON'T WALK red hand symbol or red standing figure. Pedestrians facing such signal shall not enter or cross the roadway.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (a) par (7) added City Record Mar. 3, 2004 §1, eff. Apr. 2, 2004. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 3, 2004

Subdivision (a) of section 4-03 is being amended to add a provision addressing what action traffic should take when facing a nonfunctional traffic signal.

CASE NOTES

¶ 1. Pedestrian must be "lawfully within the intersection" pursuant to New York City Traffic Regulations §30(a) (34 RCNY 4-03(a)(1)(i)) to have the right of way over vehicular traffic turning with a green light. Although witnesses testified plaintiff was in the crosswalk after having been struck by a bus, the critical question was where he was when the bus began to turn. Brito v. Manhattan & Bronx Surface Tr. Oper. Auth., 188 AD2d 253 [1993].

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34 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-04 Pedestrians.

(a) **Pedestrians subject to traffic rules, except as otherwise provided herein.** Pedestrians shall be subject to traffic control signals and pedestrian control signals as provided in §§4-03(a) and 4-03(b) of these rules and to the lawful orders and directions of any law enforcement officer, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this section.

(b) **Right of way in crosswalks.** (1) **Operators to yield to pedestrians in crosswalk.** When traffic control signals or pedestrian control signals are not in place or not in operation, the operator of a vehicle shall yield the right of way to a pedestrian crossing a roadway within a crosswalk when the pedestrian is in the path of the vehicle or is approaching so closely thereto as to be in danger.

(2) **Pedestrians shall not cross in front of oncoming vehicles.** Notwithstanding the provisions of (1) of this subdivision (b), no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the operator to yield.

(3) **Vehicles stopped for pedestrians.** Whenever any vehicle is stopped at a crosswalk to permit a pedestrian to cross the roadway, the operator of any other vehicle approaching from the rear in the same or adjacent lanes shall not overtake and pass such stopped vehicle.

(c) **Restrictions on crossings.** (1) No pedestrian shall enter or cross a roadway at any point where signs, fences, barriers, or other devices are erected to prohibit or restrict such crossing or entry.

(2) No pedestrian shall cross any roadway at an intersection except within a cross- walk.

(3) No pedestrian shall cross a roadway except at a crosswalk on any block in which traffic control signals are in operation at both intersections bordering the block.

(d) **Operators to exercise due care.** Notwithstanding other provisions of these rules, the operator of a vehicle shall exercise due care to avoid colliding with any pedestrian.

(e) **Hitch-hiking and soliciting prohibited.** (1) **Talking or selling.** No person shall stand in the roadway to talk with or sell or offer to sell anything to an occupant of any vehicle.

(2) **Soliciting rides.** No person shall solicit a ride from the occupant of a vehicle by word or gesture.

(3) **Washing, polishing, cleaning and assisting parking.** No person shall approach an operator or other occupant of a passenger vehicle on any street, while the vehicle has stopped temporarily, is about so to stop, is parked or is about to be parked, for the purpose of washing, polishing, or cleaning such vehicle or any part of it, or offering to do so. Nor shall any person approach an operator or other occupant of a passenger vehicle for the purpose of directing it to a place for parking on any street or assisting in such parking, or offering any other service in relation to such vehicle, or soliciting a gratuity, except services rendered in connection with emergency repairs at the request of the operator of the vehicle.

(4) **Opening or closing doors.** No person, other than an occupant or prospective occupant of a passenger vehicle on a street, shall open, hold open, or close, or offer to open, hold open, or close any door of the vehicle. This provision shall not apply to such acts when intended purely as a social amenity without expectation or acceptance of a gratuity, nor to doormen or other persons employed by owners, occupants, or managers of abutting premises to render such service, nor when such service is incidental to other legitimate service being rendered to such an occupant or prospective occupant of a passenger vehicle.

(5) **Hailing taxis.** Unless asked to do so without advance solicitation (direct or implied), no person shall hail or procure for another, not in his or her social company, a taxi or other passenger vehicle.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (c) par (3) added City Record Mar. 27, 1998 eff. Apr. 26, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 27, 1998:

The Commissioner of the Department of Transportation is authorized to regulate the movement of vehicular and pedestrian traffic pursuant to section 2903 of the New York City Charter. The purpose of this rule is to enhance pedestrian and vehicular safety by providing that pedestrians shall cross the street only at crosswalks on blocks with traffic control signals in operation at the intersections bordering the blocks.

Currently, traffic rules clearly prohibit pedestrians from crossing against a traffic control signal or pedestrian control signal, crossing a roadway where signs or barriers prohibit such crossing and crossing at an intersection outside a crosswalk. However, a significant number of fatalities occur as a result of pedestrians crossing heavy traffic blocks at other than crosswalks. The Department believes that compliance with the proposed rule will significantly enhance safety for both pedestrians and motorists.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Violation of Admin. Code § 4-04(c)(2) constitutes only some evidence of negligence and does not constitute negligence per se. **Schneider v. Diallo,** 14 A.D.3d 445, 788 N.Y.S.2d 366 (1st Dept. 2005).

34 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-05 Turns.

(a) **Compliance with turning restrictions.** Whenever a traffic control device regulates any turn or other movement at an intersection or other location, no operator of any vehicle shall disregard the direction of such device, unless directed to do so by a law enforcement officer.

(b) **Limitations on turning around.** (1) The operator of any vehicle shall not make a U-turn upon any street in a business district, as defined in §105 of the Vehicle and Traffic Law.

(2) The operator of a vehicle shall not make a U-turn upon any street outside a business district unless such turn is made without interfering with the right of way of any vehicle or pedestrian.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

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34 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-06 Speed Restrictions.

(a) **Maximum speed limits and basic rule.** (1) No person shall drive a vehicle at a speed greater than thirty miles per hour except where official signs indicate a different maximum speed limit.

(2) Where official signs are posted indicating a maximum speed limit, no person shall drive a vehicle at a speed greater than such maximum speed limit.

(3) Reserved.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (a) par (3) repealed City Record May 9, 2003 eff. June 8 2003. [See T34 §4-02 Note 3]

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34 RCNY 4-07

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-07 Other Restrictions on Movement.

(a) **Yield signs.** The operator of a vehicle approaching a YIELD or YIELD-RIGHT-OF-WAY sign shall slow to a reasonable speed for existing conditions of traffic and visibility, stopping if necessary, and shall yield the right-of-way to all traffic on the intersecting street which is so close as to constitute an immediate hazard. Proceeding past such sign with resultant collision or other impediment or interference with traffic on the intersecting street shall be deemed prima facie evidence of a violation of this rule.

(b) **Obstruction of traffic.** (1) **Traffic lane.** No person shall operate a vehicle in a manner which obstructs traffic in lanes specifically designated for the movement of traffic. Such lanes include, but are not limited to, no standing zones and no stopping zones.

(2) **Spillback.** No operator shall enter an intersection and its crosswalks unless there is sufficient unobstructed space beyond the intersection and its crosswalks in the lane in which he/she is traveling to accommodate the vehicle, notwithstanding any traffic control signal indication to proceed.

(c) **Restrictions on crossing sidewalks.** (1) **Driveways.** No person shall drive within any sidewalk area except at a permanent or temporary driveway.

(2) **Avoiding intersections.** No person shall drive across a sidewalk or upon a driveway in order to avoid an intersection.

(3) **Bicycles and limited use vehicles.**

(i) No person shall ride or operate a bicycle upon any sidewalk area unless permitted by sign. This prohibition shall not apply to the operation of bicycles with wheels of less than 26 inches in diameter upon the sidewalk by children of 12 years or less in age.

(ii) No person shall ride, park or operate a limited use vehicle within any sidewalk area except where permitted by sign. This prohibition shall not apply to the pushing of a limited use vehicle within a sidewalk area or to the pushing of such a vehicle to an authorized parking area.

(d) **Restrictions on backing.** No person shall back a vehicle into an intersection or over a crosswalk and shall not in any event or at any place back a vehicle unless such movement can be made in safety.

(e) **Play streets.** Whenever authorized signs are erected indicating any street or part thereof as a play street or play area, no person shall drive a vehicle upon any such street or area between 8 a.m. and one-half hour after sunset, unless other hours are prescribed by signs, except operators of vehicles having business or whose residences are within such restricted area. Any such operator shall exercise the greatest care in driving upon any such street.

(f) **Restrictions on learners.** (1) An operator with a learner's permit shall not operate a motor vehicle in any park, on any play street, or along any block in which there is an entrance to a public playground or park.

(2) The licensed operator accompanying an operator with a learner's permit shall not permit such learner to violate paragraph (f)(1), above.

(g) **Following emergency vehicles prohibited.** The operator of any vehicle other than one on official public business shall not follow any emergency vehicle traveling in response to an emergency call closer than 200 feet, nor drive into nor park such vehicle within the block where such emergency work is in progress.

(h) **Driving on divided highways.** (1) Whenever any highway is divided into two or more roadways by an intervening space, physical barrier, or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic control devices or law enforcement officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection, as established, unless specifically authorized by public authority.

(2) No vehicle shall make a U-turn on a divided highway, except where permitted by sign or at the direction of a law enforcement officer.

(i) **Towing of vehicles on parkways, expressways, drives, highways, interstate routes, thruways, and bridges.** (1) **Restrictions.** No person shall cause or permit a disabled vehicle to be towed except by a tow truck under permit issued by the commissioner of the Police Department, or by a Police Department tow truck and then only by such tow truck on the main roadway, including the berm or shoulder adjacent to said roadways or entrances and exits of the following parkways, expressways, thruways, and bridges:

Belt Parkway System

Bronx River Parkway

Cross Island Parkway

Grand Central Parkway

Henry Hudson Parkway

Hutchinson River Parkway

Jackie Robinson Parkway

Laurelton Parkway

Mosholu Parkway Extension

Richmond Parkway

Shore Parkway

Southern Parkway

Brooklyn-Queens Expressway

Bruckner Expressway

Clearview Expressway

Cross Bronx Expressway and Extension

Franklin Delano Roosevelt Drive

Gowanus Expressway

Harlem River Drive

Long Island Expressway

Major Deegan Expressway

Martin Luther King Expressway

Miller Highway

Nassau Expressway

Northern Boulevard from Astoria Boulevard and Ditmars Boulevard Entrance to Linden Place Exit

Governor Thomas E. Dewey Thruway (New England Section)

Prospect Expressway

Route 25A (Elevated Section) from 112th Place to 126th Street

Sheridan Expressway

Staten Island Expressway

Throgs Neck Expressway

Van Wyck Expressway and Extension

West Shore Expressway

Whitestone Expressway

Brooklyn Bridge

Manhattan Bridge

Queensboro Bridge

Williamsburg Bridge

Alexander Hamilton Bridge

Eastern Boulevard (Bruckner Boulevard) Bridge

Hutchinson River Parkway Extension Bridge

Kosciuszko Bridge

Midtown Highway Bridge

Mill Basin Bridge

Third Avenue Bridge between Manhattan and Bronx

Unionport Bridge

Whitestone Expressway Bridge

Willis Avenue Bridge

(2) **Police commissioner may waive requirements.** The commissioner of the Police Department in his/her discretion may waive and reimpose the requirement for a permit in the case of any specific bridge, highway, parkway, expressway, drive, interstate route and thruway.

(3) **Road service and towing rates.** For the pupose of this paragraph, road service shall mean service performed that will enable a vehicle to continue under it's own power.

(i) **Road service, all vehicles**

[See tabular material in printed version]

(ii) **Passenger cars, hoist and tow, per mile and storage fees.** Hoist and tow fees, per mile fees, and storage fees for all passenger cars towed pursuant to arterial tow service permits in the City of New York, shall be those provided for such services in subdivisions a and b of §2-368 of subchapter EE of title 6 of the rules of the city of New York.

(iii) **Vehicles other than passenger cars**

(A) Any vehicle with a maximum gross vehicle weight over 4,500 lbs. and under 10,000 lbs.

[See tabular material in printed version]

(B) Any two axle truck or bus with a maximum gross vehicle weight from 10,000 to 18,000 lbs.

[See tabular material in printed version]

(C) Any two axle truck or bus with a maximum gross vehicle weight from 18,000 to 26,000 lbs.

[See tabular material in printed version]

(D) Any truck, bus or tractor trailer with a maximum gross vehicle weight above 26,000 lbs.

[See tabular material in printed version]

(E) Labor per 1/4 hour per truck or per person or tow operator

$50.00

Applies only to vehicles over 4,500 lbs. in the following situations: overturned, wedged on guardrails, off-road recovery (embankment) and may apply to jackknifed, wedged under overpass/bridge, or broken/defective axle in which recovery (off-loading or positioning) must be performed prior to actual tow.

(F) Special equipment such as fork lifts, cranes, loading equipment, trailer, tractor, front end loaders and dump trucks will be considered rented equipment. The cost for such equipment will be billed on a daily basis with the approval of the Department.

(G) Tire service. If subcontracting to a tire company is required for on-road service, the tow vehicle must remain on the scene. Billing will be calculated for actual work time at $100.00 per hour. Subcontracting for off-roadway service, no tow truck required to remain on scene: a one-time charge of $55.00.

(j) **Yearly and single issue permits for use of roadways.**

(1) **General information.** Vehicles normally prohibited from roadways may be issued yearly or single-use permits by the Department of Transportation upon application in writing. Such permits must be displayed so that they are visible through the windshield. The Commissioner or his/her designee may charge a fee for such permits equal to the cost of administering the permit program.

(2) **Eligible groups and vehicles.** Yearly permits are available to the following, as well as to any other groups or vehicles specified by the Commissioner or his/her designee:

(i) companies that transport passengers to and from airports;

(ii) commuter and shuttle services;

(iii) ambulettes;

(iv) school bus companies;

(v) buses;

(vi) medical, blood and human service programs;

(vii) not-for-profit groups going to and from special events;

(viii) vehicles that service businesses accessible only by use of parkways; and (ix) service vehicles that repair and maintain highways and highway facilities.

(3) **Authorized roadways.** Yearly and single issue permits will be granted only for the following parkways or any other area designated by the Department of Transportation: (i) Belt Parkway: Except that the roadway between Knapp Street and Rockaway Parkway is limited to vehicles weighing under 5 tons when fully loaded.

(ii) Bronx River Parkway

(iii) Cross Island Parkway

(iv) Eastern Parkway

(v) Grand Central Parkway: Between the TriBoro Bridge and the Van Wyck Expressway

(vi) Harlem River Drive

(vii) Henry Hudson Parkway

(viii) Hutchinson River Parkway

(ix) Mosholu Parkway

(x) Pelham Parkway

(xi) Richmond Parkway

(xii) Willowbrook Parkway

For reasons of safety, the use of these roadways may be limited.

(4) **Duration.** Permits are issued for the minimum hours and days essential for the activity. Bus permits are valid only while transporting passengers. Yearly permits are issued on an annual basis on dates determined by the Department of Transportation. These permits are renewable by reapplication in writing to the Department of Transportation. The Commissioner or his/her designee may, at his/her discretion, issue, extend or revoke any permit.

(k) **Express lanes on limited access highways.** (1) **Restrictions.** Wherever signs are erected on highways or bridges giving notice of express lanes, no person shall operate a vehicle other than a vehicle as specified in paragraph (2) of this subdivision, a medallion taxi or a for-hire vehicle with at least one passenger as specified in paragraph (3) of this subdivision, an emergency vehicle as specified in paragraph (4) of this subdivision, or a vehicle classified as an HOV, with or without EZPASS as specified on such sign, within a designated express lane on a highway or bridge during the hours specified on such signs.

(2) **Buses, out-of-state bus equivalents, Access-A-Ride vehicles, ambulettes and wheelchair accessible vans.** Vehicles registered as buses in New York State, vehicles registered out-of-state that are equivalent to New York State registered buses, all vehicles authorized by the Metropolitan Transportation Authority New York City Transit ("MTA/NYCT") to provide Access-A-Ride service, ambulettes, wheelchair accessible vans, and motorcycles shall be eligible to use express lanes on highways or bridges pursuant to this subdivision as follows:

(i) The owner or operator of any vehicle registered as a bus in New York State shall be able to provide proof of:

(A) operating authority issued by one or more of the following as required: the appropriate New York City agency, department or authority; the New York State Department of Transportation; or the Interstate Commerce Commission; and

(B) current valid vehicle registration indicating New York State bus or official license plates; and

(C) minimum vehicle seating capacity of 16 passengers not including the operator; and

(D) seating capacity consistent with the seating capacity set forth in the appropriate grant of operating authority; and

(E) valid insurance consistent with state requirements.

(ii) The owner or operator of any vehicle registered out-of-state that is equivalent to a New York State registered bus shall be able to provide proof of:

(A) operating authority issued by one or more of the following as required: the appropriate New York City agency, department or authority; the appropriate out-of-state authorizing agency, department or authority; or the Interstate Commerce Commission; and

(B) current valid vehicle registration indicating license plates equivalent to New York State bus or official license plates; and

(C) minimum vehicle seating capacity of 16 passengers not including the operator; and

(D) seating capacity consistent with the seating capacity set forth in the appropriate grant of operating authority; and

(E) valid insurance consistent with State requirements.

(iii) The owner or operator of any vehicle authorized by the Metropolitan Transportation Authority New York City Transit ("MTA/NYCT") to provide Access-A-Ride service, ambulette or wheelchair accessible van shall be able to provide proof of:

(A) operating authority issued by one or more of the following as required: the New York City Taxi and Limousine Commission; the New York State Department of Transportation; or the Interstate Commerce Commission; and

(B) current valid vehicle registration; and

(C) seating capacity consistent with the seating capacity set forth in the applicable grant of operating authority, where such grant specifies a seating capacity; and

(D) valid insurance consistent with state requirements.

(iv) The owner or operator of any vehicle registered as a motorcycle in New York State shall be able to provide proof of:

(A) current valid vehicle registration; and

(B) valid insurance consistent with State requirements.

(3) **Taxis and for-hire vehicles.** Medallion taxis and for-hire vehicles duly licensed by the New York City Taxi and Limousine Commission carrying at least one passenger shall be allowed to use express lanes on highways or bridges. Medallion taxis and for-hire vehicles without passengers shall not be allowed to use express lanes on highways or bridges. Medallion taxis and for-hire vehicles without passengers shall not be allowed to use express lanes on highways or bridges.

(4) **Emergency vehicles.** Emergency vehicles responding to emergencies shall be allowed to use express lanes on highways or bridges. Emergency vehicles not responding to emergencies shall not be allowed to use express lanes on highways or bridges.

(l) **Use of the Grand Central Parkway by certain vehicles.** Notwithstanding any other provision of these rules to the contrary, single-unit vehicles with no more than three axles and ten tires may operate in both directions on the roadway of the Grand Central Parkway, between the Triborough Bridge and the western leg of the Brooklyn-Queens Expressway. Buses will continue to be prohibited from operating on the Grand Central Parkway without consent.

(m) Reserved.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (i) par (1) amended City Record Dec. 11, 1998 eff. Jan. 10, 1999. [See Note 3]

Subd. (i) par (2) amended City Record Dec. 11, 1998 eff. Jan. 10, 1999. [See Note 3]

Subd. (i) par (3) subpar (i) amended City Record July 25, 1996 eff. Aug. 24, 1996. [See Note 4]

Subd. (i) par (3) subpar (iii) repealed and added City Record July 25, 1996 eff. Aug. 24, 1996. [See Note 4]

Subd. (k) amended City Record Jan. 25, 2002 §2, eff. Feb. 24, 2002. [See Note 1]

Subd. (k) amended City Record Mar. 11, 1994 eff. Apr. 10, 1994.

Subd. (k) par (1) amended City Record May 17, 2000 eff. June 16, 2000. [See Note 2]

Subd. (k) par (2) amended City Record May 2, 2008 §1, eff. June 1, 2008. [See Note 10]

Subd. (k) par (3) amended City Record May 17, 2000 eff. June 16, 2000. [See Note 2]

Subd. (l) amended City Record Oct. 1, 2004 eff. Oct. 31, 2004. [See Note 9]

Subd. (l) added City Record Oct. 3, 2003 eff. Nov. 2, 2003. [See Note 8]

Subd. (l) repealed City Record Nov. 23, 1998 eff. Dec. 23, 1998. [See T34 §4-02 Note 2]

Subd. (m) repealed City Record Nov. 23, 1998 eff. Dec. 23, 1998. [See T34 §4-02 Note 2]

Subd. (m) par (i) added City Record June 19, 1996 eff. July 19, 1996. [See Note 5]

Subd. (m) par (i) repealed City Record Oct. 25, 1995 eff. Nov. 24, 1995. [See Note 6]

Subd. (m) par (i) added City Record Aug. 2, 1995 eff. Sept. 1, 1995. [See Note 7]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 25, 2002:

The Commissioner of the Department of Transportation is authorized to regulate traffic pursuant to §2903(a) of the New York City Charter.

Section 4-01(b) is being amended to add a definition of high occupancy vehicles.

Section 4-07(k)(1) is being amended to allow the placement of signs permitting use of designated express lanes on highways by high occupancy vehicles and to delete the references to written authorization and to limited access highways, which are no longer required.

Section 4-07(k)(2) is being amended to reflect the fact that the Access-A-Ride program is now being run by the Metropolitan Transportation Authority New York City Transit and not the New York City Department of Transportation. This paragraph is also being amended to delete the reference to applications for written authorization, which is no longer required.

Section 4-07(k)(3) and (k)(4) are being amended to add bridges as potential roads where express lanes may be designated.

2. Statement of Basis and Purpose in City Record May 17, 2000: The Commissioner of the Department of Transportation is authorized to regulate traffic pursuant to §2903(a) of the New York City Charter. Section 4-07(k) is being amended to allow for-hire vehicles with passengers to use the express lanes on limited access highways in order to give priority to vehicles being used for a transit purpose.

3. Statement of Basis and Purpose in City Record Dec. 11, 1998: The Commissioner of the Department of Transportation is authorized by section 2903 of the New York City Charter and Section 1642 of the New York State Vehicle and Traffic Law to provide for the towing of vehicles on the arterial highways in the City. In 1996, the management of the arterial tow program was transferred to the Police Department along with other traffic enforcement functions. Paragraphs (1) and (2) of subdivision (i) of section 4-07 are being amended to reflect that the tow truck permits are now awarded by the Police Commissioner and that the Police Department rather than the Department of Transportation shall maintain its own tow trucks for such purposes. In addition, the rule is being amended to reflect that the name of the Interboro Parkway was changed to the Jackie Robinson Parkway by State law in 1997.

4. Statement of Basis and Purpose in City Record July 25, 1996: The Commissioner of the Department of Transportation is authorized by section 2903 of the New York City Charter and Section 1642 of the New York State Vehicle and Traffic Law to provide for the fees allowed to be charged by the tow firms operating under Department of Transportation permits on the arterial highways in the City. Section 4-07(i)(3)(i) is being amended to clarify that only a jump start is intended to be permitted. A battery charge could imply removal of the battery, which is inappropriate on the side of the road. Section 4-07(i)(3)(iii) is being amended to alleviate any areas of confusion as to what amount could be charged and in what circumstances, which occasionally led to different rates for similar work. These new rates will allow for uniformity in the charges by tow companies.

5. Statement of Basis and Purpose in City Record June 19, 1995: The Commissioner of the Department of Transportation is authorized to regulate the movement of vehicular traffic pursuant to Section 2903 of the New York City Charter and section 1642 of the Vehicle and Traffic Law. This rule is proposed in order to reduce traffic congestion and improve air quality and vehicular and pedestrian safety by removing small commercial vehicles from local streets in residential neighborhoods. A six month pilot program from July 22, 1996 through January 21, 1997, will be undertaken allowing small commercial vehicles to utilize a segment of the Grand Central Parkway. Step vans continue to be prohibited from this parkway. After the first $4\frac{1}{2}$ months of the pilot program, DOT will conduct a comprehensive data collection and evaluation effort to determine the impacts of the pilot program on traffic circulation, safety, and community life on the Grand Central Parkway and the adjacent local street network. This analysis will include a preliminary data collection effort conducted after the first 2 months to determine initial usage. The pilot program will end at the conclusion of the six month period, after which a final report will be forwarded to the Borough President and other elected officials for their evaluation.

6. Statement of Basis and Purpose in City Record Oct. 25, 1995: The Commissioner of the Department of Transportation is authorized to regulate the movement of vehicular traffic pursuant to Section 2903 of the New York City Charter and section 1642 of the Vehicle and Traffic Law. This rule which established a pilot program for allowing certain commercial vehicles on a segment of the Grand Central Parkway is being repealed as the Agency has decided not to proceed with the pilot program at this time.

7. Statement of Basis and Purpose in City Record Aug. 2, 1995: The Commissioner of the Department of

Transportation is authorized to regulate the movement of vehicular traffic pursuant to Section 2903 of the New York City Charter and section 1642 of the Vehicle and Traffic Law. This rule is proposed in order to reduce traffic congestion and improve air quality and vehicular and pedestrian safety by removing small commercial vehicles from local streets in residential neighborhoods. A twelve month pilot program from September 6, 1995 through September 5, 1996, will be undertaken allowing small commercial vehicles to utilize a segment of the Grand Central Parkway. The purpose of the program is to measure the impacts on traffic circulation, safety, and community life by removing some of the commercial traffic from the local streets. The program will also expedite the movement of goods by permitting small commercial vehicles on parkways. Based upon a written comment received, the description of the height and weight dimensions of the vehicles which will be allowed to use the Grand Central Parkway during the pilot program has been modified by adding the words "including cargo" for clarity. In addition the descriptive words "maximum cargo volume of 400 cubic feet" have been deleted as they are superfluous for the purpose of defining the dimensions of the vehicles.

8. Statement of Basis and Purpose in City Record Oct. 3 2003: The Commissioner of Transportation is authorized to regulate the movement of vehicular traffic on parkways within New York City pursuant to Section 2903(a) of the New York City Charter. This rule is proposed in order to reduce traffic volume exiting from the Triborough Bridge to the local street system in Astoria, Queens. Preliminary estimates of this agency are that approximately 3,150 (or 70%) of the 4,500 commercial vehicles that currently exit each day at the Hoyt Avenue South/29th Street exit of the Triborough Bridge would be able to stay on the Grand Central Parkway to the entrance ramp of the Brooklyn-Queens Expressway. The portion of the Grand Central Parkway which would be opened to trucks in this pilot program is very short, approximately three-quarters of a mile. This agency anticipates that the pilot program proposed herein will reduce congestion and conflicts and improve traffic safety not only at the Hoyt Avenue South/29th Street exit, but also along Astoria Boulevard South. Buses will continue to be prohibited from using this roadway. The Department will monitor the impact and effectiveness of the pilot program. The pilot program will end at the conclusion of the 12-month period.

9. Statement of Basis and Purpose in City Record Oct. 1, 2004: The Commissioner of Transportation is authorized to regulate the movement of vehicular traffic on parkways within New York City pursuant to §2903(a) of the New York City Charter. On October 3, 2003, the Department of Transportation adopted a rule creating a 12-month pilot program to reduce traffic volume exiting from the Triborough Bridge to the local street system in Astoria, Queens by opening approximately three-quarters of a mile of the Grand Central parkway to trucks. The rule became effective on November 3, 2003. On July 27, 2004, Governor Pataki signed chapter 223 of the laws of 2004, which specifically authorizes the New York City Department of Transportation to adopt a permanent rule allowing single-unit commercial vehicles with no more than three axles and ten tires on the part of the Grand Central Parkway, between the Triborough Bridge and the western leg of the Brooklyn-Queens Expressway. Consequently, the pilot program is hereby made permanent.

10. Statement of Basis and Purpose in City Record May 2, 2008: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. Subdivision (k) of §4-07 is being amended to bring New York City's Traffic Rules in compliance with federal law that permits motorcycles to operate on highways receiving federal funding. Title 23, §102(a) of the United States Code states in relevant part that "no State or political subdivision of a State may enact or enforce a law that applies only to motorcycles and the principal purpose of which is to restrict the access of motorcycles to any highway or portion of a highway for which Federal-aid highway funds have been utilized for planning, design, construction, or maintenance." As express lanes within New York City receive federal funding, the Department is amending rules to permit motorcycles to travel upon them. Furthermore, Title 23, §166 of the United States Code states that "the State agency shall allow motorcycles . . . to use the HOV facility. A State agency may restrict the use of the HOV facility by motorcycles . . . if the agency certifies to the Secretary that such use would create a safety hazard and the Secretary accepts the certification." The Secretary of the U.S. Department of Transportation has not accepted DOT's certification, as required by the statute.

CASE NOTES

¶ 1. While a pedestrian's crossing of the West Side Highway in violation of this regulation is evidence of

negligence, that violation is not in itself sufficient to warrant summary judgment in favor of the defendant in the pedestrian's personal injury case. The manner in which the accident happened was held to be a question of fact. Romeo v. DeGennaro, 255 A.D.2d 208, 680 N.Y.S.2d 235 (App. Div. 1st Dept. 1998).

¶ 2. A bicycle rider is subject to the same rights and duties as the driver of a vehicle, and does not have the special privileges afforded pedestrians. Tapia v. Royal Bus Tours, 2008 N.Y. Slip Op. 51292U, 2008 N.Y. Misc. Lexis 3694 (Sup.Ct. Queens Co.), discussed in note 1 of 34 RCNY 4-07.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-08

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-08 Parking, Stopping, Standing.

(a) **General provisions.** (1) **Compliance with rules.** No person shall stop, stand or park a vehicle, whether attended or unattended, other than in accordance with authorized signs, pavement markings, or other traffic control devices, unless necessary to avoid conflict with other traffic or in compliance with law or direction of any law enforcement officer or other person authorized to enforce these rules.

(i) **Sign placement.** For purposes of this §4-08, one authorized regulatory sign anywhere on a block, which is the area of sidewalk between one intersection and the next, shall be sufficient notice of the restriction(s) in effect on that block.

(2) **Stopping prohibited.** When stopping is prohibited by signs or rules, no person shall stop, stand or park a vehicle, whether attended or unattended.

(3) **Standing prohibited.** When standing is prohibited by signs or rules, no person shall stop a vehicle, attended or unattended, except temporarily for the purpose of and while actually engaged in expeditiously receiving or discharging passengers.

(4) **Parking prohibited.** When parking is prohibited by signs or rules, no person shall stop a vehicle, attended or unattended, except temporarily for the purpose of and while expeditiously receiving or discharging passengers or loading of unloading property to or from the curb.

(5) **Vehicles prohibited on berms and shoulders.** Stopping, parking or operating a motor vehicle is prohibited on

the berm or shoulder adjacent to a parkway or a highway as specified in §4-07(i) of these rules, except for emergency purposes.

(6) **Paper or other temporary signs.** Any paper or other temporary signs posted by authorized law enforcement agencies shall supersede all existing posted rules for the days and times specified. Regulations placed inside parking meters by the Department of Transportation so as to cover rate plates and the inside of the dome of the meter shall supersede all existing posted rules for the time the insert remains in the parking meter.

(7) **Holiday suspensions of parking rules.** (i) Major legal holidays. Except as provided in subparagraph (ii), of this paragraph, stopping, standing, or parking rules that are indicated on official signs shall be suspended on the days on which the following major legal holidays are officially observed by the City of New York: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. In addition, if New Year's Day, Independence Day or Christmas Day is officially observed on a day other than January 1, July 4 or December 25, respectively, then major legal holiday rules shall be in effect both on the official day of observance and on the traditional day of observance.

(ii) **Exception.** Parking, standing and stopping rules that are indicated on official signs shall remain in effect on the dates of both official and traditional observance of the above-listed major legal holidays only in areas where signs indicate that parking, standing and stopping rules are in effect seven days a week, provided, however, that the activation of meters that are required by posted sign to be activated seven days a week shall be suspended on major legal holidays pursuant to subparagraph (i).

(iii) **Street cleaning rules suspended.** (A) Street cleaning parking rules are suspended on the days listed in subparagraph (i) of this paragraph, and on the following holidays: Yom Kippur, Rosh Hashanah, Ash Wednesday, Holy Thursday, Good Friday, Ascension Thursday, Feast of the Assumption, Feast of All Saints, Feast of the Immaculate Conception, first two days of Succoth, Shemini Atzereth, Simchas Torah, Shavuot, Purim, Orthodox Holy Thursday, Orthodox Good Friday, first two and last two days of Passover, Idul-Fitr, Idul-Adha, Asian Lunar New Year, on all state and national holidays, on the following additional legal holidays: Martin Luther King, Jr.'s Birthday, Lincoln's Birthday, President's Day, Columbus Day-observed, Election Day, and Veteran's Day, and on such other days as announced by the Commissioner or his/her designee.

(B) For the purposes of this subparagraph (iii), street cleaning parking rules shall mean those rules (a) on posted signs consisting of the letter "P" with a broom through it or (b) except as otherwise provided in item (D) of this subparagraph, on posted signs containing "No Parking" rules restricting parking on one day per week or on alternate days.

(C) "No Parking" street cleaning rules, located in parking meter zones, are suspended on the days on which street cleaning rules are suspended and on such other days as announced by the Commissioner or his/her designee. Suspension of street cleaning rules does not affect the requirement of activating the meter during the hours that such meter is in effect.

(D) Posted signs restricting parking for a period of six or more consecutive hours on one day per week or on alternate days are not street cleaning parking rules. However, such restrictions are suspended on the days that street cleaning rules are suspended.

(8) **Disabled vehicles.** A vehicle that becomes disabled must be pushed to the side of the road so that it obstructs traffic as little as possible, and must be removed expeditiously.

(9) **Immobilization and towing of illegally parked vehicles.** (i) **Time and manner of immobilization.** Any illegally parked vehicle found parked at any time upon any public highway in the City may, by or under the direction of any person authorized by the Commissioner, be immobilized in such manner as to prevent its operation, and thereafter may be removed to a tow pound as provided in these rules; provided, however, that no such vehicle shall be

immobilized by any means other than by the use of a device or other mechanism which will cause no damage to such vehicle unless such vehicle is moved while such device or mechanism is in place.

(ii) **Notice.** Notice of immobilization pursuant to this paragraph shall be placed in a conspicuous place on the vehicle. Such notice shall contain:

(A) a warning that any attempt to move the vehicle may result in damage to the vehicle; and

(B) the time, place and manner in which the vehicle may be redeemed.

(iii) **Immobilization fee.** The registrant of an immobilized vehicle which has not yet been removed to a tow pound pursuant to these rules, or any other person authorized by the registrant of such vehicle, may secure the release of the vehicle upon satisfaction of all parking summonses in judgment, if any, for which the registrant of the immobilized vehicle is liable and payment of an immobilization fee of $185.00.

(iv) **Applicable rules.** Where a vehicle has been both immobilized and towed, the owner shall be subject to both the immobilization requirements of this paragraph, and all applicable provisions of these rules.

(v) **Right to immediate hearing.** The registrant, title holder or operator of any vehicle that has been immobilized shall have the right to an immediate hearing during regular business hours at the Parking Violations Bureau in relation to the immobilization.

(vi) **Removal fee.** The fee for removal of illegally parked vehicles to a tow pound shall be determined in accordance with the following fee schedule. Said fee shall be payable before such vehicles are released.

(A) The removal fee for Regular Towing shall be $185.00 and shall apply to any vehicle that has a gross vehicle weight less than 6,500 pounds, that may be towed through the use of a single tow truck not weighing more than eight tons.

(B) The removal fee for Heavy Duty Towing shall be $370.00 and shall apply to any vehicle that has a gross vehicle weight of 6,500 pounds or greater, and/or requires either more than one tow truck or a single tow truck which weighs in excess of eight tons, in order to be towed.

(vii) **Storage fee.** In addition to the removal fee set forth in subparagraph (vi) of this paragraph (9), there shall be a storage fee of $20.00 for each day such vehicle remains in the possession of the city, up to and including the day such vehicle is released. Said fee shall be payable before such vehicle is released.

(viii) **Vehicles not removed considered abandoned.** Any vehicle which is not removed from city property within 10 days following the mailing of a request to remove it shall be deemed to be an abandoned vehicle pursuant to paragraph (d) of subdivision 1 of §1224 of the Vehicle and Traffic Law and shall be disposed of by the Commissioner pursuant to such law. Such request shall be sent by certified or registered mail, return receipt requested, to the registered owner of the vehicle, at the address contained on the registration of such vehicle.

(ix) **Release of vehicle in process of being removed.** When a vehicle has been hooked to a tow truck in preparation for removal toa pound but the owner or other person lawfully entitled to posession of such vehicle appears and requests the release of such vehicle before the tow truck is in motion, such vehicle shall be unhooked and released, provided, however, that the person to whom such vehicle is released must execute a binding agreement consenting to pay the vehicle release penalty as set forth in subparagraph (x) of this paragrph (9) within thirty days from the date of such agreement and, in the event of non-payment, to the imposition of additional penalties in accordance with subparagraph (xi) of this paragraph (9); and provided further that such person present a current valid driver's license and either registration for the vehicle, title to the vehicle, insurance identification and keys for the vehicle, a rental agreement and keys for the vehicle in case of a rental vehicle, or company identification and keys for the vehicle in the

case of a commercial vehicle.

(x) **Vehicle release penalty.** The penalty for the release of an illegally parked vehicle under the circumstances permitted by subparagraph (ix) of this paragraph (9) shall be $100.00 for illegally parked vehicles which meet the criteria contained in subparagraph (vi)(A) of this paragraph (9), and $200.00 for illegally parked vehicles which meet the criteria listed in subparagraph (vi)(B) of this paragraph (9). This fee is in addition to any other monetary fine(s) and penalty(ies) permitted by law for the underlying parking violation(s); provided, however, that in no event shall a vehicle release penalty be imposed if the underlying parking violation or, in the case of multiple parking violations, all underlying parking violations, is (are) dismissed by the Parking Violations Bureau.

(xi) **Non-payment of vehicle release penalty.** The Parking Violations Bureau may, in accordance with law, prescribe additional penalties for non-payment of the vehicle release penalty set forth in sub-paragraph (x) of this paragraph (9) and enter and enforce default judgements for such vehicle release penalty and additional penalties.

(10) **Notification stickers.** (i) **Issued by Traffic Enforcement Agents.** When stopping, standing or parking is prohibited by sign or rule and an unattended vehicle is stopped, standing or parked so as to interfere with the free flow of traffic, Traffic Enforcement Agents are hereby authorized to affix a sticker on the operator's side back seat window of the vehicle informing the operator of said violation and interference. The dimensions of the sticker shall be 8 1/2" by 11" with the words:"This vehicle violates New York City Traffic Rules. The resulting obstruction of traffic caused unnecessary delays." The words "New York City Department of Transportation" shall also appear on the sticker.

(ii) **Issued by the Department of Sanitation.** When parking is prohibited by sign or rule and an unattended parked vehicle interferes with the cleaning of the streets by the Department of Sanitation, the Commissioner of Sanitation is hereby authorized to affix a sticker on the operator's side back seat window of the vehicle informing the operator of said violation and interference. The dimensions of the sticker shall be 8 1/2" by 11" with the words: "This vehicle violates New York City Traffic Rules. As a result, this street could not be properly cleaned. A cleaner New York is up to you." The words "New York City Department of Sanitation" shall also appear on the sticker.

(iii) **Issued by the Fire Department.** When an unattended vehicle is parked, standing or stopped in violation of subdivision (e), paragraph (2) below, and obstructs access to any fire hydrant, the Commissioner of the Fire Department is hereby authorized to affix a sticker on the operator's side back seat window of the vehicle, informing the operator of said violation and obstruction. The dimensions of the sticker shall be 81/2" by 11" with the words: "This vehicle violates New York City Traffic Rules and is obstructing a fire hydrant. As a result, the violator is jeopardizing the life and property of the general public." The words "Fire Department of New York" shall also appear on the sticker.

(iv) **Issued by MTA New York City Transit Managers.** When standing is prohibited by a bus stop sign and an unattended vehicle other than an authorized bus is standing in such bus stop so as to interfere with the free movement of buses into such bus stop in violation of §4-08(c)(3) of these rules, MTA New York City Transit Managers are hereby authorized, only after having issued a summons to such vehicle, to affix a sticker on the driver side backseat window of the vehicle informing the operator of said violation and interference. The dimensions of the sticker shall be $8^1/_2$ inches by 11 inches and shall include the words: "This vehicle violates New York City Traffic Rules. The resulting obstruction of traffic causes delay, safety hazards, and interferes with accessibility of the bus to passengers." The words "MTA New York City Transit" also shall appear on the sticker.

(11) **Restricted area.** The Parking Violations Bureau shall be authorized to establish a separate fine schedule for violations committed in the restricted area, as defined herein. Such fine schedule may be higher than the fine schedule for violations committed outside the restricted area. As used herein, restricted area shall mean all of Manhattan, south from the north building line on 96th Street but excluding all of Central Park.

(12) **In-vehicle parking system.**

(i) **Definition.** Whenever these rules refer to an in-vehicle parking system ("IVPS"), such term shall refer

collectively to the electronic component, the electronic debit card that is inserted into the electronic component to activate it, and the windshield sticker that must be displayed on the vehicle, all as further described in this section. All components of the IVPS are non-transferable and must be activated, installed, displayed, or otherwise operated in the manner set forth in these rules in order for use of the IVPS to be valid.

(A) **Electronic component.** The electronic component of an IVPS is a small portable electronic module slightly larger than a pocket calculator that is designed to be placed on top of a vehicle's dashboard behind the windshield, capable of reading and writing to and from an electronic debit card, and incorporating an electronic display on which information can be seen readily. Unless otherwise required by law or rule, only one electronic component will be issued to the registered owner of the vehicle(s) in which the IVPS is to be used. Each electronic component shall be numerically keyed to the electronic debit card and all windshield stickers of the IVPS to which it is issued.

(B) **Electronic debit card. (a)** A card, whether or not prepaid, capable of being programmed to allow a user to activate an IVPS for a particular purpose when read by the electronic component.

(b) Each electronic debit card shall be numerically keyed to the electronic component of the IVPS to which it is issued.

(C) **Windshield sticker(s). (a)** Windshield stickers must be displayed on the right side of the windshield in each vehicle in order for an IVPS to be valid.

(b) Each windshield sticker shall be numerically keyed to the electronic component of the IVPS to which it is issued.

(c) Unless otherwise required by law or rule, at the request of the registered owner of the vehicle(s) in which the IVPS will be used, a maximum of ten (10) windshield stickers will be issued to such person.

(ii) **Use of in-vehicle parking systems.** In-vehicle parking systems may only be used:

(A) to park in a space regulated by a parking meter instead of using another authorized method of payment as defined in subdivision (h) paragraph (7) of this section of these rules; or

(B) in conjunction with the issuance of a permit pursuant to subdivision (o) of this section of these rules instead of a permit card.

(iii) **Issuance of in-vehicle parking systems.**

(A) **Issuance. (a)** IVPS applications shall be issued by the Bureau of Parking, Permit Section, and must be submitted by mail, including the following information about the applicant, in addition to any other information required on the application.

(1) Name.

(2) Home (or mailing) address.

(3) Evening telephone number.

(4) Daytime telephone number.

(5) Copy of valid driver's license.

(6) Copy of valid vehicle registration for each vehicle (to a maximum of ten) in which the IVPS will be used.

(b) [Reserved]

(c) In addition to prepaid electronic debit cards, as described below, applicants shall receive:

(1) One electronic component.

(2) One windshield sticker for each vehicle for which a valid registration is shown.

(d) Electronic debit cards shall be sold by the Bureau of Parking, Permit Section, by mail, in various denominations and must be prepaid by certified check or money order of the value of the electronic debit card(s) sought to be purchased.

(e) IVPSs and electronic debit cards shall be mailed to applicants via certified mail; provided, however, that an applicant may request that they be picked up by the applicant at the Bureau of Parking, Permit Section, upon presentation by the applicant of his/her valid driver's license.

(B) **Fees.** There shall be a deposit fee of one hundred dollars ($100) payable by certified check or money order, for each IVPS, which fee shall be refunded when the IVPS is returned to the Department. Destruction of, damage to, loss or theft of the electronic component of the IVPS shall result in the automatic forfeiture of the deposit fee.

(b) **Violation of posted no stopping rules prohibited.** When official signs, markings or traffic-control devices have been posted prohibiting, restricting or limiting the stopping of vehicles, no person shall stop, stand or park any vehicle in violation of the restrictions posted on such signs, markings or traffic-control devices.

(c) **Violation of posted no standing rules prohibited.** When official signs, markings or traffic-control devices have been posted prohibiting, restricting or limiting the standing of vehicles, no person shall stand or park any vehicle in violation of the restrictions posted on such signs, markings or traffic-control devices, except as otherwise provided herein:

(1) **No standing (snow emergency).** When the Commissioner declares a state of snow emergency, no person shall stand or park a vehicle upon a street designated by signs as a snow street, or upon any other area referred to in §4-12(k)(1) of these rules and except as otherwise provided therein.

(2) **No standing-taxi stand.** No person shall stand or park a vehicle other than a taxi in a taxi stand when any such stand has been officially designated and appropriately posted except that the operator of a vehicle may temporarily stand therein for the purpose of expeditiously receiving and discharging passengers provided such standing does not interfere with any taxi about to enter or leave such zone.

(3) **No standing-bus stop.** No person shall stand or park a vehicle other than an authorized bus in its assigned bus stop when any such stop has been officially designated and appropriately posted except that the operator of a vehicle may temporarily stand therein for the purpose of expeditiously receiving and discharging passengers provided such standing does not interfere with any bus about to enter or leave such zone.

(4) **No standing except authorized vehicles.** Except as provided in paragraph (8) of this subdivision, where a posted sign reads "No Standing Except Authorized Vehicles," no vehicles, except those designated by a rider attached to such sign, may stand or park in that area.

(5) **No standing-hotel loading zone.** No person shall stand or park a vehicle in such zone except temporarily for the purpose of and while actually engaged in receiving or discharging passengers and their personal baggage at hotels.

(6) **No standing-commuter van stop.** No person shall stand or park a vehicle other than a commuter van in a commuter van stop when such a stop has been officially designated and appropriately posted, except that an operator of such other vehicle may temporarily stand therein for the purpose of expeditiously receiving or discharging passengers

provided such standing does not interfere with any commuter van about to enter or leave such zone.

(7) **No standing-for-hire vehicle stop.** No person shall stand or park a vehicle other than a for-hire vehicle in a for-hire vehicle stop when such a stop has been officially designated and appropriately posted, except that an operator of such other vehicle may temporarily stand therein for the purpose of expeditiously receiving or discharging passengers provided such standing does not interfere with any for-hire vehicle about to enter or leave such zone.

(8) No standing except certain diplomatic and consular vehicles.

(i) Where a posted sign reads "No Standing Except Vehicles with Consul-C or Diplomat-A&D License Plates D/S Decals Only", no person may stand or park a vehicle in such area except as follows:

(A) a person may stand or park a vehicle in such area if such vehicle bears "A", "C" or "D" series license plates issued by the U.S. Department of State, such vehicle displays a valid non-transferable service vehicle decal issued by the City of New York that is affixed to the inside of the operator's side of the windshield, and such person is authorized to park or stand in a space in such area by the foreign mission or consulate that has been allocated such space by the Department; or

(B) a person may stand a vehicle temporarily (no more than thirty (30) minutes) in such area for the purpose of and while actually engaged in delivering, loading or unloading for official business if such vehicle bears "A", "C" or "D" series license plates issued by the U.S. Department of State, such vehicle displays a valid non-transferable delivery vehicle decal issued by the City of New York that is affixed to the inside of the operator's side of the windshield, such person is authorized to stand in a space in such area by the foreign mission or consulate that has been allocated such space by the Department, and a delivery is being made to such foreign mission or consulate.

(ii) Where a posted sign reads "No Standing Except Vehicles with Consul-C or Diplomat-A&D License Plates Delivery Decal Required 30 Minute Limit", no person may stand or park a vehicle in such area except a person may stand a vehicle temporarily (no more than thirty (30) minutes) in such area for the purpose of and while actually engaged in delivering, loading or unloading for official business if such vehicle bears "A", "C" or "D" series license plates issued by the U.S. Department of State and displays a valid non-transferable delivery vehicle decal issued by the City of New York that is affixed to the inside of the operator's side of the windshield.

(d) **Violation of posted no parking rules prohibited.** When official signs, markings or traffic control devices have been posted prohibiting, restricting or limiting the parking of vehicles, no person shall park any vehicle in violation of the restrictions posted on such signs, markings or traffic control devices, except as otherwise provided herein:

(1) **No parking-street cleaning.** No person shall park a vehicle in violation of officially posted street cleaning rules, as defined in subsection (a)(7)(ii) of these rules, unless such rules have been suspended by the Commissioner or his/her designee pursuant to subsection (a)(7) of these rules.

(2) **No parking-taxi stand.** No person shall park a vehicle other than a taxi in a taxi stand when any such stand has been officially designated and appropriately posted except that the operator of a passenger or commercial vehicle may temporarily stop or stand therein provided such stopping or standing does not interfere with any taxi about to enter or leave such zone.

(3) **No parking except handicapped permits (off-street).** (i) No person shall park a vehicle in any off-street parking space designated for use by the handicapped pursuant to §1203-c of the Vehicle and Traffic Law, or designated by blue painted lines or markings displaying the international symbol of access unless:

(A) Such person is, or is transporting, a handicapped permittee and displays a state special vehicle identification permit issued by the Commissioner of Motor Vehicles or

(B) Such vehicle is registered in accordance with §404-a of the Vehicle and Traffic Law and is being used for the transportation of handicapped persons, or

(C) Such vehicle displays a special license plate or parking permit issued by any governmental entity subject to the laws of the United States, or a foreign country for the purpose of granting special parking privileges to people with disabilities.

(ii) Handicapped plates or permits issued by New York State or by any other state, district, territory or other governmental entity or foreign country shall be valid only in designated off-street parking areas. They are not valid in on-street parking areas.

(4) **Official markings.** When markings upon the curb or the pavement of a street designate a parking space, no person shall stand or park a vehicle in such designated parking space so that any part of the vehicle occupies more than one space or protrudes beyond the markings designating such a space, except that a vehicle which is of a size too large to be parked within a single designated parking space shall be parked with the front bumper at the front of the space with the rear of the vehicle extending as little as possible into the adjoining space to the rear, or vice-versa. Notwithstanding the above, no vehicle that is too long and/or too wide to be parked within a single designated parking space shall be parked in such a space which is designated for angle parking.

(5) **No parking except authorized vehicles.** Where a posted sign reads "No Parking Except Authorized Vehicles," no vehicles, except those designated by a rider attached to such sign, may park in that area.

(6) **No parking-hotel loading zone.** No person shall park a vehicle in such zone except temporarily for the purpose of and while actually engaged in receiving or discharging passengers and their personal baggage at hotels.

(e) **General no stopping zones (stopping, standing and parking prohibited in specified places).** No person shall stop, stand, or park a vehicle in any of the following places, unless otherwise indicated by posted signs, markings or other traffic control devices, or at the direction of a law enforcement officer, or as otherwise provided in this subdivision:

(1) **Traffic lanes.** In any lane intended for the free movement of vehicles, except a lane immediately adjacent to the curb, unless such lane is designated by signs as a traffic lane, and except as otherwise provided in subdivision (f), paragraph (1) below. In no instance shall a vehicle extend more than 8 feet from the nearest curb.

(2) **Hydrants.** Within fifteen feet of a fire hydrant, unless otherwise indicated by signs, or parking meters, except that during the period from sunrise to sunset if standing is not otherwise prohibited, the operator of a passenger car may stand the vehicle alongside a fire hydrant provided that the operator remains in the operator's seat ready for immediate operation of the vehicle at all times and starts the motor of the car on hearing the approach of fire apparatus, and provided further, that the operator shall immediately remove the car from alongside the fire hydrant when instructed to do so by any member of the police, fire, or other municipal department acting in his/her official capacity.

(3) **Sidewalks.** On a sidewalk.

(4) **Intersections.** Within an intersection, except on the side of a roadway opposite a street which intersects but does not cross such roadway and except as provided in paragraph (5), below.

(5) **Crosswalks.** In a crosswalk.

(6) **Street excavations.** Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct any traffic lane.

(7) **Tunnels and elevated roadways.** Within a highway tunnel or upon an elevated or controlled access roadway

when all lanes are normally available for moving traffic.

(8) **Divided highways.** Parking, standing and stopping are prohibited alongside the median dividing a highway into two or more separate roadways. However, alongside the medians of certain segments of such divided highways, the department may post signs restricting parking, standing and stopping alongside the medians of such segments only on specified days and/or hours. Wherever such signs are so posted on a segment of a divided highway, parking, standing and stopping are permitted alongside the median of such segment on the days and/or hours when parking, standing and stopping are not specifically prohibited by such signs. On segments of such highway where such signs are not posted, parking, standing and stopping alongside the median are prohibited at all times. For the purposes of this paragraph, a segment of a divided highway is the area of such highway between adjacent intersections.

(9) **Bicycle lanes.** Within a designated bicycle lane.

(10) **Restricted use and limited use streets.** On any street designated as a restricted use street or a limited use street as defined in §4-12(r)(4) of these rules, except as otherwise provided in §4-12(r)(1).

(11) **Major roadways.** On the improved or paved roadway of any of the arteries set forth in §4-07(i) of these rules, or on improved or paved roadways in a park or in parks, for the purpose of removing or replacing a flat tire, unless permitted by posted signs. For the purposes of this rule, a vehicle is considered to be on the improved or paved roadway unless the vehicle is completely off such roadway.

(12) **Obstructing traffic at intersection.** When vehicular traffic is stopped on the opposite side of an intersection, no person shall drive a vehicle into such intersection, except when making a turn, unless there is adequate space on the opposite side of the intersection to accommodate the vehicle the person is driving, notwithstanding the indication of a traffic control signal which would permit the person to proceed.

(f) **General no standing zones (standing and parking prohibited in specified places).** No person shall stand or park a vehicle in any of the following places, unless otherwise indicated by posted signs, markings or other traffic control devices, or at the direction of a law enforcement officer:

(1) **Double parking.** On the roadway side of a vehicle stopped, standing, or parked at the curb, except a person may stand a commercial vehicle alongside a vehicle parked at the curb at such locations and during such hours that stopping, standing, or parking is not prohibited, while expeditiously making pickups, deliveries or service calls, provided that there is no unoccupied parking space or designated loading zone on either side of the street within 100 feet that can be used for such standing, and provided further that such standing is in compliance with the provisions of §1102 of the State Vehicle and Traffic Law. A person may stand a commercial vehicle along the roadway side of a bicycle lane provided all other conditions of this paragraph are met. For the purposes of this paragraph (f)(1), "expeditiously making pick-ups, deliveries or service calls" shall mean that any period of inactivity at the pick-up, delivery or service-call location does not exceed 30 minutes. However, such definition shall in no way limit the discretion of the Department of Finance Adjudication Tribunal to determine whether a violation of this paragraph has occurred.

(2) **Driveways.** In front of a public or private driveway, except that it shall be permissible for the owner, lessor or lessee of the lot accessed by a private driveway to park a passenger vehicle registered to him/her at that address in front of such driveway, provided that such lot does not contain more than two dwelling units and further provided that such parking does not violate any other provision of the Vehicle and Traffic Law or local law or rule concerning the parking, stopping or standing of motor vehicles. The prohibition herein shall not apply to driveways that have been rendered unusable due to the presence of a building or other fixed obstruction and, therefore, are not being used as defined in §4-01(b) of these rules.

(3) **Parks.** In any park between one-half hour after sunset and one-half hour before sunrise, except at places designated or maintained for the parking of vehicles.

(4) **Bus lane.** In any lane designated for the exclusive use of buses.

(5) **Railroad crossings.** Within fifty feet of the nearest rail of a railroad crossing.

(6) **Safety zones.** In a safety zone, between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone.

(7) **Pedestrian ramps.** Alongside or in a manner which obstructs a curb area which has been cut down, lowered or otherwise constructed or altered to provide access for persons with disabilities at a marked or unmarked crosswalk as defined in subdivision (b) of §4-01 of this chapter. A person may stop, stand or park a vehicle alongside or in a manner which obstructs a pedestrian ramp not located within such crosswalk, unless otherwise prohibited.

(g) **General no parking zones (parking prohibited in certain places)**. No person shall park a vehicle in any of the following places, unless otherwise indicated by posted signs, markings or other traffic control devices:

(1) **Emergency sites.** Within a block where emergency work is in progress, except that the operator of any vehicle on official public business related to the emergency may park such vehicle at such sites.

(2) **Vacant lots.** In a vacant lot, unless the operator of the vehicle has the written permission of the lot's owner so to park and has otherwise complied with §§10-112 and 10-113 of the Administrative Code.

(3) **Marginal street and waterfronts.** On a marginal street or waterfront, as defined in §4-01(b) of these rules.

(h) **On-street and off-street metered zones.** (1) **Activation of meter or in-vehicle parking system.** No person shall park a vehicle, whether attended or not, in any parking space regulated by a parking meter that indicates by signal that the lawful parking time in such space has expired without (i) properly activating the meter by depositing the appropriate currency therein or otherwise making appropriate payment by an authorized method as described in this section and performing any other act necessary to activate the meter or (ii) properly activating an IVPS. The registration numbers of the electronic component, the electronic debit card, and all related windshield stickers comprising an IVPS must match in order for such system to be considered properly activated. This provision shall not apply to the act of parking or the time necessary to activate the meter or an IVPS immediately. A person may park at a meter without depositing a coin, using another authorized method of payment, or activating an IVPS, if there is an unexpired interval of time shown on the meter but only if the vehicle is moved before the expiration of such interval. However, such person may reactivate the meter or activate an IVPS upon expiration of the time remaining on the meter but in no event may that person remain at the space in excess of the specified time limits applicable to the parking meter zone in which such meter is located.

(2) **Expired meters or in-vehicle parking systems.** No person shall allow a vehicle within his/her control to be parked in any such parking meter space during the restricted and regulated time applicable to the parking meter zone in which such meter is located while the parking meter for such space indicates by signal or a properly activated IVPS shows that the lawful parking time in such space has expired. This provision shall not apply to the act of parking or the time necessary to deposit immediately thereafter a coin or coins or to use another authorized method of payment, in such meter and to perform any other act prescribed on the meter which may be required to place the meter in operation or to activate an IVPS. If an IVPS is used, such system shall be the only valid indicator of whether lawful parking time in a space is available or has expired, because the meter in all such cases will indicate that the time has expired.

(3) **Parking at broken or missing meters.**

(i) A person shall be allowed to park at a missing or broken meter up to the maximum amount of time otherwise lawfully permitted at such meter.

(ii) Where parking spaces in a parking field or on a block are controlled by "Muni-Meters," and a "Muni-Meter" is

broken or missing, the person seeking to purchase a parking receipt shall use a functional "Muni-Meter" in the same parking field or on the same block, to purchase a parking receipt and shall display it pursuant to paragraph 10 of this subdivision.

If all muni-meters in a parking field or on a block are missing or broken, a person shall be allowed to park in such parking field or on such block up to the maximum amount of time otherwise lawfully permitted by such muni-meters in such controlled parking field or block. For purposes of this section, "muni-meter" shall mean an electronic parking meter that dispenses timed receipts that must be displayed in a conspicuous place on a vehicle's dashboard.

(4) **Oversize vehicles.** When a vehicle is too large to be parked within a single parking meter space, it shall be parked with the front section alongside the forward meter. If the operator of the vehicle is using coins or another authorized method of payment other than an IVPS, such forward meter shall be operated and shall determine when the lawful parking time has expired. If the operator of the vehicle is using an IVPS, it shall be activated and shall determine when the lawful parking time has expired.

(5) **Time allowed at parking meters; feeding meters or reactivation of in-vehicle parking systems prohibited.** (i) No person shall park a vehicle in a parking meter space for more than one time period lawfully permitted in that parking meter zone, nor shall any person deposit any additional coin or coins or use another authorized method of payment for the purpose of extending such time.

(ii) No person shall activate an IVPS for a time period longer than one time period lawfully permitted in that parking meter zone, nor shall any person activate or reactivate an IVPS for the purpose of extending such time. Where a person uses less time than the time activated on an IVPS, the cost of the time not actually used shall be credited back to the electronic debit card when such card is next used to activate the electronic component of the IVPS.

(6) **Restrictions and limitations.** The provisions of this subdivision (h) shall not relieve any person of the duty to observe other and more restrictive provisions prohibiting, restricting, or limiting the stopping, standing, or parking of vehicles in specified places or at specified times.

(7) **Authorized payment methods; counterfeits prohibited.** (i) Authorized payment methods. Parking meters shall be activated by the insertion of a coin or coins of United States currency, by the insertion of a token issued by the Metropolitan Transportation Authority New York City Transit ("MTA/NYCT") where authorized by sign or other official indicator, or by the insertion of an electronic debit card. Parking at an on-street meter also may be paid for by the activation of a valid IVPS.

(ii) No person shall deposit or attempt to deposit in any parking meter any slug, button, or any other unauthorized device or substance as a substitute for coins of United States currency or a token issued by MTA/NYCT, nor shall any person use an IVPS or electronic debit card not issued pursuant to this section.

(8) **Displaying, selling or offering merchandise for sale prohibited.** No peddler, vendor, hawker or huckster shall park a vehicle at a metered parking space for purposes of displaying, selling, storing or offering merchandise for sale from the vehicle.

(9) **Parking by disabled persons permitted.** Rules pertaining to the use of parking meter zones shall not apply to vehicles operated by disabled persons duly displaying New York City special parking identification permits issued by the Department of Transportation pursuant to §4-08(o) of these rules, other than at those periods of time when no standing and no stopping restrictions are in effect in the metered zones.

(10) **"Muni-Meters."**

(i) No person shall, in any parking space controlled by a "Muni-Meter," park a vehicle without first purchasing the amount of parking time desired from such machine.

(ii) No person shall, in any parking space controlled by a "Muni-Meter," park a vehicle without displaying a payment receipt in the windshield, where such requirement is indicated by posted signs.

(iii) No person shall, in any parking space controlled by a "Muni-Meter," which allows a person to purchase the amount of parking time desired from a machine that dispenses a receipt or tag to be displayed in the windshield, park a vehicle in excess of the amount of time indicated on such receipt or tag, or on posted signs.

(i) **Municipal off-street parking facilities.** (1) **Parking fees.** No person shall park a vehicle without paying the appropriate fee in accordance with authorized fee schedules posted on the facility.

(2) **Hours of operation.** No person shall park a vehicle before the opening hour or after the closing hour, as specified on authorized signs.

(3) **"Muni-Meters."**

(i) No person shall, in any parking space controlled by a "Muni-Meter," park a vehicle without first purchasing the amount of parking time desired from such machine.

(ii) No person shall, in any parking space controlled by a "Muni-Meter," park a vehicle without displaying a payment receipt in the windshield, where such requirement is indicated by posted signs.

(iii) No person shall, in any facility using the "Muni-Card" system, which allows a person to purchase the amount of parking time desired from a machine that dispenses a receipt or tag, park a vehicle in excess of the amount of time indicated on such receipt or tag, or on posted signs.

(4) **Parking in a dangerous manner.** No person shall park a vehicle in a manner that will endanger any person or property.

(5) **Operator responsible for loss.** The operator enters the facility at his/her own risk and the City of New York shall not be responsible for any injury or loss due to fire, theft, accident, or other causes.

(6) **Angle parking.** No vehicle that is too long and/or too wide to be parked within a single designated parking space shall be parked in such a space which is designated for angle parking.

(j) **Standing or parking vehicles that violate registration and inspection rules are covered or have the VIN obscured.** (1) **Vehicles must be properly registered.** No person shall stand or park a vehicle bearing a New York license plate or plates unless it is properly registered in accordance with the laws and rules of New York.

(2) **Valid plates must be properly displayed.** No person shall stand or park a vehicle unless it properly displays the current plate or plates issued to it. For the purposes of this paragraph (j)(2), New York plates shall not be deemed properly displayed unless they are conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened so as to prevent the same from swinging and placed, whenever reasonably possible, not higher than 48 inches and not lower than 12 inches from the ground, and they are kept clean and in a condition so as to be readable and shall not be covered by glass or any plastic material, and the view thereof shall not be obstructed by any part of the vehicle or by anything carried thereon. New York dealer or transporter plates issued pursuant to §415 of the Vehicle and Traffic Law shall be deemed properly displayed if the one plate issued is placed on the rear of the vehicle as described above. New York motorcycle plates and plates from other states shall be deemed properly displayed if at least one plate is fastened on the rear of the vehicle.

(3) **Vehicles must display valid registration sticker.** No person shall stand or park a vehicle bearing a New York plate or plates unless it properly displays a current registration sticker.

(4) **Improper stickers prohibited.** No person shall stand or park a vehicle bearing a New York plate or plates

displaying an expired, mutilated, void, imitation, counterfeit or inappropriate New York registration sticker.

(5) **Registration plates, stickers, and tags must match.** No person shall stand or park a vehicle bearing registration plates, stickers, and tags that do not match as to information contained thereon.

(6) **Vehicles must display valid inspection sticker.** No person shall stand or park a vehicle bearing New York plates unless it is properly inspected and properly displays a current inspection sticker or certificate, in accordance with §306(b) of the Vehicle and Traffic Law unless it bears New York dealer or transporter plates pursuant to §415 of the Vehicle and Traffic Law.

(7) **Improper inspection stickers prohibited.** No person shall stand or park a vehicle bearing New York plates displaying any mutilated, imitation or counterfeit of an official certificate of inspection.

(8) **Vehicle covers prohibited.** No person shall stand or park a vehicle having a cover on it that obscures the make, color, vehicle identification number (VIN), license plates and/or registration and inspection stickers, and/or restricts entry to the vehicle, if such vehicle is standing or parked in violation of posted rules.

(9) **Obscuring VIN prohibited.** No person shall stand or park a vehicle that has the vehicle identification number obscured in any manner.

(k) **Special rules for commercial vehicles.** (1) **Parking of unaltered commercial vehicles prohibited.** No person shall stand or park a vehicle with commercial plates in any location unless it has been permanently altered with all seats and rear seat fittings, except the front seats, removed, except that for vehicles designed with a passenger cab and a cargo area separated by a partition, the seating capacity within the cab shall not be considered in determining whether the vehicle is properly altered, and has the name and address of the owner as shown on the registration certificate plainly marked on both sides of the vehicle in letters and numerals not less than three inches in height, in compliance with §10-127 of the Administrative Code and is also in compliance with paragraph (i) of the definition of commercial vehicle as set forth in §4-01 of these rules.

(2) **No standing except trucks loading and unloading.** Where a posted sign reads "No Standing Except Trucks Loading and Unloading," no vehicle except a commercial vehicle or a service vehicle as defined in §4-01(b) of these rules, may stand or park in that area, for the purpose of expeditiously making pickups, deliveries or service calls, and except that in the area from 35th St. to 41st St., Avenue of the Americas to 8th Avenue, inclusive, in the Borough of Manhattan, between the hours of 7 a.m. and 7 p.m., no vehicle except a truck as defined in §4-13(a)(1) of these rules may stand or park for the purpose of expeditiously making pickups, deliveries, or service calls.

(3) **Angle standing or parking of commercial vehicles.** Commercial vehicles standing or parking in authorized areas shall not be placed at an angle to the curb unless such positioning is essential for loading or unloading and then only for such period of time actually required for such purposes provided that a sufficient space shall be left clear for the passage of a vehicle between the angle-parked vehicle and the center of the street, the opposite curb or a vehicle parked or standing thereat, whichever is closest. In no event shall an angle-parked vehicle occupy more than a parking lane, plus one traffic lane.

(4) **Parking of trailers.** (i) No person shall park any trailer or semi-trailer on any street or arterial highway, except while loading or unloading at off-street platforms, unless such trailer or semi-trailer is attached to a motor vehicle capable of towing it.

(ii) Notwithstanding the provisions of paragraph (i) above, where posted signs permit, a trailer or semi-trailer may park while unattached to a motor vehicle capable of towing it on streets in industrial zoned property as defined in the Zoning Resolution. Such trailers or semi-trailers may park for the length of time indicated on the posted signs. An owner of a trailer or semi-trailer parked pursuant to this provision shall protect the streets from damage that may be caused by parking the unattached trailer. All doors located on such trailers or semi-trailers must be locked while the

trailers are parked.

(5) **Street storage of commercial vehicles prohibited.** When parking is not otherwise restricted, no person shall park a commercial vehicle in any area, including a residential area, in excess of three hours.

(6) **Nighttime parking of commercial vehicles prohibited.** No person shall park a commercial vehicle on a residential street, between the hours of 9 p.m. and 5 a.m. Where a commercial vehicle is parked in violation of this paragraph, it shall be an affirmative defense to said violation, with the burden of proof on the person who received the summons, that he or she was actively engaged in business at the time the summons was issued at a premises located within three city blocks of where the summons was issued. This paragraph shall not apply to vehicles owned or operated by gas or oil heat suppliers or gas or oil heat systems maintenance companies, the agents or employees thereof, or any public utility.

(7) **Vehicles equipped with platform lifts.** Commercial vehicles may not be parked on any city street with a platform lift set in a lowered position while the vehicle is unattended.

(l) **Blue zone, midtown, and other special zones.** (1) **Blue zone.** No person shall park a vehicle upon any of the streets within the area designated as the "Blue Zone," Monday through Friday from 7 a.m. to 7 p.m., except as otherwise posted along the perimeter of and inside the designated area, or when necessary to avoid conflict with other traffic or in compliance with law or upon the direction of any law enforcement officer authorized to enforce these rules. Said area is indicated by a blue line painted parallel to the curb and is bounded by the northern property line of Frankfort Street, the northern property line of Dover Street, the eastern property line of South Street, the western property line of State Street, the centerline of Broadway, and the centerline of Park Row.

(2) **Special midtown rule: method of parking.** Except where otherwise restricted, between the hours of 7 a.m. and 7 p.m. daily, except Sundays, from 14th to 60th Streets, 1st to 8th Avenues, all inclusive, in the Borough of Manhattan, no operator of a vehicle or combination of vehicles used for transportation of merchandise shall stop, stand, or park in any of the streets herein designated, other than parallel and close to the curb, and occupy no more than ten feet of roadway space from the nearest curb, and in no case shall any such vehicle be backed in at an angle to the curb.

(3) **Special midtown rule: standing time limit.**

(i) Between the hours of 7 a.m. and 7 p.m., daily except Sundays, from 14th to 60th Streets, 1st to 8th Avenues, all inclusive, in the Borough of Manhattan no operator shall stand a vehicle or combination of vehicles for the purpose of making pickups, deliveries or service calls in any one block of streets herein designated for a period of more than three hours unless otherwise posted. A vehicle or combination of vehicles not being used for expeditious pickups, deliveries or service calls is deemed to constitute a parked vehicle subject to parking rules applicable to that particular location.

(ii) Commercial parking meter area. Notwithstanding the provisions of subparagraph (i) of this paragraph, where signs are posted regulating the use of the curb by commercial vehicles it shall be unlawful to stand a vehicle in any space on a block unless such vehicle is a "commercial vehicle" as defined in §4-01(b)(i) of this chapter or a vehicle with a valid "combination" registration from another state, and unless such space is controlled by a parking meter. The maximum time for such metered parking on a single block shall be a total of three hours, unless otherwise indicated by a posted sign. The provisions of subdivision (h) of this section shall apply to commercial vehicles parked at a parking meter, including a "Muni-Meter," pursuant to this paragraph.

(4) **Parking in garment district restricted to trucks.** Notwithstanding any provisions of these rules to the contrary, no vehicles except trucks and vans bearing commercial plates shall stand at the curb for the purpose of expeditiously loading and unloading between the hours of 7 a.m. and 7 p.m. daily, including Sundays, from 35th Street to 41st Street, between Avenue of the Americas and 8th Avenue, all inclusive, in the Borough of Manhattan. For the purpose of this paragraph (4), passenger vehicles, or station wagons bearing commercial plates shall not be deemed trucks or vans.

(5) **Parking restricted in limited truck zones.** No operator of truck shall stop, stand or park his/her vehicle upon any streets designated as "Limited Truck Zones," except for the purpose of making a delivery, loading or servicing within said zone, and except as otherwise provided in §4-13(d)(3) of these rules.

(m) **Additional parking rules.** (1) **Wrong way parking prohibited.** Except where angle parking is authorized, every vehicle stopped, standing, or parked partly upon a roadway shall be so stopped, standing or parked parallel to the curb or edge of the roadway. On a one-way roadway such vehicle shall be facing in the direction of authorized traffic movement; on a two-way roadway such vehicle shall be facing in the direction of authorized traffic movement on that portion of the roadway on which the vehicle rests.

(2) **Angle standing or parking.** No person shall place a vehicle at an angle to the curb, except when such angle placement is authorized by these rules or by signs or markings. Notwithstanding the above, no vehicle that is too long and/or too wide to be parked within a single designated parking space shall be parked in such a space which is designated for angle parking.

(3) **Angle parking of motorcycles, motor scooters and mopeds.** A person shall be permitted to park a motorcycle, motor scooter or moped at an angle to the curb at times and at places when and where parking is permitted but only in such manner that at least one wheel shall touch the curb. In no event shall any portion of the motorcycle, motor scooter or moped be more than 6 feet from the curb.

(4) **Parking of doctors' and dentists' vehicles.** Where parking is prohibited by signs, but not where stopping or standing is prohibited, a duly licensed physician or dentist may park his/her motor vehicle, identified by "MD," "OP" or "DDS" New York registration plates, on a roadway adjacent to hospitals or clinics for a period not to exceed three hours. For the purposes of this paragraph, only those portions of a roadway corresponding to the shaded areas on the diagrams below shall be considered adjacent to a hospital or clinic. At other locations where parking is prohibited by signs, but not where stopping or standing is prohibited, a duly licensed physician may park his/her motor vehicle, identified by "MD" or "OP" New York registration plates, for a period not to exceed one hour while actually attending to a patient in the immediate vicinity.

(5) **Bus parking on streets prohibited.** No person shall park a bus at any time on any street within the City of New York, unless authorized by signs, except that a charter bus may park where parking is otherwise permitted at its point of origin or destination. No operator of a bus shall make a bus layover, except as otherwise provided in §4-10(c) of these rules. Notwithstanding any local law or rule to the contrary, but subject to the provisions of the Vehicle and Traffic Law, it shall be permissible for a school bus owned, used or hired by a public or nonpublic school to park at any time, including overnight, upon any street or roadway, provided said bus occupies a parking spot in front of and within the building lines of the premises of the public or nonpublic school.

(6) **Time limits.** Where signs are erected specifying time limits on standing or parking, no person shall stand or park any vehicle in excess of the time so prescribed.

(7) **Emergency ambulance service vehicles.** The operator of an ambulance, as defined in section 100-b of the Vehicle and Traffic Law, while awaiting an emergency call, may park at meters, truck loading and unloading zones, and "NO PARKING" areas not specifically designated for other vehicles. (i.e. authorized zones).

(8) **Street storage of boat trailers, mobile homes and mobile medical diagnostic vehicles prohibited.** No person shall park any boat trailer (with or without a boat attached), mobile home or mobile medical diagnostic vehicle in any area, on any street, in excess of 24 hours.

(9) **Street storage of vehicles prohibited.** When parking is not otherwise restricted, no person shall park any vehicle in any area, including a residential area, in excess of seven consecutive days.

(n) **Special restrictions on parking.** (1) **Parking for sales purposes prohibited.** No person regularly engaged in

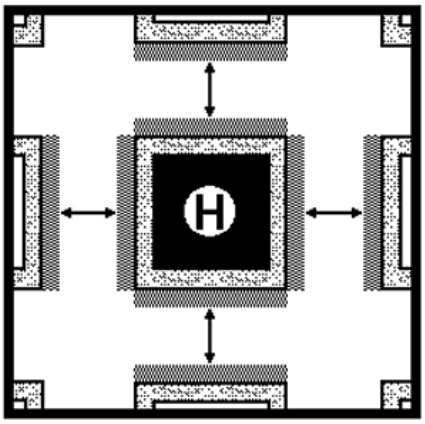
the sale of vehicles shall park a vehicle upon any roadway or off-street parking facility for the principal purpose of displaying such vehicle for sale.

(2) **Parking for certain purposes prohibited.** No person regularly engaged in the repair of vehicles shall park a vehicle upon any roadway or off-street parking facility for the principal purpose of washing, greasing, or repairing such vehicle, except repairs necessitated by an emergency.

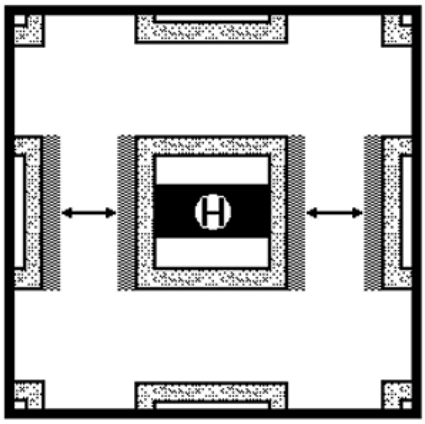
(3) **Parking for the purposes of commercial advertising prohibited.** No person shall stand or park a vehicle on any street or roadway for the purpose of commercial advertising, as defined in §4-12(j)(1) of these rules, except as otherwise provided in that section.

(4) **Peddlers, vendors and hawkers restricted.** No peddler, vendor, hawker, or huckster shall permit his car, wagon, or vehicle to stand on any street when stopping, standing, or parking is prohibited or on any street within 25 feet of any corner of the curb or to stand at any time on any sidewalk or within 500 feet of any public market or within 200 feet of any public or private school.

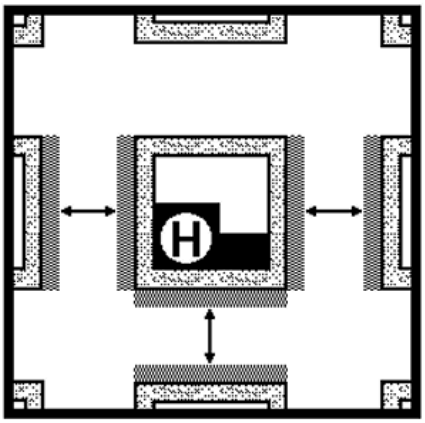
(5) **Unattended motor vehicles.** No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the vehicle, and effectively setting the brake provided, however, the provision for removing the key from the vehicle shall not require the removal of keys hidden from sight about the vehicle for convenience or emergency.



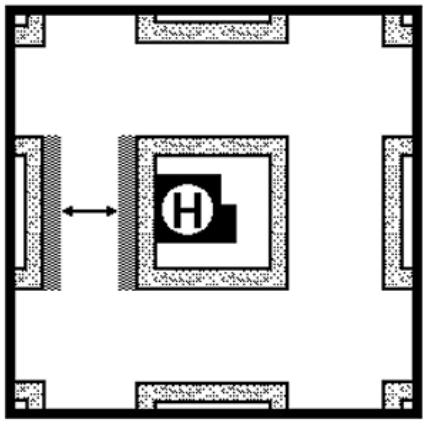
Hospital occupies full square block.



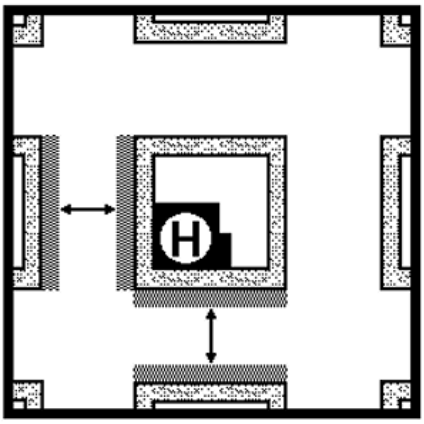
Hospital in mid block.



Hospital occupies part of block.



Hospital in part of mid block



Hospital in corner of block

Shaded areas are considered adjacent.

(6) **Moving parked vehicle.** No person shall move a vehicle not lawfully under his/her control into any position where stopping, standing, or parking would be unlawful.

(7) **Unofficial reserving of parking space.** It shall be unlawful for any person to reserve or attempt to reserve a parking space, or prevent any vehicle from parking on a public street through his/her presence in the roadway, the use of hand-signals, or by placing any box, can, crate, handcart, dolly or any other device, including unauthorized pavement, curb or street markings or signs in the roadway.

(8) **Vehicles must have proper equipment.** No person shall stand or park a motor vehicle, motorcycle or limited use vehicle on any street at any time unless it is equipped with head lamps, rear lamps, reflectors and any other equipment required by any provision of the Vehicle and Traffic Law.

(o) **Permits.** For purposes of this section, a "permit" is the authorization granted by the Department to qualified individuals for special parking privileges as set forth in this subdivision. At the discretion of the Department, a permit may be represented by a permit card inscribed with information that describes the specific parking privileges it authorizes or by an IVPS programmed to contain the same information. Where this rule states that a permit must be displayed in the vehicle, a permittee using a permit card must place it in the appropriate place in a vehicle; a permittee using an IVPS must activate the system before so displaying it, in order to authorize parking pursuant to the permit. The registration numbers of the electronic component, the electronic debit card, and all related windshield stickers comprising an IVPS must match in order for such system to be considered properly activated.

(1) **Permits for people with disabilities.** (i) **Authorized parking areas.** An operator of a vehicle bearing a valid New York City Special Parking Identification permit may park:

(A) in any "No Parking" zone, including those marked "except authorized vehicles,"

(B) in any "No Standing Except Authorized Vehicles" zone,

(C) at parking meters without using an authorized payment method, and

(D) in "No Standing Except Trucks Loading and Unloading" zones.

Such special parking permit shall be displayed so that it is visible through the windshield. An IVPS must be activated to authorize parking.

(ii) **Prohibited parking areas.** Such special parking identification permits do not authorize parking:

(A) in a bus stop,

(B) in a taxi-stand,

(C) within 15 feet of a fire hydrant,

(D) in a fire zone,

(E) in a driveway,

(F) in a crosswalk,

(G) in a no stopping zone,

(H) in a no standing zone, or

(I) double parking.

(iii) **Issuance of permits.** The Special Parking Identification permit shall be issued by the Commissioner or his/her designee to a New York City resident certified by the Department of Health or a provider designated by the Department or the Department of Health, who shall make such certification in accordance with standards and guidelines prescribed by the Department of Health, as having a permanent disability seriously impairing mobility, who requires the use of a private automobile for transportation and to a non-resident similarly certified who requires the use of a private automobile for transportation to a school in which such applicant is enrolled or to a place of employment. A permit shall also be issued to such person upon application made on such person's behalf by a parent, spouse, domestic partner as defined in New York City Administrative Code §1-112(21), guardian, or other individual having legal responsibility for the administration of such person's day to day affairs. The permit may include no more than ten (10) license plate numbers for the vehicle(s) which will be used to transport the permittee. Upon application for a permit, applicant shall submit to the department a copy of the vehicle registration for each license plate which will be registered on the permit. Any vehicle displaying such a permit shall be used exclusively in connection with parking a vehicle in which the person to whom it has been issued is being transported or will be transported within a reasonable period of time.

(iv) **Replacement permits.** In case of a lost or stolen permit, the permittee must, upon request for a replacement, submit to the department a copy of a valid police report. In case of a stolen vehicle which is registered on the permit, permittee must submit to the department a copy of a valid police report. In the event a vehicle registered on the permit is unable to be used as a result of an accident or mechanical defect, a substitution of plates will be permitted only if the permittee has three or fewer plates registered on the permit. The permittee must provide proof to the department of the inability to use the vehicle. If the permittee has four or more plates registered on the permit, no temporary substitution will be allowed.

(v) **Revocation.** Any abuse by any person of any privilege, benefit or consideration granted by such permit, shall be sufficient cause for revocation of said permit.

(2) **Municipal parking permit.** A municipal parking permit licenses the permittee to park one automobile at the permittee's risk in the area designated by signs. Fees charged are for the use of a parking space in the designated facility only. Only a license to park is granted by this permit and no bailment is created. The Department of Transportation assumes no responsibility for loss due to fire, theft, collision or otherwise to the car or its contents.

(i) A municipal parking permit must be displayed when parked in authorized spaces, and in such a manner that the permit is visible through the left side of the windshield. An IVPS must be activated to authorize parking.

(ii) A municipal parking permit is to be displayed only on vehicles bearing license plate numbers on file at the Bureau of Parking. For license plate changes call the Permit Section of the Bureau of Parking, weekdays (10 AM to 4 PM).

(iii) A municipal parking permit is to be displayed only when a vehicle is parked in areas reserved for use of this permit.

(iv) Failure to comply with the above regulations will result in a summons.

(3) **Yearly permits for parking in contradiction to rules on city streets.** Yearly permits are issued on dates determined by the Department of Transportation or any other agency authorized by the Department to non-profit organizations needing to park in contradiction to parking rules when the vehicle is essential to the performance of their organizational functions. These organizations generally are medical, blood, government and human service programs. Such permits shall be displayed so that they are visible through the windshield. An IVPS must be activated to authorize parking.

(i) **Parking permitted.** Parking with yearly permits is permitted in areas specified on or programmed into the permit and may include some or all of the following:

(A) Meters.

(B) Truck loading and unloading zones.

(C) No Standing/Parking Except Authorized Vehicles, when the permit matches the signs, and

(D) "No Parking" areas.

(ii) **Parking not permitted.** Parking with yearly permits is not permitted at:

(A) "No Standing" areas.

(B) "No Stopping" areas.

(C) Fire hydrants.

(D) Bus stops.

(E) Double parking.

(F) Driveways.

(G) Bridges and highways, and

(H) Areas where a traffic hazard would be created.

(iii) **Duration.** Yearly permits are issued for the minimum hours and days essential for the activity. Such permits are issued on an annual basis on dates determined by the Department of Transportation. The Commissioner or his/her designee may, at his/her discretion, issue, extend or revoke these permits.

(4) **Single issue permits for parking in contradiction to rules on city streets.** Single issue permits are issued by the Department of Transportation or any other agency authorized by the Department to for-profit and not-for-profit medical, blood and human service programs; press events; and concerts, film production companies, special events and emergencies. Such permits shall be displayed so that they are visible through the windshield. An IVPS must be activated to authorize parking.

(i) **Information required.** The request for such a single issue permit shall be made in writing to the Department of Transportation and must include:

(A) Date(s) of the event,

(B) Hours,

(C) Location,

(D) Number and size of vehicles, and

(E) License plates or identifying markings of the vehicles.

(ii) **Parking permitted.** Parking with single issue permits is permitted in areas specified on or programmed into the permit and may include some or all of the following:

(A) Meters.

(B) Truck loading and unloading zones.

(C) No Standing/Parking Except Authorized Vehicles, and

(D) "No Parking" areas.

(iii) **Parking not permitted.** Parking with single issue permits is not permitted at:

(A) "No Standing" areas.

(B) "No Stopping" areas.

(C) Fire hydrants.

(D) Bus stops.

(E) Double parking.

(F) Driveways.

(G) On bridges and highways, and

(H) Areas where a traffic hazard would be created.

(iv) **Duration.** Single issue permits are issued for the minimum hours and days essential for the event. The Commissioner or his/her designee may, at his/her discretion, issue, extend or revoke these permits.

(5) **Clergy parking permits.** (i) **Definitions.**

Hospital. A general hospital, nursing home or hospice inpatient facility certified pursuant to the public health law or a psychiatric center established pursuant to §7.17 of the mental hygiene law.

House of worship. A building or space owned or leased by a religious corporation or association of any denomination or used by a religious corporation or association of any denomination pursuant to the written permission of the owner thereof, which is used by members principally as a meeting place for divine worship or other religious observances presided over by a member of the clergy and which is classified in occupancy group F-1(b) pursuant to article eight of subchapter three of chapter one of title twenty-seven of the New York City Administrative Code. Such term shall not include a dwelling unit as defined in the housing maintenance code.

Member of the clergy. A clergyperson or minister as defined in the religious corporations law including, but not limited to, a pastor, rector, priest, rabbi or imam who officiates at or presides over services on behalf of a religious corporation or association of any denomination. Such term shall not include clergy who derive their principal income from any other occupation or profession or who do not officiate at or preside over services on behalf of a religious corporation or association of any denomination.

Passenger car. Notwithstanding any other provision of these rules, for the purposes of this paragraph (5), a passenger car shall mean a motor vehicle designed and used for carrying not more than fifteen people, including the driver. Such term shall not include a vehicle licensed to operate pursuant to chapter five of title 19 of the New York City Administrative Code or a commercial vehicle as defined in §19-170 of the Code.

(ii) **Application requirements.**

(A) The religious corporation or association applying for a permit on behalf of a member of the clergy shall submit an application on a form to be provided by the department and signed by an officer of the corporation or association or

by a person otherwise authorized to act on behalf of the corporation or association. Such application shall be accompanied by a copy of a deed or lease and a certificate of occupancy indicating classification in occupancy group F-1(b) (plus the type of house of worship) for the New York City house of worship used by the religious corporation or association. In the absence of a deed or lease, the religious corporation or association shall submit a sworn written statement of the owner of the house of worship attesting to the fact that said religious corporation or association has the permission of said owner to use the premises as a house of worship. In the event a house of worship was constructed prior to the existence of a certificate of occupancy or occupancy group F-1(b) so that a certificate of occupancy is not available, the religious corporation or association shall submit such other documentation as the department may require.

(B) The religious corporation or association shall, on behalf of a clergy member, submit a copy of title, registration or lease in the clergy member's name for a New York State registered vehicle to be covered by a permit. Such religious association or corporation shall, on behalf of a member of the clergy, also submit a copy of a current automobile insurance identification card for such vehicle.

(C) The religious corporation or association shall certify on a form provided by the Department that only the member of the clergy on whose behalf the application is made will use such permit, that such use will occur only while the member of the clergy is performing official duties at the house of worship at whose services such member of the clergy officiates or presides or while performing such official duties at a hospital, that such member of the clergy derives his/her principal income from officiating at or presiding over services on behalf of said religious corporation or association, that such member of the clergy possesses a valid New York State driver's license and that such member of the clergy otherwise qualifies for the benefits of this permit.

(D) In addition, the religious corporation or association shall submit any other documents deemed necessary by the Department.

(iii) **Parking permitted.** Parking is permitted only in "No Parking" areas designated by posted sign for up to four hours on a roadway adjacent to the house of worship's address as it appears on the permit or for up to three hours on a roadway adjacent to a hospital when the clergy member is performing official duties at such hospital. For the purposes of this paragraph, only those portions of a roadway corresponding to the shaded areas on the diagrams shall be considered adjacent to a house of worship or hospital.

(iv) **Issuance of permit.** Only one permit shall be issued to any religious corporation or association. The front of such permit shall include the license plate numbers of up to three passenger cars, as defined in subparagraph (i), above, that are owned, registered or leased by the members of the clergy for whose benefit the religious corporation or association has applied for such permit. No permit shall be issued with the license plate number of any vehicle that has one or more summonses in judgment according to the records of the New York City Parking Violations Bureau.

(v) **Duration.** Permits issued in accordance with this paragraph (5) shall be valid for one year, unless revoked pursuant to subparagraph (viii).

(vi) **Renewal.** Sixty days prior to the expiration of the permit, the religious corporation or association may apply for a renewal by completing a form provided by the Department.

(vii) **Replacement permits.**

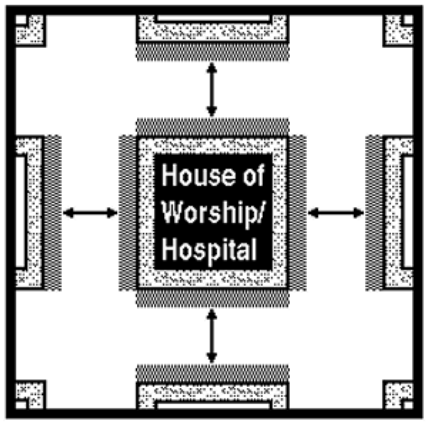
(A) In case of a lost or stolen permit, the religious corporation or association shall, upon request for a replacement, submit to the Department a copy of a valid police report. In the case of a stolen vehicle containing a permit that was also stolen, the religious corporation or association shall submit a copy of a valid police report for the stolen vehicle, which report also lists the permit as stolen.

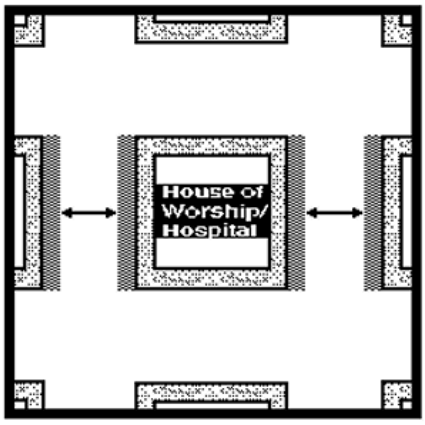
(B) To receive a replacement permit with a changed license plate number or an additional plate number up to a total of three, the religious corporation or association shall supply the documentation required by subparagraphs (B), (C)

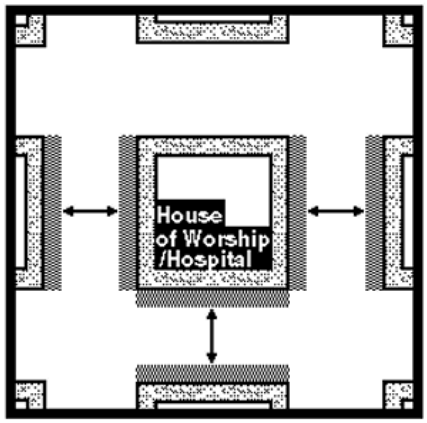
and (D) of paragraph (ii), above, in addition to the police report, if applicable. Changes to the permit may only be made by the Department.

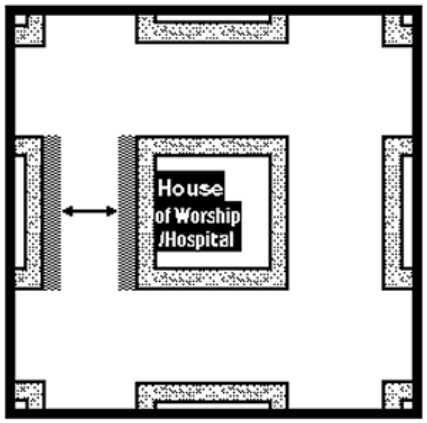
(viii) **Revocation.** A member of the clergy who engages in or allows the improper use or alteration of a permit issued pursuant to this paragraph may be excluded from the benefits of this paragraph. The department shall mail written notice to the religious corporation or association with which such clergy member is associated of the improper use of a permit issued to such corporation or association. The religious corporation or association may submit a response within ten days of the date of mailing of such notice. After ten days from the date of mailing of such notice, the department may send notice to the religious corporation or association of the exclusion of a member from the permit and the corporation or association shall forthwith return the permit to the department. If the permit contains more than one license plate number, the license plate number of the vehicle of the excluded member shall be deleted and the department shall promptly reissue the permit with the remaining license plate numbers. If the permit contains only the license plate number of the excluded member, the religious corporation or association may submit an application for a new permit pursuant to this paragraph. The member of the clergy who engaged in or allowed such improper use shall not be eligible for inclusion in any future application submitted pursuant to this paragraph.

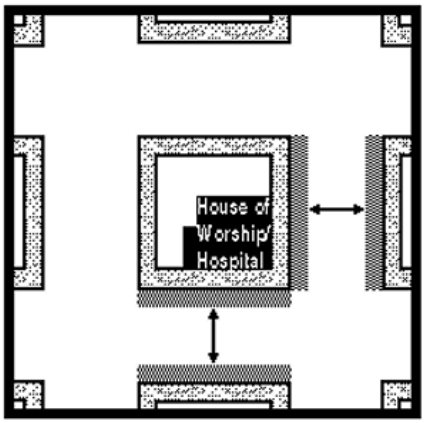
(p) **Engine idling.** (1) **Idling of vehicle engines prohibited.** Except as provided for buses in paragraph (p)(2) hereof, no person shall cause or permit the engine of any vehicle, other than a legally authorized emergency motor vehicle, to idle for longer than three minutes while parking, standing or stopping unless the engine is being used to operate a loading, unloading or processing device.











Shaded areas are considered adjacent.

(2) **Idling of bus engines prohibited.** No person shall cause or permit the engine of any bus to idle at a layover or terminal location, whether or not enclosed, when the ambient temperature is in excess of forty (40) degrees Fahrenheit. When the ambient temperature is forty (40) degrees Fahrenheit or less, no person shall cause or permit any bus to idle for longer than three minutes at any layover or terminal location. For the purpose of this rule, at a layover or terminal location a bus engine shall not be deemed to be idling if the operator is running the engine in order to raise the air pressure so as to release the air brakes, provided however, that this shall not exceed a period of three minutes.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (a) amended City Record July 27, 1993 eff. Aug. 26, 1993.

Subd. (a) par (6) amended City Record Nov. 18, 2003 eff. Dec. 18, 2003. [See Note 25]

Subd. (a) par (7) amended City Record Nov. 22, 1995 eff. Dec. 22, 1995. [See Note 8]

Subd. (a) par (7) amended City Record July 27, 1993 eff. Aug. 26, 1993.

Subd. (a) par (7) subpar (ii) amended City Record Mar. 3, 2004 §2, eff. Apr. 2, 2004. [See Note 29]

Subd. (a) par (7) subpar (iii) amended City Record Sept. 3, 1996 eff. Oct. 3, 1996. [See Note 9]

Subd. (a) par (7) subpar (iii) clause (A) amended City Record Dec. 5, 2003 eff. Jan. 4, 2004. [See Note 28]

Subd. (a) par (7) subpar (iii)(C) amended City Record Oct. 17, 1997 eff. Nov. 16, 1997. [See Note 11]

Subd. (a) par (7) subpar (iii) clause (C) amended City Record Dec. 12, 1994 eff. Jan. 11, 1995.

Subd. (a) par (7) subpar (iii)(D) amended City Record Aug. 14, 1997 eff. Sept. 13, 1997. [See Note 12]

Subd. (a) par (9) subpar (ii) amended City Record Mar. 28, 2005 §3, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (a) par (9) subpar (iii) amended City Record Oct. 22, 2002 §1, eff. Nov. 21, 2002. [See Note 6]

Subd. (a) par (9) subpar (iv) amended City Record Mar. 28, 2005 §3, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (a) par (9) subpar (vi) amended City Record Oct. 22, 2002 §2, eff. Nov. 21, 2002. [See Note 6]

Subd. (a) par (9) subpar (vii) amended City Record Oct. 22, 2002 §3, eff. Nov. 21, 2002. [See Note 6]

Subd. (a) par (9) subpar (vii) amended City Record Feb. 4, 1993 eff. Mar. 2, 1993.

Subd. (a) par (9) subpar (ix) added City Record Oct. 20, 1993 eff. Nov. 19, 1993.

Subd. (a) par (9) subpar (x) amended City Record Oct. 22, 2002 §4, eff. Nov. 21, 2002. [See Note 6]

Subd. (a) par (9) subpars (x), (xi) added City Record Oct. 20, 1993 eff. Nov. 19, 1993.

Subd. (a) par (10) subpar (iv) added City Record Oct. 22, 2001 eff. Nov. 21, 2000. [See Note 5]

Subd. (a) par (12) added City Record Feb. 25, 1997 eff. Mar. 27, 1997. [See Note 13]

Subd. (c) par (4) amended City Record May 9, 2003 §3, eff. June 8, 2003. [See Note 27]

Subd. (c) par (6)-(7) added City Record Oct. 7, 1996 eff. Nov. 6, 1996. [See T34 §4-01 Note 1]

Subd. (c) par (8) added City Record May 9 2003 §4, eff. June 8, 2003. [See Note 27]

Subd. (d) par (3) amended City Record Apr. 9, 1993 eff. May 9, 1993.

Subd. (d) par (4) amended City Record Mar. 3, 2004 §3, eff. Apr. 2, 2004. [See Note 29]

Subd. (e) opening par amended City Record Oct. 29, 1999 eff. Nov. 28, 1999. [See Note 1]

Subd. (e) par (4) amended City Record June 8, 2005 §2, eff. July 8, 2005. [See T34 §4-01 Note 4]

Subd. (e) par (6) amended City Record Apr. 9, 1996 eff. May 9, 1996. [See Note 14]

Subd. (e) par (6) amended City Record Nov. 24, 1995 eff. Dec. 24, 1995. [See Note 15]

Subd. (e) par (8) amended City Record Oct. 29, 1999 eff. Nov. 28, 1999. [See Note 2]

Subd. (e) par (12) added City Record Aug. 28, 2008 §1, eff. Aug. 28, 2008 per City Record notice. [See Note 31]

Subd. (f) par (1) amended City Record Jan. 11, 2007 §1, eff. Feb. 10, 2007. [See Note 30]

Subd. (f) par (1) amended City Record Mar. 28, 2005 §4, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (f) par (1) amended City Record Apr. 9, 1996 eff. May 9, 1996. [See Note 14]

Subd. (f) par (1) amended City Record July 27, 1993 eff. Aug. 26, 1993.

Subd. (f) par (2) amended City Record Apr. 12, 2005 §2, eff. May 12, 2005. [See T34 §4-01 Note 3]

Subd. (f) par (2) amended City Record Oct. 15, 1996 eff. Nov. 14, 1996. [See Note 16]

Subd. (f) par (7) amended City Record Nov. 26, 2008 §2, eff. Dec. 26, 2008. [See T34 §4-01 Note 6]

Subd. (f) par (7) added City Record Oct. 15, 1996 eff. Nov. 14, 1996. [See Note 16]

Subd. (g) amended City Record Apr. 17, 1991 eff. May 17, 1991.

Subd. (g) par (3) amended City Record Mar. 28, 2005 §5, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (h) amended City Record Feb. 25, 1997 eff. Mar. 27, 1997. [See Note 13]

Subd. (h) par (3) amended City Record Feb. 18, 2009 §1, eff. Mar. 20, 2009. Note bill section erroneously referred to this as Subd. (e) par (3). [See Note 32]

Subd. (h) par (3) amended City Record Sept. 6, 2000 eff. Oct. 6, 2000. [See Note 3]

Subd. (h) par (3) subpar (i) amended City Record Mar. 28, 2005 §6, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (h) par (3) subpar (iii) open par amended City Record Mar. 28, 2005 §6, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (h) par (10) amended City Record Mar. 28, 2005 §7, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (h) par (10) added City Record Dec. 14, 1995 eff. Jan. 13, 1996. [See Note 17]

Subd. (i) par (3) amended City Record Mar. 28, 2005 §8, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (i) par (3) amended City Record Dec. 14, 1995 eff. Jan. 13, 1996. [See Note 17]

Subd. (i) par (4) repealed City Record Dec. 14, 1995 eff. Jan. 13, 1996. [See Note 17]

Subd. (i) par (5) renumbered (4) City Record Dec. 14, 1995 eff. Jan. 13, 1996. [See Note 17]

Subd. (i) par (6) renumbered (5) City Record Dec. 14, 1995 eff. Jan. 13, 1996. [See Note 17]

Subd. (i) par (6) added City Record Mar. 3, 2004 §4, eff. Apr. 2, 2004. [See Note 29]

Subd. (j) amended City Record Nov. 30, 1993 eff. Dec. 30, 1993.

Subd. (k) par (1) amended City Record Dec. 12, 2005 §2, eff. Jan. 11, 2006. [See T34 §4-01 Note 5]

Subd. (k) par (1) amended City Record July 14, 2000 eff. Aug. 13, 2000. [See Note 2]

Subd. (k) par (2) amended City Record Mar. 28, 2005 §9, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (k) par (2) amended City Record July 27, 1993 eff. Aug. 26, 1993.

Subd. (k) par (4) amended City Record June 3, 1996 eff. July 3, 1996. [See Note 18]

Subd. (k) par (6) amended City Record Mar. 28, 2005 §9, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (k) par (7) added City Record Dec. 4, 1995 eff. Jan. 3, 1996.

Subd. (l) par (3) amended City Record Sept. 6, 2000 eff. Oct. 6, 2000. [See Note 3]

Subd. (l) par (3) subpar (ii) amended City Record Aug. 15, 2003 eff. Sept. 14 2003. [See Note 26]

Subd. (l) par (3) subpar (ii) amended City Record Apr. 10, 2003 eff. Apr. 10, 2003. [See Note 7]

Subd. (l) par (3) subpar (ii) amended City Record July 20, 2001 eff. Aug. 19, 2001. [See Note 4]

Subd. (l) par (4) amended City Record Jan. 24, 1997 eff. Feb. 23, 1997. [See Note 20]

Subd. (l) par (5) amended City Record Mar. 28, 2005 §10, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (m) amended City Record Sept. 17, 1993 eff. Oct. 17, 1993.

Subd. (m) par (2) amended City Record Mar. 3, 2004 §5, eff. Apr. 2, 2004. [See Note 29]

Subd. (m) par (3) amended (as par 4) City Record July 27, 1993 eff. Aug. 26, 1993.

Subd. (m) par (4) amended City Record Mar. 28, 2005 §11, eff. Apr. 27, 2005. [See T34 §4-01 Note 2]

Subd. (m) par (4) amended (as par 6) City Record Apr. 4, 1993 eff. May 4, 1993.

Subd. (m) par (7) added (as par 9) City Record Oct. 7, 1992 eff. Dec. 6, 1992.

Subd. (m) par (8) added City Record Sept. 3, 1996 eff. Oct. 3, 1996. [See Note 10]

Subd. (m) par (9) added City Record June 13, 1997 eff. July 13, 1997. [See Note 21]

Subd. (m) par (5) amended City Record Dec. 24, 1992 eff. Jan. 23, 1993.

Subd. (o) amended City Record Feb. 25, 1997 eff. Mar. 27, 1997. [See Note 13]

Subd. (o) par (1) amended City Record Dec. 5, 1995 eff. Jan. 4, 1996. [See Note 23]

Subd. (o) par (1) subpar (iii) amended City Record Dec. 21, 1998 eff. Jan. 20, 1999. [See Note 22]

Subd. (o) par (5) added City Record Apr. 2, 1997 eff. May 2, 1997. [See Note 24]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 29, 1999:

The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to §2903(a) of the New York City Charter.

Section 4-08(e)(8) is being amended to clarify that the Department's intent along certain divided highways is to prohibit parking only during certain days and/or hours and allow parking the rest of the time. The rule would still prohibit parking, standing or stopping at all times along the medians of divided highways where there is no sign.

2. Statement of Basis and Purpose in City Record July 14, 2000: The Commissioner of the Department of Transportation is authorized to regulate traffic pursuant to §2903(a) of the New York City Charter. Section 4-08(k) is being amended to clarify the requirements for altering a commercial vehicle for parking purposes.

3. Statement of Basis and Purpose in City Record Sept. 6, 2000: The Commissioner of the Department of Transportation is authorized by §2903 of the New York City Charter and §1642 of the New York State Vehicle and Traffic Law, and in accordance with §1043 of the Charter, to regulate parking, standing, and stopping of vehicles in the City of New York. By creating a Pilot Program for metered commercial parking areas, this amendment will help alleviate a serious problem in Manhattan-the severe traffic congestion caused by commercial vehicles that double park and stand in the area for long periods. By creating a metered parking area specifically designated for such vehicles, with a three-hour time limit on a block (both sides of a single street constitute a "block"), traffic flow should be greatly enhanced. Additionally, enforcement currently is very difficult; creating metered parking areas for these vehicles will provide easily tracked time frames for enforcement personnel. The initiative is being implemented as a Pilot Program for a period of eighteen months in order to test its efficacy and effect on traffic flow and enforcement. This rule also clarifies the procedures to be followed when a driver seeks to park at a space controlled by a broken or missing "Muni-Meter."

4. Statement of Basis and Purpose in City Record July 20, 2001: The Commissioner of the Department of Transportation is authorized by §2903 of the New York City Charter and §1642 of the New York State Vehicle and Traffic Law, and in accordance with §1043 of the Charter, to regulate parking, standing, and stopping of vehicles in the City of New York. An on-going Pilot Program for metered commercial parking areas in a limited area in Manhattan appears to be effective. By expanding the Pilot Program to a larger geographical area, this amendment will further aid the City in studying the effect of metered commercial parking in alleviating traffic congestion.

5. Statement of Basis and Purpose in City Record Oct. 22, 2001: Cars parked illegally in bus stops force buses to stop in lanes carrying moving traffic. This delays traffic and creates the potential for rear-end collisions and accidents involving cars attempting to pull around buses. The gap between the roadway and the first step in the bus is uncomfortable for boarding and alighting passengers to negotiate, and the elderly and disabled can encounter significant difficulties. For wheelchair users, it may be impossible to negotiate the curb to board the bus. For these reasons, it is imperative that vehicle operators clearly receive the message that they must not block bus access to bus stops. One way that MTA New York City Transit personnel with summons issuance authority can reinforce the importance of this requirement is by affixing notices on the driver side backseat windows of violators. The Department of Sanitation has similar authority to use against violators of street cleaning regulations. The notice would not interfere with driving, nor would it damage the vehicle to which it is applied, but it would give highly conspicuous notice to the operators of offending vehicles who are contemptuous of the rights of others that the City takes bus stop violations seriously.

6. Statement of Basis and Purpose in City Record Oct. 22, 2002: These rules set forth amendments to existing New York City Department of Transportation rules to raise the fees charged for illegally parked vehicles which are immobilized, towed, stored, and released, and to add new fees for towing or releasing heavy duty vehicles. The immobilization (booting) fee would increase from $75 to $185. Regular towing fees would be raised from $150 to $185. The storage fee would increase from $15 to $20. The vehicle release fee would increase from $75 to $100. Two new fees would be added, heavy duty towing and heavy duty release, at $370 and $200 respectively. In order to ensure that roadways and traffic lanes are open for efficient traffic flow, and especially to ensure that emergency vehicles such as fire engines, police vehicles and ambulances have swift and unobstructed movement through city streets to sites of emergencies, the City of New York maintains a Violation Tow Program to deter illegal parking and to remove illegally parked vehicles. The fees charged to persons who violate the parking rules were last fixed in 1989 and consequently do not reflect increased personnel and office equipment/space costs. Therefore, at present, the public and not the violator pays the difference between what the fees bring in and what is needed to pay for the program. The fee increases are based on User Service Cost Analyses of the New York City Office of Management and Budget to ensure that the fees charged are commensurate with the administrative costs needed to run the program. The two new fees for heavy duty towing and heavy duty release reflect the additional expense of utilizing heavier towing equipment, requiring more

highly trained and qualified personnel, and the need for more space at the tow pound to store heavy or large vehicles and trucks.

7. Statement of Basis and Purpose in City Record Apr. 10, 2003: The Commissioner of the Department of Transportation is authorized to regulate parking, standing, and stopping of vehicles in the City of New York pursuant to §2903 of the New York City Charter and §1642 of the New York State Vehicle and Traffic Law. Section 4-08(l)(3)(ii) is being amended to extend a program for commercial parking in part of Manhattan. NYC Department of Transportation: I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, that there is a substantial need for implementation of the rule extending the commercial parking meter program upon publication of its Notice of Adoption in the City Record. The implementation of such rule upon publication is necessary because the pilot program expired April 1 and the Department wishes to continue it.

Iris Weinshall Apr. 7, 2003

8. Statement of Basis and Purpose in City Record Nov. 22, 1995: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(a)(7) is being amended to clarify the term "legal holidays" because the fact that there are some listed in subparagraph (i) and others listed in subparagraph (iii)(A) and (C) was causing confusion to the motoring public. Also, subparagraph (iii)(C) is being amended to clarify that the parking meter zones where No Parking rules are suspended are on-street metered zones, not those in municipal parking lots.

9. Statement of Basis and Purpose in City Record Sept. 3, 1996: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(a)(7)(iii) is being amended to clarify what rules are suspended on days when street cleaning rules are suspended. The "No Parking 8 a.m. to 6 p.m." rule exists for traffic mobility purposes only. However, it was causing confusion because some signs only list one day or alternating days that the rule is in effect, thereby putting it into the category of street cleaning rule under subparagraph (iii)(B) and making it unclear whether the rule should be suspended along with other street cleaning rules. This amendment clarifies that the 8-6 rule should not be suspended on days when street cleaning rules are suspended.

10. Statement of Basis and Purpose in City Record Sept. 3, 1996: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(m) is being amended by adding a new paragraph (8) prohibiting the leaving of certain types of vehicles on any street for more than 24 hours. The prohibition on leaving non-commercial vehicles on any street for more than 24 hours was repealed in 1993 for lack of enforcement. Since then, quality of life issues have arisen that may best be addressed by this 24-hour limit. Such issues include boat owners in residential areas attaching their boat trailers to licensed vehicles and storing them indefinitely on the streets and medical diagnostic vehicles being used as extensions of medical offices and remaining on the street for long periods of time.

11. Statement of Basis and Purpose in City Record Oct. 17, 1997: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(a)(7)(iii)(C) is being amended to conform to the suspension schedule for other alternating restrictions. This amendment will suspend rules restricting parking at meters before the time when the meters go into effect on religious as well as legal holidays.

12. Statement of Basis and Purpose in City Record Aug. 14, 1997: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(a)(7)(iii)(D) is being amended to clarify that all alternating restrictions, and not just the "No Parking 8 a.m. to 6 p.m." rule, are also suspended on days when street cleaning rules are suspended. This proposed amendment would cover signs restricting parking for six or more hours (e.g. 10 a.m. to 4 p.m., 8 a.m. to 6 p.m., etc.) This change is needed because motorists are confused over what exactly is suspended on what days.

13. Statement of Basis and Purpose in City Record Feb. 25, 1997: In-vehicle Parking Systems ("IVPSs") are small portable electronic components slightly larger than pocket calculators that are designed to be placed on top of a vehicle's dashboard behind the windshield and which can be used instead of traditional paper permits or instead of depositing coins in parking meters. IVPSs are capable of reading and writing to and from a free or pre-paid electronic debit card, and incorporate an electronic display on which information can be readily seen by enforcement agents. DOT plans to conduct an IVPS pilot demonstration comprised of consecutive phases, each of which will last four months. While the pilot parameters are still under discussion, it appears likely that it will begin with holders of certain official City parking permits. The pilot will then be expanded to include volunteer private automobile drivers who will use the IVPSs instead of coins at existing on-street parking meters around the City, subject to the same time restrictions as other parkers at those locations. If the pilot program is deemed successful, the use of IVPSs will likely be expanded to permanent use for a broader number of permits and for more users of parking meters. The Department of Transportation is introducing the use of IVPSs to provide for a higher level of customer service. IVPSs do not require drivers to carry coins and can result in reduced parking costs by crediting parkers for unused prepaid parking time. IVPSs also will help reduce public confusion regarding parking regulations, because the electronic component of the IVPS will be programmed to reflect the parking regulations for each zone. When the user activates the system and inputs the parking zone, the IVPS automatically knows how much time is allowed at that spot, at that time, on that day, and credits the parker with the maximum allowable parking time. If the parker returns before the time has expired, the unused time is credited back to the IVPS when the electronic debit card is next inserted, so there is a savings to the driver that cannot be achieved with the use of coins inserted into the meter.

14. Statement of Basis and Purpose in City Record Apr. 9, 1996: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(e)(6) is being amended to effect the repeal of recent changes to the rule because further discussion is needed to determine which types of vehicles may be allowed in street excavation areas in order to perform construction-related activities. Section 4-08(f)(1) is being amended to correct an oversight. The reference to section 4-08(m)(1) should have been removed when that section, which related to parking more than twelve inches from the curb, was repealed in 1993.

15. Statement of Basis and Purpose in City Record Nov. 24, 1995: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(e)(6) is being amended to enable the Department to issue summonses to contractors who block off a greater area of a street than they need for the actual work to be performed and store their private vehicles in that extra space. Since such parking does not obstruct a traffic lane because the excavation already prevents traffic from using the lane, these private vehicles are not parked in violation of this paragraph as it is currently written. The public should not be inconvenienced by having to avoid a greater obstruction than necessary so that contractors can park all day in the middle of the street.

16. Statement of Basis and Purpose in City Record Oct. 15, 1996: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter and section 1642 of the Vehicle and Traffic Law. Section 4-08(f)(2) is being amended to separate pedestrian ramps from driveways because section 237(2)(a) of the State Vehicle and Traffic Law provides for higher fines for violations involving areas for the disabled. A new paragraph (7) is, therefore, being added to make it a separate violation to stand in front of a pedestrian ramp.

17. Statement of Basis and Purpose in City Record Dec. 14, 1995: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 408(h)(10) is being added because motorists who purchase parking time may not park in excess of the amount of time indicated on the receipt or tag. Unlike parking at all but one off-street facilities, motorists are required to display payment receipts at municipal on-street parking spaces. Section 408(i)(3) and (i)(4) are being amended in order to eliminate a requirement which is not necessary for the proper enforcement of parking at Municipal lots using the "Muni-Card" system, namely the display of the receipt or tag in the windshield in off-street parking facilities.

18. Statement of Basis and Purpose in City Record June 3, 1996: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903 of the New York City Charter. This rule is proposed in order to improve the economic atmosphere in the city for manufacturing and distributions firms. The current rule which prohibits the parking of detached trailers on city streets, causes considerable hardship to many companies as it precludes the most efficient use of time regarding loading of trailers. Allowing detached trailers or semi-trailers to park while unattached to a cab in industrial zoned property will facilitate the expeditious movement of goods and relieve the undue burden placed on many firms by the current rule. Properties designated for industrial use are defined in the zoning resolution. The areas which the rule change will affect are industrial properties which have extremely wide streets and are not located near residential areas.

19. Statement of Basis and Purpose in City Record Dec. 4, 1995: The Commissioner of the Department of Transportation is authorized to regulate the parking, stopping and standing of vehicles pursuant to section 2903 of the New York City Charter. This rule is proposed in order to prevent operators from leaving the platform lift in a lowered position while the vehicle is unattended. Leaving platform lifts in a lowered position is a safety hazard, prevents unlawfully parked vehicles from being towed, and can be used for the purpose of unlawfully reserving parking spaces. The proposed rule will assist in eliminating these undesirable situations.

20. Statement of Basis and Purpose in City Record Jan. 24, 1997: The Commissioner of the Department of Transportation is authorized to regulate the parking, stopping and standing of vehicles pursuant to section 2903 of the New York City Charter. This rule will allow for the standing of all trucks and vans with commercial plates to load and unload in the garment district between the hours of 7 a.m. and 7 p.m. daily.

21. Statement of Basis and Purpose in City Record June 13, 1997: The Commissioner of the Department of Transportation is authorized to adopt rules regarding the parking of vehicles pursuant to section 1642 of the New York State Vehicle and Traffic Law and section 2903 of the New York City Charter. This rule is proposed in order to prohibit motorists from storing vehicles on the streets for extended periods of time in certain neighborhoods throughout the City, where the Department of Sanitation has determined that street cleaning rules, which require the limited parking of vehicles, do not apply.

22. Statement of Basis and Purpose in City Record Dec. 21, 1998: Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residdents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City housing authority and the department of housing preservation and development. By the end of April, 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55% of those registered domestic partners were heterosexual couples, and less than 45% were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees. On July 7, 1998, the Mayor signed into law Local Law No. 27 of 1998 to incorporate the provisions of these orders into the New York City Charter and the Administrative Code of the City of New York. Consistent with the intent of such orders and subject to applicable federal or state law, Local Law No. 27 of 1998 also extended to domestic partners the various provisions applicable to spouses in the New York City Charter and the Administrative Code of the City of New York. In accordance with Local Law No. 27 of 1998, and pursuant to the authority vested in the Commissioner of Transportation by section 2903(a) of the New York City Charter, and in accordance with Section 1043 of the Charter, the Commissioner of Transportation is now acting to provide that a rule applicable to spouse should now be extended to domestic partners.

23. Statement of Basis and Purpose in City Record Dec. 5, 1995: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City

Charter. Section 4-08(o)(1) is being amended by adding three new subparagraphs to bring the rule into compliance with amendments to subparagraphs (a) and (c) of paragraph (15) of subdivision (a) of section 2903 of the Charter. These amendments were passed by the City Council in April of 1995 and approved in May. They went into effect in September of 1995.

24. Statement of Basis and Purpose in City Record Apr. 2, 1997: The Commissioner of the Department of Transportation is authorized to regulate the parking of vehicles pursuant to section 2903(a) of the New York City Charter. Section 4-08(o) is being amended to conform to a local law enacted in August of 1996. This local law added a new section 19-162.1 to the New York City Administrative Code allowing clergy to park in certain areas for a prescribed amount of time adjacent to hospitals and houses of worship.

25. Statement of Basis and Purpose in City Record Nov. 18 2003: The commissioner of the Department of Transportation is authorized to regulate parking, standing and stopping of vehicles in the City of New York pursuant to section 2903 of the New York City Charter and Section 1642 of the New York State Vehicle and Traffic Law. The Department of Transportation issues meter inserts which either say "No Standing" or "No Parking". The purpose of these inserts is to prohibit parking when meters are temporarily taken out of service for particular purposes, including, but not limited to, construction, bus stops, taxi stands, authorized mobile health vans and movie shoot vehicles. The inserts are used in order to avoid removing existing posted regulations.

26. Statement of Basis and Purpose in City Record Aug. 15 2003: The Commissioner of the Department of Transportation is authorized to regulate parking, standing, and stopping of vehicles in the City of New York pursuant to section 2903 of the New York City Charter and Section 1642 of the New York State Vehicle and Traffic Law. Section 4-08(l)(3)(ii) is being amended to expand a program for commercial parking to the whole city in order to enhance curb space usage and efficiency, insure appropriate space turnover, improve compliance with the traffic regulations and improve traffic flow.

27. Statement of Basis and Purpose in City Record May 9, 2003: The Commissioner of Transportation is authorized to make rules and regulations for the conduct of vehicular traffic in the City pursuant to section 2903(a) of the New York City Charter. Sections 4-01, 4-08 and 4-11 of Title 34 of the Rules of the City of New York are being amended to conform the rules to an agreement reached between the City and the United States Department of State regarding the standing and parking of diplomatic and consular vehicles issued "A," "C" or "D" series license plates by the Department of State. In addition, the section heading of section 4-11 has been amended to include a reference to "Commuter Vans", which are addressed in that section. This amendment is a technical correction unrelated to the agreement the City and the State Department.

28. Statement of Basis and Purpose in City Record Dec. 5, 2003: The Commissioner of Transportation is authorized to make rules and regulations for the conduct of vehicular traffic in the City pursuant to section 2903(a) of the New York City Charter. Subparagraph (iii) of paragraph (7) of subdivision (a) of section 4-08 is being amended to reflect recent amendments to the Administrative Code passed by the City Council that added three holidays to the list of those on which parking rules are suspected and to reflect the fact that Washington's Birthday is now celebrated on President's Day.

29. Statement of Basis and Purpose in City Record Mar. 3, 2004: Paragraph 7 of subdivision (a) of section 4-08 is being amended to provide that meter rules, even those in effect seven days a week, are suspended on major legal holidays. Paragraph 4 of subdivision (d), subdivision (i) and paragraph 2 of subdivision (m) of section 4-08 are being amended to clarify that a vehicle shall not be angle parked if it is too long or too wide to fit into one space as it would cause an impediment to traffic and deprive other motorists of public parking spaces.

30. Statement of Basis and Purpose in City Record Jan. 11, 2007: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. Paragraph (1) of subdivision (f) of §4-08 is being amended to clarify the meaning of "expeditiously

making pick-ups, deliveries, or service calls" for the purposes of double parking for commercial vehicles. This clarification will primarily benefit the public by providing a time frame for such deliveries, pick-ups, and service calls. It will also benefit administrative law judges interpreting whether a delivery was made in an expeditious manner, and will also benefit the police department in their enforcement of this provision.

31. Statement of Basis and Purpose in City Record Aug. 28, 2008: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. Subdivision (e) of §4-08 is being amended to incorporate recent amendments to the New York State Vehicle & Traffic Law. The Governor of the State of New York recently signed legislation specifying that, in cities with a population of one million or more, blocking an intersection can be adjudicated as a parking violation. The Department is amending the Traffic Rules to implement this change, and to facilitate effective enforcement by the New York City Police Department. Statement of Substantial Need for Earlier Implementation Chapter 241 of the Laws of 2008 added a new subdivision 2-a to §236 of the Vehicle and Traffic Law ("VTL"), which provides that in the City of New York, a violation of §1175 of the Vehicle and Traffic Law is to be considered a parking violation in addition to being a moving violation. VTL §1175 prohibits a driver from driving a vehicle into an intersection when traffic is stopped on the opposite side of the intersection and there is not adequate space on the opposite side of the intersection to accommodate the vehicle ("blocking the box"), unless the driver is making a turn. Pursuant to the New York City Charter, parking, stopping and standing regulations are established by rule of the Department of Transportation. This amendment to the Rules Relating to General No Stopping zones incorporates VTL §1175 into DOT's Traffic Rules and establishes "blocking the box" as a parking violation therein. As traffic congestion continues to be a significant problem in New York City, immediate implementation of this rule amendment is necessary to facilitate the prompt enforcmeent of the new violation by the New York City Police Department. Therefore, pursuant to §1043(e)1(c) of the New York City Charter, the Department of Transportation hereby finds that there is a substantial need for the earlier implementation of the amendment to the Rules Relating to General No Stopping Zones. Consequently, the attached amendment to the Rules Relating to General No Stopping Zones shall be effective upon the final publication of the amendment in the City Record, and the requirement that thirty days first elapse after such publication shall not apply.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Due to a two-vehicle accident, the defendant motorists were stopped, blocking part of an intersection. The injured plaintiff's vehicle was struck by a third vehicle as plaintiff was attempting to get his vehicle around the blocked area. Plaintiff alleged that the defendants' failure to remove their vehicles from the intersection constituted a violation of Section 4-08 and was the proximate cause of the accident. The court, however, held that since, after the defendants' vehicles were immobilized after their collision, and the defendants expeditiously moved their vehicles once the police arrived and a tow truck was made available, the defendants did not stop, stand or park their vehicles in violation of the statute. Thus, the court dismissed the action against these defendants. Siegel v. Boedigheimer, 743 N.Y.S.2d 137 (App.Div. 2d Dept. 2002).

¶ 2. A violation of a statutory prohibition on double parking is some evidence of negligence. Murray-Davis v. Rapid Armored Corp., 300 A.D.2d 96, 752 N.Y.S.2d 37 (1st Dept. 2002). See also Lau v. Doe, 2002 WL 32068294 (App. Term 2d & 11th Judic. Dists.).

¶ 3. In one case, a vehicle operated by the defendant was sideswiped, and swerved across a lane and into a cement median divider. The vehicle came to rest with its left fender impacted against the divider, and its body extending out, blocking two lanes of moving traffic. Several other impacts by other vehicles followed, one of which involved the taxi cab in which plaintiff was a passenger. The court held that, in order for defendant to avoid negligence liability for his failure to remove the vehicle from this dangerous place, defendant had the burden of proving that his vehicle was disabled or that he was unable to move it before the next impact occurred. Eltahan v. Rejouis, 776 N.Y.S.2d 833 (2d Dept. 2004).

¶ 4. 34 RCNY 4-08(e)(5) can furnish a basis for liability if a defendant was negligent in stopping his vehicle in a

crosswalk and such negligence was the proximate cause of plaintiff's injuries. Thomas v. Vezza, 29 A.D.3d 678, 815 N.Y.S.2d 154 (2d Dept. 2006).

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-09

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-09 Equipment.

(a) **Brakes.** No person shall operate or park a motor vehicle unless such vehicle is in compliance with §375(1) of the Vehicle and Traffic Law.

(b) **Lights while driving.** (1) When the display of head lamps is required, no operator shall operate the vehicle with parking lights only. The operator shall use the lower beam of multiple beam head lamps, except that the upper beam may be used where the street is not lighted sufficiently to reveal any person, vehicle or substantial object straight ahead of such vehicle for a distance of at least 350 feet, and provided that there is no vehicle within 500 feet approaching from the direction ahead.

(2) No person shall operate a motor vehicle or motorcycle on any street at any time unless it is equipped with head lamps, rear lamps and reflectors complying with the provisions of §§375(2) and 376 of the Vehicle and Traffic Law.

(c) **Colored lights prohibited.** No operator of a motorcycle or motor vehicle, other than authorized emergency vehicles, shall operate said vehicle when displaying other than white or yellow lights visible from in front of the vehicle. No operator of an authorized emergency vehicle shall operate said vehicle when displaying other than white or yellow lights visible from in front of the vehicle except when actually engaged in emergency service.

(d) **Lights on horse-drawn vehicles and pushcarts.** No person shall drive a horse-drawn vehicle or propel a pushcart in the roadway between sunset and sunrise unless such vehicle or cart displays a white or yellow light visible from 200 feet directly in front and a red light visible from 200 feet directly to the rear.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-10

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-10 Buses.

(a) **Franchise regulations.**

(1) **Franchise required.** No person shall operate or cause to be operated on any street a bus for the operation of which a franchise, consent, or certificate of convenience and necessity, order, or other authorization of any municipal, state, or federal authority is required, unless such franchise, consent, certificate of convenience and necessity, order or other authorization shall have been obtained. No person shall operate or move or cause to be operated or moved on any street a bus operating pursuant to a certificate of convenience and necessity, order or other written authorization of any state or federal authority for which operation of a franchise or consent of the Department of Transportation of the City of New York is not required, unless there shall be filed with the Commissioner, not later than two weeks after issuance, duly authenticated copies of such certificates, orders, authorizations and amendments thereto.

(2) **Franchise not required.** Every person applying to any governmental authority other than the City of New York for authorization to operate a bus into or through the City of New York, for which operation or a franchise or consent of the Department of Transportation of the City of New York is not required, shall, within ten days after the date of submitting such application to such governmental authority, file a duly authenticated copy thereof with the Commissioner, and attach thereto a statement setting forth the address, by street and number, of any proposed off-street terminal or terminals to be used within the City of New York.

(b) **Designated routes.** No person shall operate or cause to be operated on any street a bus operating pursuant to a franchise or consent of the Department of Transportation of the City of New York which designates the route to be followed, except on the route so designated. No person shall operate or cause to be operated on any street any other bus,

other than a charter bus, except over a route designated by the Commissioner in writing.

(c) **Pickup and discharge of passengers and layovers.** (1) Pickup and discharge of passengers at designated bus stops. Except as provided in paragraph (2) below, no operator of a bus shall pick up or discharge passengers on a street except at a bus stop designated by the Commissioner in writing. Only buses designated by the Commissioner in writing may stop at such locations. A charter bus may stop on the highway at points of origin and destination for the purpose of expeditiously receiving or discharging passengers, except where prohibited by sign or by the Commissioner. While engaging in the picking up or discharging of passengers, buses must be within twelve inches of the curb and parallel thereto, except where a bus stop is physically obstructed.

(2) Pickup and discharge of passengers at locations other than designated bus stops.

(i) (A) At times and along those portions of bus routes designated by the Commissioner, the operator of a bus authorized to operate in the City of New York that provides local or express service along a bus route may discharge a passenger, on such passenger's request, at a curbside location other than a bus stop as described in paragraph (1) above, provided that such location affords the alighting passenger a safe point of departure from the bus and provided that complying with such request will not interfere with the flow of traffic.

(B) Prospective passengers shall be picked up only at a bus stop as provided in paragraph (1) above.

(C) The provisions of this subparagraph (i) shall be clearly posted, in a format approved by the Commissioner, in all buses authorized to discharge passengers between designated stops.

(ii) A charter bus may stop on the highway at points of origin and destination for the purpose of expeditiously receiving or discharging passengers, except where prohibited by sign or by the Commissioner.

(3) **Layovers.** No operator of a bus shall make a bus layover, except in locations designated by sign or by the Commissioner in writing. For the purposes of this rule, layover is defined as follows: for a bus without passengers a layover consists of waiting at a curb or other street location; for a bus with passengers a layover consists of waiting at a curb or other

street location for more than five minutes. The Commissioner may define the terms, including duration and authorized companies, for use of layover areas.

(d) **Approved bus terminals.** No person shall operate or cause to be operated on any street any intrastate or interstate bus unless such intrastate or interstate bus operates from an off-street terminal or terminals duly approved by the proper authorities of the City of New York.

(e) **Routes.** (1) Operators of empty buses and buses with "charter," "special," "contract carriage" or similar non-route specific authority given by the City of New York, the Department of Transportation, the Interstate Commerce Commission, or other legally authorized body, must adhere to the truck routes as described in §4-13 of these rules, or other additional bus routes, except that an operator may operate on a street not designated as a truck route or bus route for the purpose of arriving at his/her destination. This shall be accomplished by leaving a designated truck route or bus route at the intersection that is nearest to his/her destination, proceeding by the most direct route, and then returning to the nearest designated truck route or bus route by the most direct route. If the operator has additional destinations in the same general area and there is no designated truck route or bus route that can be taken to the next destination, the operator may proceed to his/her next destination without returning to a designated truck route or bus route. The operator shall have in his/her possession throughout each trip a route slip, or similar document, showing the points of origin and destination of the trip. Upon the request of a law enforcement officer, or other authorized person, the bus operator shall present for inspection the above stated document or documents.

(2) Notwithstanding the provisions of §4-10 paragraph (e)(1) above, no operator of a bus as described in paragraph

(1) shall operate his/her vehicle upon any of the streets within the area served by the limited local truck route network in Staten Island as described in §4-13(c) of these rules, except for the purpose of arriving at a destination within the area served by the network. This shall be accomplished by using a designated truck route or bus route to the closest limited local truck route to the destination, using this limited local truck route to the intersection that is nearest to the destination. The operator shall then continue via the most direct route to the closest designated limited local truck route and then to the closest designated truck route or bus route. If the operator has additional destinations in the same general area, and there is no designated truck route, limited local truck route, or bus route that can be taken to the next destination, he/she may proceed to his/her next destination without returning to a designated limited local truck route.

(f) **Required inspection of buses.** No person shall operate or cause to be operated on any street any bus required by law, ordinance, resolution, or rule of any municipal, state, or federal authority to display a certificate, disc, sticker, poster, or other insignia evidencing that such bus has been inspected and is mechanically fit, or has been bonded or insured, or that prescribed fees have been paid, unless such a certificate, disc, sticker, poster or other insignia, currently valid, shall be displayed in the lower right hand corner of the interior surface of the windshield of such bus. In the event it is required that any writing be placed on any such certificate, disc, sticker, poster, or other insignia by someone other than a public official, no person shall operate or move or cause to be operated or moved on any street any such bus unless such writing shall have been placed on such certificate, disc, sticker, poster, or other insignia in black ink and in letters or numbers no less than one inch in height and three-fourths of an inch in width.

(g) **Leased and rented buses.** No person shall operate or cause to be operated a bus leased, rented, or borrowed from another person unless there is marked on the side of the bus in letters at least three inches in height the words "chartered by" followed by the name of the person operating such leased, rented, or borrowed bus. Notwithstanding the foregoing, buses leased, rented or borrowed from the City of New York shall not be required to have such markings.

(h) **Limitation on backing buses.** No person shall back any bus from or into any street or across or along any sidewalk.

(i) **Bus parking on streets prohibited.** No person shall park a bus at any time on any street within the City, unless authorized by signs, except that a charter bus may park where parking is otherwise permitted at point of destination.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (c) amended City Record Nov. 3, 1993 eff. Dec. 3, 1993.

Subd. (c) par (1) amended City Record Oct. 7, 1996 eff. Nov. 6, 1996. [See T34 §4-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-11

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-11 Taxis, Commuter Vans, For-Hire and Certain Diplomatic and Consular Vehicles.

(a) **Standing.** No operator of a taxi, while awaiting employment shall stand his/her vehicle in any street except:

(1) At an authorized taxi stand.

(2) In front of fire hydrants where standing or stopping is not prohibited by signs or rules, provided that the operator remains in the operator's seat ready for immediate operation of the taxi at all times and starts the motor on hearing the approach of fire apparatus, and provided further, that the operator shall immediately remove the taxi from in front of the fire hydrant when instructed to do so by any member of the police, fire, or other municipal department acting in his/her official capacity.

(3) In the area of the Borough of Manhattan, bounded by the north side of 60th Street, the east side of First Avenue, the south side of 14th Street and the west side of Eighth Avenue, on those streets where "No Standing Except Trucks Loading or Unloading" is posted and in effect, the operator of a taxi, while waiting for a passenger, may stand for the period of one traffic signal cycle, provided that no taxi shall stand in any area where parking is restricted to diplomatic or other classes of vehicles and provided further that the operator remains in attendance at the vehicle and shall immediately remove it when instructed to do so by any law enforcement officer.

(b) **Cruising prohibited.** An operator of a vehicle other than a taxi shall not operate his/her vehicle along a street for the purpose of soliciting passengers or searching for passengers.

(c) **Pickup and discharge of passengers by taxis, commuter vans and for-hire vehicles.** Operators of taxis,

commuter vans and for-hire vehicles may, in the course of the lawful operation of such vehicles, temporarily stop their vehicles to expeditiously pick up or discharge passengers at the curb in areas where standing or parking is prohibited. Taxis, commuter vans and for-hire vehicles, while engaged in picking up or discharging passengers must be within 12 inches of the curb and parallel thereto, but may stop or stand to pick up or discharge passengers alongside a vehicle parked at the curb only if there is no unoccupied curb space available within 100 feet of the pickup or discharge location; however, picking up or discharging passengers shall not be made:

(1) Within a pedestrian crosswalk.

(2) Within an intersection, except on the side of a roadway opposite a street which intersects but does not cross such roadway.

(3) Alongside or opposite any street excavation when stopping to pick up or discharge passengers obstructs traffic.

(4) Under such conditions as to obstruct the movement of traffic and in no instance so as to leave fewer than 10 feet available for the free movement of vehicular traffic.

(5) Where stopping is prohibited.

(6) Within a bicycle lane.

(7) Within horse-drawn carriage boarding areas.

(d) **Pickup and discharge of passengers by certain diplomatic and consular vehicles.** A vehicle bearing "A", "C" or "D" series license plates issued by the U.S. Department of State and displaying a valid non-transferable service vehicle decal issued by the City of New York that is affixed to the inside of the operator's side of the windshield shall be treated like a for-hire vehicle while actively engaged in and for the purpose of expeditiously picking up or discharging passengers, in a manner that does not obstruct traffic, provided that the operator of such vehicle bearing such "A" "C" or "D" series license plates and displaying such non-transferable service vehicle decal:

(1) may not pick up or discharge passengers in a for-hire vehicle stop;

(2) remains in attendance at the vehicle; and

(3) shall immediately remove such vehicle when instructed to do so by any law enforcement officer.

HISTORICAL NOTE

Section heading amended City Record May 9, 2003 §5, eff. June 8, 2003. [See T34 §4-08 Note 27]

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (c) amended City Record Oct. 7, 1996 eff. Nov. 6, 1996. [See T34 §4-01 Note 1]

Subd. (d) added City Record May 9, 2003 §6, eff. June 8, 2003. [See T34 §4-08 Note 27]

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-12

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-12 Miscellaneous.

(a) **Compliance with directions of law enforcement officers.** (1) An operator must at all times comply with any direction given by a law enforcement officer, a bridge and tunnel officer of the Port Authority of New York and New Jersey, or an officer of the Triborough Bridge and Tunnel Authority authorized to enforce these rules, or a school crossing guard by hand, voice, whistle or mechanical device.

(2) A law enforcement officer, school crossing guard or a bridge and tunnel officer may disregard any traffic light signal or rule in order to expedite the movement of traffic or to safeguard pedestrians or property.

(3) Vehicle operators must present and/or surrender their operator's license, vehicle registration and insurance documents upon request of a law enforcement officer.

(b) **Passengers in vehicle.** No person shall ride in any place or in any part of a vehicle except that provided for passenger carrying purposes, nor shall he/she permit any part of his/her body to extend outside of any part of a vehicle, except when required to extend the hand to indicate an intention to turn, slow down, stop, or start from the curb.

(c) **Getting out of vehicle.** No person shall get out of any vehicle from the side facing on the traveled part of the street in such manner as to interfere with the right of the operator of an approaching vehicle or a bicycle.

(d) **Fire drill line.** The operator of any vehicle, except authorized emergency vehicles, shall not drive through or approach within one hundred feet of a line of children during a fire drill, nor interfere with, hinder, obstruct, or impede in any way whatsoever any such fire drill.

(e) **Operator's hand on steering device.** No person shall operate or ride a motor vehicle or bicycle without having his/her hand on the steering device or handle bars. A person riding or leading a horse or driving a horse-drawn carriage shall have the reins in his/her hand continuously.

(f) **Unbridled horse.** No person shall leave a horse unbridled or unattended in a street or unenclosed place unless the horse is securely fastened, or harnessed to a vehicle with wheels so secured as to prevent it from being dragged faster than a walk.

(g) **Peddlers.** No peddler, vendor, hawker, or huckster shall stop or remain or permit any cart, wagon, or vehicle owned or controlled by him/her, to stop, remain upon or otherwise encumber any street in front of any premises if the owner or lessee of the ground floor thereof objects. No peddler, vendor, hawker, or huckster shall permit his cart, wagon, or vehicle to stand on any street when stopping, standing, or parking is prohibited or on any street within 25 feet of any corner of the curb or to stand at any time on any sidewalk or within 500 feet of any public market or within 200 feet of any public or private school.

(h) **Reporting accidents by operators of other than motor vehicles.** The operators of any bicycle or vehicle other than a motor vehicle involved in an accident resulting in death or injury to a person or damage to property must stop and give their names and addresses and information concerning liability insurance coverage to the party sustaining injuries or damage, and in the case of death or injury, he/she must, in addition to the above, without delay report the accident to the nearest police station, unless he/she has supplied the information to a police officer on the scene. Accidents involving motor vehicles must be reported as required by the Vehicle and Traffic Law.

(i) **Horn for danger only.** No person shall sound the horn of a vehicle except when necessary to warn a person or animal of danger.

(j) **Commercial advertising vehicles.** (1) **Restrictions.** No person shall operate, stand, or park a vehicle on any street or roadway for the purpose of commercial advertising. Advertising notices relating to the business for which a vehicle is used may be put upon a motor vehicle when such vehicle is in use for normal delivery or business purposes, and not merely or mainly for the purpose of commercial advertising, provided that no portion of any such notice shall be reflectorized, illuminated, or animated, and provided that no such notice shall be put upon the top of the vehicle and that no special body or other object shall be put upon vehicles for commercial advertising purposes. Advertisements may be put upon vehicles licensed by the New York City Taxi and Limousine Commission in accordance with the Commission's rules.

(2) **Buses and Sanitation Vehicles.** Notwithstanding the foregoing provisions of this subdivision (j), buses operated pursuant to a franchise or consent from the Department of Transportation of the City of New York, and cleaning and collection vehicles owned or operated by the New York City Department of Sanitation may display commercial advertisements, including reflectorized and illuminated advertisements, on the exterior surface areas of such vehicles and may have installed on such vehicles the necessary frames, supports and related appurtenances in order to display such advertisements.

(k) **Snow Emergency.** (1) **Standing and Parking Prohibited.** When the Commissioner declares a state of snow emergency, no person shall stand or park a vehicle upon a street designated by signs as a snow street, or upon any part of the right of way, including the berm or shoulder adjacent to the roadways, entrances and exits of the expressways, parkways, bridges and tunnels set forth in §4-07 subdivision (i) of these rules, except in such areas and for such purposes as shall be designated by the Commissioner, until the Commissioner declares the prohibition of such standing or parking terminated. On certain designated snow streets, posted signs may prohibit parking on only one side of the street.

(2) **Operating vehicles prohibited.** When the Commissioner declares a state of snow emergency, no person shall operate a vehicle upon a street designated by signs as a snow street or upon any part of the right of way, including the

berm or shoulder adjacent to the roadways, entrances, and exits of the expressways, parkways, bridges and tunnels set forth in §4-07 subdivision (i) of these rules unless the drive, traction or powered wheels of said vehicle are equipped with skid chains or snow tires, until the Commissioner declares the state of snow emergency terminated.

(3) **Snow tires defined.** For the purposes of this rule, snow tires are defined as:

(i) Any radial tire (a radial tire is a tire in which the ply cords, extending to the beads, are nearly at right angles to the center line of the tread).

(ii) Any tire with tread which has ribs, lugs, blocks or buttons arranged in a generally discontinuous pattern; when inflated, a substantial number of the lug, block or rib edges in the tread design are at an angle greater than 30 degrees to the tire circumferential center line; and, on at least one side of the tread design, have shoulder lugs that protrude at least one-half inch in a direction generally perpendicular to the direction of travel.

(iii) Any tire labelled on the sidewall with the words "MUD AND SNOW" or any contraction using the letters "M" and "S" (e.g. MS, M/S, M-S or M&S).

(4) **Worn or damaged tires.** Worn or damaged tires which no longer provide effective traction shall not constitute snow tires within the meaning of this section regardless of their original classification or designation.

(5) **Use of parkways by certain vehicles.** Notwithstanding any other provision of these rules, during snow emergencies declared by the Commissioner, commercial vehicles owned or operated by oil heating companies that are no more than 7 feet in height, no more than 8,500 pounds in maximum gross weight, and have no more than two axles and four tires may travel on parkways and other roadways where commercial vehicles are normally prohibited when such vehicles are responding to heat emergencies which require the repair of heating and hot water equipment. Such vehicles must abide by all posted weight limits and clearances on such roadways.

(l) **Emergency repairs.** No person shall solicit or render repair service or push or tow any vehicle on any part of the right of way, including the berm or shoulder adjacent to the roadways, entrances and exits of the expressways and parkways, and bridges enumerated in §4-07 subdivision (i) of these rules, except persons and vehicles operating pursuant to a permit issued by the Commissioner. This subdivision (l) shall not be deemed to prohibit emergency repairs by the occupants of a disabled vehicle.

(m) **Bus lane restrictions on city streets.** When signs are erected giving notice of bus lane restrictions, no person shall drive a vehicle other than a bus within a designated bus lane during the hours specified, except that a person may use such bus lane in order to make the first available right hand turn where permitted into a street, private road, private drive, or an entrance to private property in a safe manner or when necessary to avoid conflict with other traffic or at the direction of a law enforcement officer. Notwithstanding any provision of this subdivision, no person shall drive a vehicle other than a bus in the bus lane on Madison Avenue for the purpose of making a right hand turn during the restricted hours specified by sign between 42nd street and 59th street. During such restricted hours, the first permissible right hand turn for vehicles other than buses is at 60th street, except that a taxicab carrying a passenger may use the bus lane to make a right hand turn at 46th street.

(n) **Work affecting traffic.** The rules contained in the New York State Manual on Uniform Traffic Control Devices shall be complied with by public and private organizations when temporary disruption of street traffic is required for street repaving or repairs, subsurface utility line installations or other repairs and similar projects.

(o) **Use of roadways.** (1) **Pedestrians, horses, bicycles and limited use vehicles prohibited.** In order to provide for the maximum safe use of the expressways, drives, highways, interstate routes, bridges and thruways set forth in §4-07 subdivision (i) of these rules and to preserve life and limb thereon, the use of such highways by pedestrians, riders of horses and operators of limited use vehicles and bicycles is prohibited, unless signs permit such use.

(2) **Flat tires.** No operator shall stop on the improved or paved roadway of any of the arteries set forth in §4-07 subdivision (i) of these rules, for the purpose of removing or replacing a flat tire. No person shall remove or

replace a flat tire unless the vehicle is completely off the improved or paved roadway so that no part of the vehicle or person is exposed to passing vehicles.

(p) **Bicycles.** (1) **Bicycle riders to use bicycle lanes.** Whenever a usable path or lane for bicycles has been provided, bicycle riders shall use such path or lane only except under any of the following situations:

(i) When preparing for a turn at an intersection or into a private road or driveway.

(ii) When reasonably necessary to avoid conditions (including but not limited to, fixed or moving objects, motor vehicles, bicycles, pedestrians, pushcarts, animals, surface hazards) that make it unsafe to continue within such bicycle path or lane.

(2) **Driving on or across bicycle lanes prohibited.** No person shall drive a vehicle on or across a designated bicycle lane, except when it is reasonable and necessary:

(i) to enter or leave a driveway; or

(ii) to enter or leave a legal curbside parking space; or

(iii) to cross an intersection; or

(iv) to make a turn within an intersection; or

(v) to comply with the direction of any law enforcement officer or other person authorized to enforce this rule; or

(vi) to avoid an obstacle which leaves fewer than ten feet available for the free movement of vehicular traffic.

Notwithstanding any other rule, no person shall drive a vehicle on or across a designated bicycle lane in such manner as to interfere with the safety and passage of persons operating bicycles thereon.

(3) **Bicycles permitted on both sides of 4O-foot wide one-way roadways.** Any person operating a bicycle upon a roadway that carries traffic in one direction only and is at least 40 feet wide may ride as near as is practicable to either the left or the right hand curb or edge of such roadway, provided that bicycles are not prohibited from using said roadway.

(4) **Bicycle safety poster.**

(i) Every person, firm, partnership, joint venture, association or corporation which engages in the course of its business, either on behalf of itself or others, in delivering packages, parcels, papers or articles of any type by bicycle shall post one or more bicycle safety posters at each employment site.

(ii) The bicycle safety poster shall be in English, Spanish and any other language spoken predominately by any bicycle operator utilized by the business. It shall be clear and conspicuous to the bicycle operators and patrons of the business.

(iii) The poster shall be at least eleven (11) inches by seventeen (17) inches in size. It shall be printed with dark colored ink on durable material with a light colored background. The titles on the poster shall be a minimum of 0.3 inches or twenty-one (21) point font and must be accommodated on only one line. The headings on the poster shall be a minimum of 0.25 or eighteen (18) point font and must be accommodated on only one line. The lettering on the rest of the poster shall be a minimum of 0.22 inches in height or sixteen (16) point font.

(iv) A model of the poster shall be made available on the Department of Transportation's website.

(v) The poster shall include the following:

(A) Responsibilities of Commercial Bicycle Operators:

Obey Traffic Signs and Signals.

· Bicyclists are subject to all applicable New York state and local laws, rules and regulations, including NYC Traffic Rules.

Wear a Helmet.

· While working, commercial bicyclists must wear a properly fitted bicycle helmet.

Never Ride Against Traffic.

· Bicyclists cannot ride against the flow of traffic. Ride with traffic to avoid accidents.

· If available, bicyclists must use bicycle lanes.

Stay Off Sidewalks and Limited Access Roadways.

· Bicycles are not permitted on sidewalks unless bicycle wheels are less than 26 inches in diameter and the rider is 12 years or younger, or if signs allow.

· Bicycles are also prohibited on expressways, drives, highways, interstate routes, bridges and thruways, unless authorized by signs.

Be Safe.

· Yield to pedestrians.

· Bicyclists must have at least one hand on the steering device or handlebars at all times.

· Bicyclists cannot wear more than one earphone attached to a radio, tape player or other audio device while riding.

· No attaching of a bicycle to another vehicle being operated on the roadway.

· Any bicyclist involved in an accident resulting in a death or injury to a person or damage to property must stop and give their name, address, insurance information, etc., and must report the accident to the police department.

Be Visible.

· It is advisable to ensure visibility at night by wearing light-toned clothing with reflective tape material.

· From dusk to dawn, bicyclist must use a white headlight and red taillight.

Be Prepared.

· Bicycle operators must wear upper body apparel with the business' name and the operator's identification number.

· Bicycle operators must also carry and produce, on demand, a numbered business ID card with the operator's photo, name, home address and business' name, address and phone number. It is recommended that the operator also carry a second form of photo identification.

(B) Responsibilities of Business Owners Who Employ Bicycle Operators:

Businesses must provide their bicycle operators with the following:

· A bicycle helmet in good condition, which properly fits the operator;

· Upper body apparel with the business' name and operator's identification number;

· Numbered business ID card with the operator's photo, name, home address and the business' name, address and phone number;

· A white headlight and red taillight;

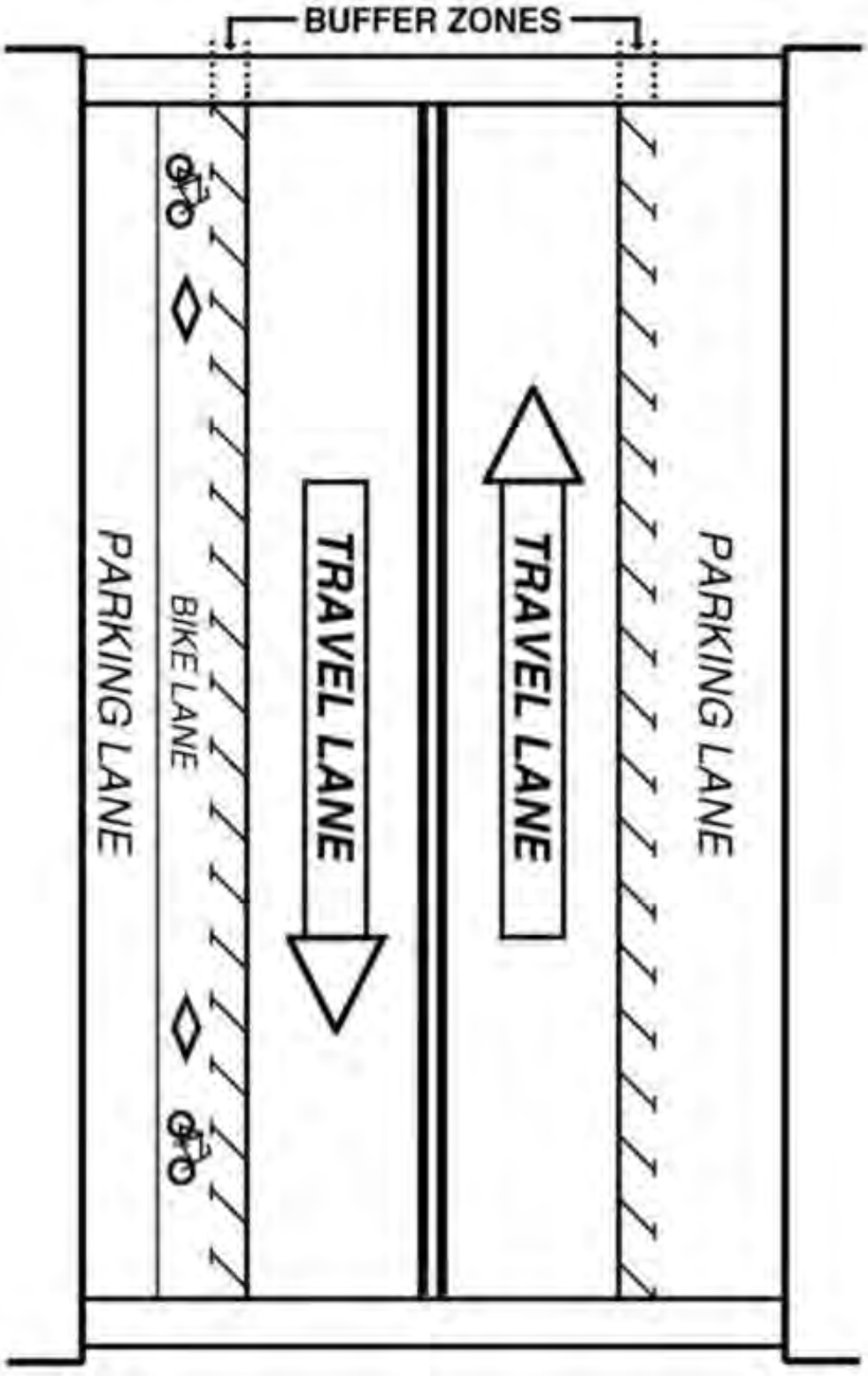
· A bell or other audible signal (not whistle);

· Working brakes;

· Reflective tires and/or other reflective devices on new bicycles.

Businesses must maintain a log book, which must be available for inspection during regular and usual business hours.

Some of the responsibilities listed above are imposed by law and failure to comply with them may subject violators to legal sanctions.


BUFFER ZONES
PARKING LANE
TRAVEL LANE
TRAVEL LANE
BIKE LANE
PARKING LANE

(q) **Transportation of radioactive materials.** Shipments of radioactive materials meeting or exceeding the specifications of "large quantities" and/or "fissile Class III" as specified by the Interstate Commerce Commission and the Nuclear Regulatory Commission, shall follow the same truck routes designated for vehicles having an overall length of 33 feet or more, in §4-13 of these rules. All such shipments are required to be so classified under the NRC license or contract before being shipped and the carrier shall obtain the proper classification. All vehicles carrying such shipments shall adhere to the rules of the fire department, the Department of Environmental Protection and §175.111 of the New York City Health Code.

(r) **Restricted use and limited use streets.**

(1) **Restrictions.** No operator of a vehicle or combination of vehicles shall operate, enter, stop, stand or park any such vehicle on any street designated as a restricted use street or a limited use street by the Department of Transportation, unless such vehicle or combination of vehicles

(i) is being used for the purpose of loading or unloading at premises legally utilizing an entrance, loading bay or elevator that fronts upon said street during authorized hours or,

(ii) is a bus traversing a route, franchised by the Department of Transportation, which includes said street, and the vehicle stands only at a designated bus stop or,

(iii) is a maintenance or utility vehicle operated or engaged by proper authority for the purpose of construction or maintenance of said street or any utility located on, above or below the street surface or for the construction or maintenance of any structure located on said street.

(2) **Driving across permitted.** Notwithstanding any other provision stated herein, the operator of any vehicle may drive across any restricted use or limited use street that intersects the street along which he is travelling.

(3) **Commissioner may suspend.** The commissioner, upon 24 hours' notice to the public, may suspend the application of this subdivision (r) for a specified period or indefinitely. If suspended for a specific period, the provisions of this subdivision (r) shall become effective at the termination of such period. If suspended indefinitely, the provisions of this subdivision (r) shall become effective upon order of the Commissioner and 48 hours notice to the public.

(4) **Definitions.** For the purpose of this subdivision (r), a restricted use street is a legally mapped street to be permanently closed to motor vehicles by the Department of Transportation, except as provided herein, and open to use by pedestrians. A limited use street is a legally mapped street to be temporarily closed to motor vehicles by the Department of Transportation, except as provided herein, and in accordance with lawfully authorized signs or other traffic control devices.

(s) **Crossing buffer zones.** (1) For the purposes of this subdivision, a buffer zone is defined as an area in the roadway, created by white lines, that is used to separate a parking lane from a travel lane or a bicycle lane from a travel lane, as indicated on the diagram below.

(2) No person shall drive a motor vehicle on or across a designated buffer zone, except when it is reasonable and necessary to enter or leave a legal curbside parking space or a driveway.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Section amended City Record June 16, 1995 eff. July 16, 1995.

Subd. (k) par (1) amended City Record Jan. 21, 1997 eff. Feb. 20, 1997.

Subd. (k) par (5) added City Record Dec. 9, 1996 eff. Jan. 5, 1997.

Subd. (m) amended City Record May 15, 1996 eff. June 14, 1996.

Subd. (p) par (4) added City Record July 30, 2007 §1, eff. Aug. 29, 2007. [See Note 1]

Subd. (s) added City Record July 29, 1998 eff. Aug. 28, 1998.

NOTE

1. Statement of Basis and Purpose in City Record July 30, 2007:

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter.

Subdivision (p) of §4-12 is being amended to add the requirements set forth in §10-157.1 of the Administrative Code of the City of New York, added by Local Law No. 10 of 2007. This new section of the Administrative Code requires the Department to effectuate the rules and regulations governing the content, size and manner of display of a poster setting forth bicycle safety procedures. The poster must be placed at commercial business locations where the business is engaged in delivering packages, parcels, papers or articles of any type by bicycle.

An English language model of the poster required by this proposed rule will be made available and model posters in other languages, including but not limited to, Spanish, Chinese, Korean and Russian, may be made available on the Department's website.

CASE AND ADMINISTRATIVE NOTES

¶ 1. An off duty police officer who obstructed traffic on the Brooklyn Bridge while engaged in a demonstration was found guilty of conduct unbecoming a police officer. Loeffel v. Kelly, 214 A.D.2d 431, 625 N.Y.S.2d 39 (1st Dept. 1995).

¶ 2. A company which allegedly operated vehicles used solely for the purpose of displaying commercial advertising, challenged the regulation as being an unconstitutional restriction upon commercial speech. The court, however, upheld the regulation, citing the city's substantial interest in controlling the flow of traffic. People v. Target Advertising, Inc., N.Y.L.J., May 26, 2000, page 28, col. 1 (Crim.Ct. New York Co.).

¶ 3. The statute prohibits vehicles which contain advertisements for businesses other than the business of the owner of the vehicle. One defendant, who was charged with a violation, claimed that the statute violated the First Amendment of the U.S. Constitution, and was void by reason of vagueness in violation of the Due Process clause of the Constitution. First, defendant argued that the statute was unconstitutional on its face, since it did not differentiate between ordinary commercial advertising (such as the type present on the defendant's vehicle) and advertisements covering political campaigns and non-profit public service groups. The court, however, held that since the rule by its own terms was not applicable to non-commercial speech, it was not unconstitutional on its face. The defendant next argued that the rule impermissibly differentiated between people based on the content of the message, but the court rejected this argument. The sovereign can lawfully regulate the time, place and manner of commercial speech (not its content) to effectuate a significant governmental interest. That interest, in this case, was to regulate traffic, and there was no intent to suppress a particular message. In other words, the statute was content neutral, in the sense that no one was permitted to advertise someone else's product but everyone was permitted to advertise one's own product. The court also rejected the "void for vagueness" argument, stating that "commercial speech" has been well defined in prior cases, so that defendant should be able to ascertain the types of advertisements which are permitted or prohibited (for example, defendant can lawfully

carry advertisements for political candidates or groups such as Unicef or Red Cross). People v. Professional Truck Leasing Systems, Inc., N.Y.L.J., Sept. 1, 2000 page 27, col. 5 (Crim.Ct. New York Co.); aff'd 190 Misc.2d 806, 737 N.Y.S.2d 767 (App.Term 1st Dept. 2002). Another court reached a similar result in People v. Target Advertising, 184 Misc.2d 903, 708 N.Y.S.2d 597 (Crim.Ct. New York Co. 2000); in that case, the court held that the rule directly advanced the City's interest in controlling traffic, since the ban on the use of advertising-only vehicles lessened the amount of potential traffic on City streets.

Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-13 Truck Routes.

(a) **General provisions.** (1) **Definitions.** For the purpose of these rules, a truck is defined as any vehicle or combination of vehicles designed for the transportation of property, which has either of the following characteristics: two axles, six tires; or three or more axles

(2) **Exceptions.** These rules do not apply to authorized emergency vehicles and authorized public utility company vehicles engaged in an emergency operation as defined in §114-b of the Vehicle and Traffic Law.

(3) **Enforcement.** An operator of any truck as defined above shall have in his/her possession throughout each trip a bill of lading, or similar document, showing the points of origin and destination of the trip. Upon the request of a law enforcement officer or other authorized person, the truck operator shall present for inspection the above stated document or documents.

(b) **Truck routing rules for the Borough of Queens.** (1) **Through trucks.** An operator of any truck as defined above, having neither an origin nor a destination within the Borough of Queens shall restrict the operation of such vehicle to those street segments on the following list. These are designated as "Through Truck Routes." All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Through Truck Route Network

Street	Limits
Astoria Blvd. (North and South)	29th St. to Northern Blvd.

Atlantic Avenue	Kings County Line to Van Wyck Expressway
Beach Channel Drive	Marine Pkway Bridge to Nassau County Line
Braddock Avenue	Hillside Avenue to Jamaica Avenue
Bradley Avenue	Greenpoint Avenue to Van Dam Street
Bridge Plaza	Queensboro Bridge to Jackson Avenue
Brooklyn-Queens Expressway	Kings County Line to Astoria Boulevard (North and South)
Clearview Expressway	Throgs Neck Bridge to Hillside Avenue
Crescent Street	41st Avenue to Bridge Plaza
Cross Island Parkway Service Roads	Whitestone Expressway to Francis Lewis Boulevard
Flushing Avenue	Kings County Line to Grand Avenue
Francis Lewis Boulevard	Cross Island Parkway Service Road to Springfield Boulevard
Grand Avenue	Kings County Line to Long Island Expressway
Grand Central Parkway	Triborough Bridge to the Brooklyn-Queens Expressway (western leg)
Greenpoint Avenue	Van Dam Street to Queens Boulevard
Hempstead Avenue	Jamaica Avenue to Nassau County Line
Hillside Avenue	Myrtle Avenue to Nassau County Line
Hoyt Avenue (North and South)	Astoria Boulevard to 21st Street
Jackson Avenue	Borden Avenue to Northern Boulevard
Jamaica Avenue	Francis Lewis Boulevard to Nassau County Line
Linden Boulevard	Kings County Line to North and South Conduit Avenue
Long Island Expressway	Queens Midtown Tunnel to Nassau County Line
Myrtle Avenue	Kings County Line to Hillside Avenue
North and South Conduit Avenue (Sunrise Highway	Linden Boulevard to Nassau County Line
Northern Boulevard	Jackson Avenue to Nassau County Line
Queens Boulevard	Jackson Avenue to Hillside Avenue
Rockaway Boulevard	North and South Conduit Avenue to Nassau County Line
Springfield Boulevard	Jamaica Avenue to North and South Conduit Avenue
Thomson Avenue	Jackson Avenue to Queens Boulevard
Van Dam Street	Greenpoint Avenue to Queens Boulevard
Van Wyck Expressway	Whitestone Expressway to North and South Conduit Avenue
Whitestone Expressway	Whitestone Bridge to Astoria Boulevard
21st Street	Borden Avenue to 24th Avenue
24th Avenue	21st Street to 29th Street
29th Street	24th Avenue to Astoria Boulevard
41st Avenue	21st Street to Crescent Street
213th Street	Hempstead Avenue to Jamaica Avenue

(2) **Local trucks.** An operator of any truck as defined in paragraph (a)(1) above, with an origin or destination for the purpose of delivery, loading or servicing within the Borough of Queens, shall only operate such vehicle over the following listed streets, except that an operator may operate on a street not designated below for the purpose of arriving at his/her destination. This shall be accomplished by leaving a designated truck route at the intersection that is nearest and provides the most direct route to his/her destination, proceeding by the most direct route while observing existing street directions and turn restrictions, and then returning to the nearest designated truck route by the most direct route. If the operator has additional destinations in the immediate vicinity, he/she may proceed by the most direct route to his/her next destination without returning to a designated truck route, provided that the operator's next destination does not require that he/she cross a designated truck route. All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Local Truck Route Network

Street	Limits
Astoria Blvd. (North and South)	8th Street to Northern Boulevard
Atlantic Avenue	Kings County Line to Van Wyck Expressway
Baisley Boulevard	Rockaway Boulevard to Merrick Boulevard
Beach Channel Drive	Marine Pkway Bridge to Nassau County Line
Borden Avenue	2nd Street to Greenpoint Avenue
Braddock Avenue	Hillside Avenue to Jamaica Avenue
Bradley Avenue	Greenpoint Avenue to Van Dam Street
Bridge Plaza	Queensboro Bridge to Jackson Avenue
Broadway	Vernon Boulevard to Queens Boulevard
Brooklyn-Queens Expressway	Kings County Line to Astoria Boulevard (North and South)
Central Avenue	Myrtle Avenue to Cooper Avenue
Clearview Expressway	Throgs Neck Bridge to Hillside Avenue
Clintonville Street	Cross Island Parkway South Service Road to 7th Avenue
College Point Avenue	Long Island Expressway to 14th Avenue
Cooper Avenue	Kings County Line to Woodhaven Boulevard
Crescent Street	41st Avenue to Bridge Plaza
Cross Bay Boulevard	Liberty Avenue to Beach Channel Drive
Cross Island Pkwy. Service Rds.	Whitestone Expressway to Francis Lewis Boulevard
Cypress Avenue	Flushing Avenue to Cooper Avenue
Ditmars Boulevard	49th Street to Hazen Street
Ditmars Boulevard	81st Street to 23rd Avenue
Dunkirk Street	Liberty Avenue to Linden Boulevard
Farmers Boulevard	Liberty Avenue to North and South Conduit Avenue
Flushing Avenue	Kings County Line to Grand Avenue
Francis Lewis Boulevard	Cross Island Parkway Service Roads to Springfield Boulevard
Fresh Pond Road	Flushing Avenue to Myrtle Avenue
Grand Avenue	Kings County Line to Queens Boulevard
Greenpoint Avenue	Van Dam Street to Queens Boulevard
Guy R. Brewer Boulevard	Liberty Avenue to North and South Conduit Avenue
Hazen Street	20th Avenue to Astoria Boulevard
Hempstead Avenue	Jamaica Avenue to Nassau County Line
Hillside Avenue	Myrtle Avenue to Nassau County Line
Hoyt Ave. (North and South)	Astoria Boulevard to 21st Street
Jackson Avenue	Borden Avenue to Northern Boulevard
Jamaica Avenue	Merrick Boulevard to Nassau County Line
Junction Boulevard	32nd Avenue to Queens Boulevard
Kissena Boulevard	Main Street to Parsons Boulevard
Laurel Hill Boulevard	Review Avenue to 54th Avenue
Liberty Avenue	Van Wyck Expressway to Farmers Boulevard
Linden Boulevard	Kings County Line to North and South Conduit Avenue, and Newburg Street to Farmers Boulevard
Linden Place	Whitestone Expressway to Northern Boulevard
Long Island Expressway	Queens Midtown Tunnel to Nassau County Line
Main Avenue	Vernon Boulevard to Astoria Boulevard
Main Street	Northern Boulevard to Queens Boulevard
Maurice Avenue	L.I.E. to 56th Terrace
Maspeth Avenue	49th Street to 48th Street
Merrick Boulevard	Hillside Avenue to Nassau County Line

Metropolitan Avenue	Kings County Line to Hillside Avenue
Myrtle Avenue	Kings County Line to Hillside Avenue
North and South Conduit Avenue (Sunrise Highway)	Linden Boulevard to Nassau County Line
Northern Boulevard	Jackson Avenue to Nassau County Line
Parsons Boulevard	Kissena Boulevard to Union Turnpike
Queens Boulevard	Jackson Avenue to Hillside Avenue
Review Avenue	Borden Avenue to Laurel Hill Boulevard
Rockaway Boulevard	Atlantic Avenue to Nassau County Line
Roosevelt Avenue	Queens Boulevard to Main Street
Rust Street	58th Street to Flushing Avenue
Rust Street	56th Terrace to 58th Street
Springfield Boulevard	Jamaica Avenue to North and South Conduit Avenue
Steinway Street	Northern Blvd. to Astoria Blvd. North
Steinway Street	Astoria Blvd. North to 19th Avenue
Sutphin Boulevard	94th Avenue to Liberty Avenue
Thomson Avenue	Jackson Avenue to Queens Boulevard
Union Turnpike	Myrtle Avenue to Nassau County Line
Van Dam Street	Queens Boulevard to Greenpoint Avenue
Van Wyck Expressway	Whitestone Expressway to John F. Kennedy International Airport
Vernon Boulevard	Borden Avenue to 8th Street
Whitestone Expressway	Whitestone Bridge to Astoria Boulevard
Willets Point Boulevard	Roosevelt Avenue to Northern Boulevard
Woodhaven Boulevard	Liberty Avenue to Queens Boulevard
8th Street	Astoria Boulevard to Vernon Boulevard
14th Road	College Point Boulevard to 110th Street
14th Avenue	Cross Island Parkway Service Road to Whitestone Expressway and College Point Boulevard to 110th Street
15th Avenue	College Point Boulevard to 1l0th Street
19th Avenue	Steinway Street to 81st Street
20th Avenue	21st Street to Hazen Street
20th Avenue	Whitestone Expressway to College Point Boulevard
21st Street	Borden Avenue to 20th Avenue
23rd Avenue	Astoria Boulevard South to Ditmars Boulevard
24th Avenue	21st Street to 29th Street
29th Street	24th Avenue to Astoria Boulevard
39th Street	Queens Boulevard to Northern Boulevard
41st Avenue	21st Street to Crescent Street
43rd Street	53rd Avenue to 54th Avenue
47th Street	Grand Avenue to 58th Road
48th Street	Long Island Expressway to 55th Avenue
48th Street	Maspeth Avenue to 58th Road and 55th Avenue to 56th Road
49th Street	Ditmars Boulevard to Astoria Boulevard
49th Street	Maspeth Avenue to 56th Road
53rd Avenue	43rd Street to 48th Street
54th Avenue	Laurel Hill Boulevard to 43rd Street
54th Street	Flushing Avenue to Grand Avenue
55th Avenue	48th Street to 58th Street
55th Street	Flushing Avenue to Grand Avenue
56th Drive	56th Road to 58th Street

56th Road	Laurel Hill Boulevard to 56th Drive
56th Road	56th Drive to 56th Terrace
57th Place	Maspeth Avenue to Rust Street
58th Road	47th Street to 48th Street
58th Street	Queens Boulevard to Maspeth Avenue
62nd Drive	Junction Boulevard to Queens Boulevard
69th Street	Long Island Expressway to Metropolitan Ave.
94th Avenue	Van Wyck Expressway to Sutphin Boulevard
94th Street	La Guardia Airport to 32nd Avenue
108th Street	Astoria Boulevard to Queens Boulevard
110th Street	14th Avenue to 15th Avenue
126th Street	Northern Boulevard to Roosevelt Avenue
154th Street	Cross Island Parkway North Service Road to 10th Avenue
168th Street	Merrick Boulevard to Hillside Avenue
213th Street	Hempstead Avenue to Jamaica Avenue

(c) **Truck routing rules for the Borough of Staten Island.** (1) **Through trucks.** An operator of any truck as defined in paragraph (a)(1) above, having neither an origin nor a destination within the Borough of Staten Island, shall restrict the operation of such vehicle to those street segments on the following list. These are designated as "Through Truck Routes." All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Through Truck Route Network

Street	Limits
Richmond Parkway	Outerbridge Crossing to West Shore Expressway
Staten Island Expressway	Goethals Bridge to Verrazano Narrows Bridge
West Shore Expressway	Staten Island Expressway to Richmond Parkway
Willowbrook Expressway	Staten Island Expressway to Bayonne Bridge

(2) **Local trucks.** (i) **2 axles, 6 tires.** An operator of any truck as defined in paragraph (a)(1) above, with 2 axles, 6 tires and having an origin or destination for the purpose of delivery, loading or servicing within the Borough of Staten Island, shall only operate such vehicle over the following listed "Local Truck Routes" and "Limited Local-Truck Routes," except that an operator may drive on a street not designated below for the purpose of arriving at his/her destination. This shall be accomplished by leaving a designated truck route at the intersection which is nearest and provides the most direct route to his/her destination, proceeding by the most direct route while observing existing street directions and turn restrictions, and then returning to the nearest designated truck route by the most direct route. If the operator has additional destinations in the immediate vicinity, he/she may proceed by the most direct route to his/her next destination without returning to a designated truck route, provided that the operator's next destination does not require that he/she cross a designated truck route. All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

(ii) **3 or more axles.** An operator of any truck as defined in paragraph (a)(1) above, with 3 or more axles, and having an origin or destination for the purpose of delivery, loading or servicing within the Borough of Staten Island, shall only operate such vehicle over the following listed "local truck routes," except under the conditions described in subparagraph (2)(i), above.

Local Truck Route Network

Street	Limits

Amboy Road	Richmond Road to Wards Point Avenue
Arden Avenue	Veterans Road West to Hylan Boulevard
Arthur Kill Road	Richmond Road to Main Street
Bay Street	Richmond Terrace to School Road
Bloomfield Avenue	Chelsea Road to Gulf Avenue
Bloomingdale Road	Amboy Road to Boston Avenue
Boscombe Avenue	Page Avenue to Weiner Street
Bradley Avenue	South Gannon Avenue to Victory Boulevard
Broad Street	Van Duzer Street to Bay Street
Broadway	Forest Avenue to Richmond Terrace
Buel Avenue	Hylan Boulevard to Richmond Road
Castleton Avenue	Jewett Avenue to Jersey Street
Castleton Avenue	Jewett Avenue to Port Richmond Avenue
Chelsea Road	Meredith Avenue to Bloomfield Avenue
Clarke Avenue	Richmondtown Road to Amboy Road
Clove Road	Narrows Road South to Richmond Terrace
Draper Place	Richmond Avenue to Richmond Avenue
Drumgoole Road East	Bloomingdale Road to Richmond Avenue
Drumgoole Road West	Arthur Kill Road to Veterans Road
Ebbitts Avenue	Hylan Boulevard to Mill Road
Edgewater Street	Bay Street to Hyland Boulevard
Edward Curry Avenue	Chelsea Road to South Avenue
Englewood Avenue	Veterans Road West to Veterans Road East
Fahy Avenue	Bengal Avenue to Lamberts Lane
Father Capodanno Blvd. (Seaside Blvd.)	Midland Avenue to Lily Pond Avenue
Forest Avenue	Western Avenue to Victory Boulevard
Foster Road	Woodrow Road to Amboy Road
Front Street	Bay Street to Murry Hulbert Avenue
Giffords Land	Arthur Kill Road to Amboy Road
Glen Street	Edward Curry Avenue to Fahy Avenue
Goethals Road North	Western Avenue to West Caswell Avenue
Gulf Avenue	Forest Avenue to West Shore Expressway
Guyon Avenue	Hylan Boulevard to Amboy Road
Huguenot Avenue	Arthur Kill Road to Hylan Boulevard
Hylan Boulevard	Satterlee Avenue to Steuben Street, and Narrows Road South to Edgewater Street
Jersey Street	Richmond Terrace to Victory Boulevard
Jewett Avenue	Richmond Terrace to Victory Boulevard
Justin Avenue	Amboy Road to Hylan Boulevard
Lamberts Lane	Fahy Avenue to Victory Boulevard
Lily Pond Avenue	School Road to Father Capodanno Boulevard (Seaside Boulevard)
Lincoln Avenue	Hyland Boulevard to Richmond Road
Little Clove Road	Renwick Avenue to Narrows Road North
Main Street	Arthur Kill Road to Hylan Boulevard
Manor Road	Schmidts Lane to Victory Boulevard
Midland Avenue	Richmond Road to Father Capodanno Boulevard (Seaside Boulevard)
Milford Drive	Renwick Avenue to Clove Road
Mill Road (Old Mill Road)	Tysens Lane to New Dorp Lane
Morley Avenue	Richmond Road to Richmond Road

Morningstar Road	Richmond Terrace to Richmond Avenue
Narrows Road North	Verrazano Narrows Bridge to Little Clove Road
Narrows Road South	Clove Road to Verrazano Narrows Bridge
Nelson Avenue	Amboy Road to Hylan Boulevard
New Dorp Lane	Mill Road to Hylan Boulevard
North Bridge Street	Veterans Road West to Arthur Kill Road
North Gannon Avenue	Slosson Avenue to Willow Road East
Page Avenue	South Bridge Street to Hylan Boulevard
Renwick Avenue	Milford Drive to Little Clove Road
Richmond Avenue	Hylan Boulevard to Forest Avenue, and Forest Avenue to Richmond Terrace
Richmond Parkway	Outerbridge Crossing to West Shore Expressway
Richmond Road	Van Duzer Street to Morley Avenue and Morley Avenue to Arthur Kill Road
Richmond Terrace	Western Avenue to Bay Street
Richmond Valley Road	Arthur Kill Road to Page Avenue
Rossville Avenue	Arthur Kill Road to Woodrow Road
St. Pauls Avenue	Van Duzer Street to Van Duzer Street
Schmidts Lane	Manor Road to Slosson Avenue
School Road	Lily Pond Avenue to Bay Street
Seaview Avenue	Father Capodanno Boulevard (Seaside Boulevard) to Hylan Boulevard
Seguine Avenue	Amboy Road to Hylan Boulevard
Sharrott Avenue	Amboy Road to Hylan Boulevard
Sharotts Road	Veterans Road East to Veterans Road West
Slosson Avenue	Victory Boulevard to Schmidts Lane
South Avenue	Richmond Terrace to Chelsea Road
South Bridge Street	Arthur Kill Road to Page Avenue
South Gannon Avenue	Victory Boulevard to Manor Road
Staten Island Expressway	Goethals Bridge to Verrazano Narrows Bridge
Steuben Street	Hylan Boulevard to Narrows Road South
Targee Street	Van Duzer Street to Richmond Road
Tompkins Avenue	Hylan Boulevard to Broad Street
Trantor Place	Walker Street to Willowbrook Expressway entrance ramp
Travis Avenue	South Avenue to Draper Place
Tyrellan Avenue	Boscombe Avenue to Veterans Road West
Tysens Lane	Mill Road to Hylan Boulevard
Vanderbilt Avenue	Richmond Road to Bay Street
Van Duzer Street	Richmond Road to Victory Boulevard
Van Duzer St. Extension	Van Duzer Street to Bay Street
Veterans Road East	Drumgoole Road West to Sharrotts Road, and Bloomingdale Road to Arthur Kill Road
Veterans Road West	Arden Road to Bloomingdale Road, and Sharrotts Road to Arthur Kill Road
Victory Boulevard	West Shore Expressway to Bay Street
Walker Street	Morningstar Road to Richmond Avenue
West Caswell Avenue	Goethals Road North to Willow Road West
West Shore Expressway	Staten Island Expressway to Richmond Parkway
Western Avenue	Forest Avenue to Richmond Terrace
Willow Road East	North Gannon Avenue to Forest Avenue
Willow Road West	Forest Avenue to West Caswell Avenue
Willowbrook Expressway	Victory Boulevard to Bayonne Bridge
Woodrow Road	Bloomingdale Road to Arthur Kill Road
Woolley Avenue	South Gannon Avenue to Victory Boulevard

Limited Local Truck Route Network

Street	Limits
Bradley Avenue	Brielle Avenue to South Gannon Avenue
Brielle Avenue	Rockland Avenue to Manor Road
Forest Hill Road	Richmond Hill Road to Willowbrook Road
Manor Road	Brielle Avenue to Schmidts Lane
Ocean Terrace	Manor Road to Todt Hill Road
Richmond Hill Road	Richmond Avenue to Forest Hill Road
Richmond Road	Rockland Avenue to Morley Avenue
Rockland Avenue	Richmond Avenue to Richmond Road
Slosson Avenue	Schmidts Land to Todt Hill Road
Todt Hill Road	Slosson Avenue to Richmond Road
Woolley Avenue	Willowbrook Road to South Gannon Avenue

(d) **Truck routing rules for the Borough of Manhattan.** (1) **Through trucks.** An operator of any truck as defined in paragraph (a)(1) above, having neither an origin nor a destination within the Borough of Manhattan, shall restrict the operation of such vehicle to those street segments designated on the following list as "Through Truck Routes." All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Through Truck Route Network

Street	Limits
Allen Street	Delancey Street to Houston Street
Avenue of the Americas	West Broadway to Houston Street
Beach Street	West Broadway to Varick Street
Canal Street	Manhattan Bridge to West Street
Chrystie Street	Delancey Street to Houston Street
Delancey Street	Williamsburg Bridge to Bowery
Dyer Avenue	34th Street to Lincoln Tunnel
Dyer Avenue	Lincoln Tunnel to 42nd Street
Houston Street	Allen Street to Varick Street
Hudson Street	Laight Street to Holland Tunnel Entrance
Kenmare Street	Bowery to Lafayette Street
Lafayette Street	Kenmare Street to Canal Street
Laight Street	Varick Street to Canal Street
**Queens Midtown Tunnel	34th Street to Tunnel Approach
**Queens Midtown Tunnel	34th Street to Tunnel Exit
Trans-Manhattan Expway	Alexander Hamilton Bridge to George Washington Bridge
Varick Street	Houston Street to Holland Tunnel Entrance
Walker Street	Canal Street to West Broadway
West Broadway	Beach Street to Avenue of the Americas
West Street	Brooklyn Battery Tunnel to Gansevoort Street
11th Avenue	Gansevoort Street to 22nd Street
11th Avenue	34th Street to 42nd Street
12th Avenue	22nd Street to 34th Street
**34th Street	Queens Midtown Tunnel Entrance to Dyer Avenue
34th Street	Dyer Avenue to 12th Avenue
40th Street	Lincoln Tunnel entrance to 11th Avenue

42nd Street	Dyer Avenue to 11th Avenue

** All through trucks are prohibited from 34th Street between the Queens Midtown Tunnel and Dyer Avenue between the hours of 11:00 A.M. and 6:00 P.M.

(2) **Local trucks.** An operator of any truck as defined in paragraph (a)(1) above, having an origin or destination for the purpose of delivery, loading or servicing within the Borough of Manhattan, shall restrict the operation of such vehicle to those street segments designated on the following list as "Local Truck Routes," except that an operator may operate on a street not designated below for the purpose of leaving his/her origin or arriving at his/her destination (subject to restrictions specified in §4-13(d)(3) through §4-13(d)(5) of these rules). This shall be accomplished by leaving a designated truck route at an intersection that is nearest and provides the most direct route to his/her destination, proceeding by the most direct route while observing existing street directions and turn restrictions, and then returning to the nearest designated truck route by the most direct route. If the operator has additional destinations in the immediate vicinity, he/she may proceed by the most direct route to his/her next destination without returning to a designated truck route, provided that the operator's next destination does not require that he/she cross a designated truck route. All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Local Truck Routes

Street	Limits
Adam Clayton Powell, Jr., Blvd.	Central Park North to 155th Street
Allen Street	Division Street to Houston Street
Amsterdam Avenue	59th Street to 181st Street
Avenue of the Americas (6th Avenue)	Church Street to 31st Street
Barclay Street	Broadway to West Street
Battery Park Underpass	South Street to West Street
Battery Place	State Street to West Street
Beach Street	West Broadway to Varick Street
Bowery	St. James Place to Cooper Square
Broadway	State Street to 14th Street
Broadway	17th Street to 31st Street
Broadway	Columbus Circle to 230th Street
Broome Street	Centre Street to Watts Street
Canal Street	Chrystie Street to West Street
Canal Street	Chrystie Street to Forsyth Street
Cathedral Parkway (110th Street)	8th Avenue to Broadway
Central Park North	Adam Clayton Powell, Jr., Blvd. to 8th Ave.
Central Park South	Columbus Circle to Grand Army Plaza
Central Park Traverse Roads 1, 2, 3 & 4	Fifth Avenue to Central Park West
Central Park West	81st Street to 82nd Street
Centre Street	Canal Street to Broome Street
Chrystie Street	Canal Street to Houston Street
Church Street	Liberty Street to Avenue of the Americas
Clarkson Street	7th Avenue South to West Street
Columbus Avenue	59th Street to Cathedral Parkway
Columbus Circle	Entire Length
Cooper Square	Bowery to Third Avenue
Delancey Street	Williamsburg Bridge to Bowery
Division Street	Bowery to Pike Street

Dyer Avenue	Lincoln Tunnel to 42nd Street
Dyer Avenue	Lincoln Tunnel to 34th Street
Forsyth Street	Division Street to Canal Street
Fort Washington Avenue	178th Street to 181st Street Avenue
Grand Street	Allen Street to West Broadway
Greenwich Avenue	Avenue of the Americas to 8th Avenue
Houston Street	1st Avenue to West Street
Hudson Street	Worth Street to 8th Avenue
Kenmare Street	Bowery to Lafayette Street
Lafayette Street	Kenmare Street to Canal Street
Laight Street	Varick Street to Canal Street
Lexington Avenue	23rd Street to 125th Street
Lincoln Tunnel Access	30th Street to Lincoln Tunnel
Madison Avenue	84th Street to 86th Street
Madison Avenue	96th Street to 97th Street
Madison Avenue	125th Street to Madison Avenue Bridge
Maiden Lane	South Street to Water Street
Nagle Avenue	Broadway to l0th Avenue
Pearl Street	Water Street to St. James Place
Pike Slip	South Street to Cherry Street
Pike Street	Cherry Street to Division Street
Queens Midtown Tunnnel Approach	34th Street to Tunnel
Queens Midtown Tunnel Exit	34th Street to Tunnel
St. James Place	Pearl Street to Bowery
South Street	State Street to Pike Slip
State Street	South Street to Broadway
Trans-Manhattan Expway	Alexander Hamilton Bridge to George Washington Bridge
Trinity Place	Brooklyn Battery Tunnel to Liberty Street
Union Square East	14th Street to 17th Street
Varick Street	West Broadway to 7th Avenue South
Vesey Street	Broadway to West Street
Walker Street	Canal Street to West Broadway
Water Street	State Street to Pearl Street
Watts Street	Broome Street to Holland Tunnel entrance
West Broadway	Worth Street to Varick Street
West Broadway	Beach Street to Grand Street
West Street	Battery Park Underpass to Gansevoort Street
Worth Street	St. James Place to Hudson Street
1st Avenue	Houston Street to Willis Avenue Bridge
2nd Avenue	Houston Street to 128th Street
3rd Avenue	Cooper Square to 125th Street
5th Avenue	22nd Street to 26th Street
5th Avenue	85th Street to 86th Street
5th Avenue	125th Street to 138th Street
6th Avenue (Avenue of the Americas)	Church Street to 31st Street
7th Avenue	14th Street to 31st Street
7th Avenue South	Varick Street to 14th Street
8th Avenue	Hudson Street to Columbus Circle
8th Street	Avenue of the Americas to Broadway
9th Avenue	14th Street to 59th Street

l0th Avenue	Little West 12th Street to 59th Street
l0th Avenue	Nagle Avenue to Broadway
11th Avenue	Gansevoort Street to 57th Street
11th Ave. service road	Gansevoort Street to 23rd Street
12th Avenue	22nd Street to 59th Street
14th Street	1st Avenue to 11th Avenue
15th Street	9th Avenue to 11th Avenue
17th Street	Union Square East to Broadway
22nd Street	5th Avenue to Broadway
23rd Street	1st Avenue to 12th Avenue
26th Street	5th Avenue to Broadway
30th Street	Broadway to 11th Avenue
31st Street	3rd Avenue to l0th Avenue
34th Street	1st Avenue to 12th Avenue
36th Street	Queens Midtown Tunnel entrance to 2nd Ave.
40th Street	Lincoln Tunnel entrance to 11th Avenue
41st Street	9th Avenue to Lincoln Tunnel entrance
42nd Street	1st Avenue to 12th Avenue
57th Street	1st Avenue to 12th Avenue
59th Street	1st Avenue to Grand Army Plaza
60th Street	1st Avenue to Lexington Avenue
65th Street	1st Avenue to 5th Avenue
65th Street	Central Park West to Amsterdam Avenue
66th Street	1st Avenue to 5th Avenue
66th Street	Central Park West to Amsterdam Avenue
75th Street	Amsterdam Avenue to Broadway
79th Street	1st Avenue to 5th Avenue
79th Street	Columbus Avenue to Broadway
81st Street	Central Park West to Columbus Avenue
82nd Street	Central Park West to Broadway
84th Street	Madison Avenue to 5th Avenue
86th Street	1st Avenue to 5th Avenue
86th Street	Central Park West to Broadway
96th Street	1st Avenue to 5th Avenue
96th Street	Central Park West to Broadway
97th Street	Madison Avenue to 5th Avenue
97th Street	Central Park West to Broadway
116th Street	1st Avenue to Adam Clayton Powell, Jr., Blvd.
124th Street	1st Avenue to Triborough Bridge entrance
125th Street	1st Avenue to Broadway
128th Street	2nd Avenue to 3rd Avenue Bridge
138th Street	Madison Avenue Bridge to 5th Avenue
145th Street	145th Street Bridge to Broadway
155th Street	Macombs Dam Bridge to Broadway
178th Street	Amsterdam Avenue to George Washington Bridge exit
179th Street	Amsterdam Avenue to George Washington Bridge entrance
181st Street	Washington Bridge to Fort Washington Ave.
207th Street	University Heights Bridge to Broadway
215th Street	Tenth Avenue to Broadway

(3) **Limited truck zones.** (i) **Restrictions.** Notwithstanding the provisions of paragraphs (a), (d)(1) and (d)(2) of this section, no operator of a truck as defined in paragraph (a)(1) of this section shall operate, enter, stop, stand or park his/her vehicle upon any of the streets designated on the following list as "Limited Truck Zones" except for the purpose of making a delivery, loading or servicing within said zone. This shall be accomplished by leaving a designated truck route at the intersection that is nearest and provides the most direct route to his/her destination, proceeding by the most direct route while observing existing street directions and turn restrictions, and then returning to the nearest designated truck route by the most direct route. If the operator has additional destinations in the immediate vicinity, he/she may proceed by the most direct route to his/her next destination without returning to a designated truck route provided that the operator's next destination does not require that he/she cross a designated truck route.

(ii) **Time period.** 24 hours per day, 7 days per week.

(iii) **Zones**

Zone A-**Chelsea** Bounded by the northern property line of 16th Street, the eastern property line of Ninth Avenue, the northern property line of 18th Street, the eastern property line of Tenth Avenue, the southern property line of 30th Street, the western property line of Eighth Avenue, the southern property line of 25th Street, the western property line of Seventh Avenue, the northern property line of 19th Street and the western property line of Eighth Avenue. Trucks passing completely through the designated area, or entering it for the purpose of reaching or leaving a street within these boundaries, are permitted to traverse 23rd Street, Eighth Avenue and Ninth Avenue only.

Zone B-**Chinatown** Bounded by the northern property line of Worth Street, the eastern property line of Baxter Street, the southern property line of Canal Street, the western property line of the Bowery, and the western property line of Chatham Square.

Zone C-**Greenwich Village** Bounded by the northern property line of Spring Street, the eastern property line of Varick Street, the eastern property line of Seventh Avenue South, the northern property line of Clarkson Street, the eastern property line of Hudson Street, the northern property line of Morton Street, the eastern property line of Washington Street, the southern property line of Gansevoort Street, the southern property line of 14th Street, the western property line of Avenue of the Americas, the southern property line of 12th Street, the western property line of University Place, the southern property line of 8th Street, the western property line of Mercer Street, the northern property line of Houston Street, and the western property line of West Broadway. Trucks passing completely through the designated area, or entering it for the purpose of reaching or leaving a street within these boundaries, are permitted to traverse Avenue of the Americas, Eighth Avenue, Eighth Street, Greenwich Avenue, Hudson Street (Northbound only), Seventh Avenue South, Varick Street and Houston Street only. Trucks with neither an origin nor a destination within Manhattan are restricted to Houston Street and Avenue of the Americas between Spring and Houston Streets only.

Zone D-**Little Italy** Bounded by the northern property line of Canal Street, the eastern property line of Centre Street, the eastern property line of Cleveland Place, the eastern property line of Lafayette Street, the southern property line of Houston Street and the western property line of Bowery. Trucks passing completely through the designated area, or entering it for the purpose of reaching or leaving a street within these boundaries, are permitted to traverse Grand Street, Kenmare Street and Canal Street only. Trucks with neither an origin nor a destination within Manhattan are restricted to Canal Street only.

Zone E-**Lower East Side** Bounded by the northern property line of Senator Robert F. Wagner Place, the eastern property line of St. James Place, the eastern property line of East Broadway, the southern property line of Montgomery Street, and the western property line of South Street. Trucks passing completely through the designated area, or entering it for the purpose of reaching or leaving a street within these boundaries, are permitted to traverse Pike Slip and Pike Street only.

(4) **Special garment center rule.**

(i) **Restrictions.** Notwithstanding the provisions of paragraphs (a), (d)(1) and (d)(2) of this section, no operator of a truck as defined in paragraph (a)(1) of this section shall operate, enter, stop, stand or park his/her vehicle upon any of the streets included within the boundaries designated below except for the purpose of making a delivery, loading or servicing on said streets. An operator shall not enter a street within the designated boundaries for the sole purpose of gaining access to a designated truck route, or to an adjacent street within said boundaries.

(ii) **Time period.** 9:00 A.M. to 5:00 P.M., Monday through Friday.

(iii) **Boundaries.** Bounded by the northern property line of 34th Street, the eastern property line of Eighth Avenue, the southern property line of 42nd Street and the western property line of Avenue of the Americas. Trucks passing completely through the designated area, or entering it for the purpose of reaching or leaving a street within these boundaries, are permitted to traverse Seventh Avenue and Broadway only.

(5) **Operation of vehicles 33 feet or more in length restricted.** Notwithstanding the provisions of §§4-08(1)(2) and (3) and 4-13 of these rules, no operator of a vehicle or combination of vehicles used for the transportation of merchandise, having an overall length of 33 feet or more including load and bumpers, shall operate, enter, traverse, stop, stand, or park any such vehicle or combination of vehicles upon any of the streets included in the area bounded by the south property line of West 42nd Street, the west property line of 5th Avenue, the north property line of West 34th Street, and the east property line of 9th Avenue, all in the Borough of Manhattan, between the hours of 8 a.m. and 10 a.m., and between 12 noon and 6 p.m., Monday through Friday inclusive, except that the operator of any such vehicle or combination of vehicles who has lawfully entered this area may allow such vehicle or combination of vehicles to remain therein while being expeditiously loaded or unloaded, but must remove same therefrom before 12 noon, and provided that any vehicle or combination of vehicles 33 feet or more in length may enter such area in order to reach an off-street parking facility or terminal therein where such parking facility or terminal is sufficient in size to accommodate the vehicle or combination of vehicles, and where no waiting, loading, or unloading on the street by such vehicle or combination of vehicles will take place. Such vehicle or combination of vehicles may not stop between an entry point into the area and its destination for any purpose other than to conform with traffic rules.

(6) **Special rules for vehicles 33 feet or more in length in the financial district and midtown core.** (i) **Financial district.**

(A) **Time period.** 11:00 A.M. to 2:00 P.M., Monday through Friday.

(B) **Restrictions.** Notwithstanding the provisions of subdivisions (a), (d)(1) and (d)(2) of this section, no operator of a vehicle having an overall length of 33 feet or more shall enter his/her vehicle upon any of the streets included within the boundaries designated below.

(C) **Exceptions.** Trucks having an overall length of 33 feet or more whose operator has in his/her possession a special permit issued by the Department of Transportation.

(D) **Boundaries.** Bounded by the eastern property line of Whitehall Street, the eastern property line of Broadway, the eastern property line of Park Row, the southern property line of Frankfort Street, the western property line of Pearl Street, and the western property line of Water Street.

(ii) **Midtown core.** (A) **Time period.** 12:00 Noon to 6:00 P.M. Monday through Friday.

(B) **Restrictions.** Notwithstanding the provisions of paragraphs (a) and (d)(1), through (d)(4) of this section, no operator of a vehicle having an overall length of 33 feet or more shall enter his/her vehicle upon any of the streets included within the boundaries designated below.

(C) **Exceptions.** Vehicles having an overall length of 33 feet or more whose operator has in his/her possession a special permit issued by the Department of Transportation.

(D) **Boundaries.** Bounded by the northern property line of 42nd Street, the eastern property line of Seventh Avenue, the southern property line of Central Park South, the southern property line of 59th Street, and the western property line of Third Avenue. Trucks having an overall length of 33 feet or more passing completely through the designated area are permitted to traverse 57th Street and Lexington Avenue only.

(e) **Truck routing rules for the Borough of Brooklyn.** (1) **Through trucks.** An operator of any truck as defined in paragraph (a)(1) above, having neither an origin nor a destination within the Borough of Brooklyn, shall restrict the operation of such vehicle to those street segments on the following list. These are designated as "Through Truck Routes." All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Through Truck Route Network

Street	Limits
Atlantic Avenue	Columbia Street to Queens County Line
Brooklyn-Queens Expressway	Gowanus Expressway to Queens County Line
Brooklyn-Queens Expressway Ramp	Williamsburg Bridge to Brooklyn-Queens Expressway
Church Avenue	McDonald Avenue to Flatbush Avenue
Columbia Street	Atlantic Avenue to Brooklyn-Queens Expressway Ramps North to Congress Street
Conduit Boulevard	Atlantic Avenue to Queens County Line
Flatbush Avenue	Fulton Street to Atlantic Avenue and Church Avenue to Marine Parkway Bridge
Flatbush Avenue Extension	Manhattan Bridge to Fulton Street
Gowanus Expressway	Brooklyn Battery Tunnel to Verrazano Narrows Bridge
Jay Street	Manhattan Bridge Exit Ramp to Sands Street
McDonald Avenue	l0th Avenue to Church Avenue
Prospect Expressway	Gowanus Expressway to Church Avenue
Sands Street	Jay Street to Brooklyn-Queens Expressway Entrance
Tillary Street	Flatbush Avenue Extension to Brooklyn-Queens Expressway Ramps
3rd Avenue	Flatbush Avenue to Atlantic Avenue
l0th Avenue	Prospect Expressway Exit Ramp to McDonald Avenue

(2) **Local trucks.** An operator of any truck as defined in paragraph (a)(1) above, with an origin or destination for the purpose of delivery, loading or servicing within the Borough of Brooklyn, may only operate such vehicle over the following listed streets, except that an operator may operate on a street not designated below for the purpose of arriving at his/her destination. This shall be accomplished by leaving a designated truck route at the intersection that is nearest and provides the most direct route to his/her destination, proceeding by the most direct route while observing existing street directions and turn restrictions, and then returning to the nearest designated truck route by the most direct route. If the operator has additional destinations in the immediate vicinity, he/she may proceed by the most direct route to his/her next destination without returning to a designated truck route, provided that the operator's next destination does not require that he/she cross a designated truck route. All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Local Truck Route Network

Street	Limits

Adams Street	Sands Street to Front Street
Ainslie Street	Rodney Street to Union Avenue
Ash Street	McGuinness Boulevard to Commercial Street
Atlantic Avenue	Furman Street to Queens County Line
Avenue D	Linden Boulevard to Foster Avenue
Avenue M	Flatlands Avenue to Kings Highway
Avenue N	Kings Highway to Flatlands Avenue
Avenue T	Flatbush Avenue to Ralph Avenue
Avenue U	86th Street to East 55th Street
Bay Parkway	Kings Highway to Belt Parkway Eastbound Service Road
Bay Street	Columbia Street to Smith Street
Beard Street	Van Brunt Street to Otsego Street
Bedford Avenue	Rogers Avenue to Taylor Street
Bergen Street	3rd Avenue to 5th Avenue
Box Street	Commercial Street to McGuinnes Boulevard
Bridgewater Street	Norman Avenue to Varick Street
Broadway	Kent Avenue to Jamaica Avenue
Brooklyn-Queens Expressway	Gowanus Expressway to Queens County Line
Brooklyn-Queens Expressway Access Ramp	Williamsburg Bridge to Brooklyn-Queens Expressway
Cadman Plaza West	Furman Street to Court Street
Caton Avenue	McDonald Avenue to Linden Boulevard
Cherry Street	Vandervoort Avenue to Varick Avenue
Church Avenue	Old New Utrecht Road to Linden Boulevard
Classon Avenue	Kent Avenue to Flushing Avenue
Clinton Street	Hamilton Avenue to Bay Street
Columbia Street	Atlantic Avenue to Irving Street; and Bay Street to Halleck Street
Commercial Street	Manhattan Avenue to Franklin Street
Concord Street	Flatbush Avenue Extension to Jay Street
Conduit Boulevard	Atlantic Avenue to Queens County Line
Coney Island Avenue	Caton Avenue to Neptune Avenue
Cooper Street	Broadway to Queens County Line
Court Street	Hamilton Avenue to Bay Street; and Cadman Plaza West to Atlantic Avenue
Cropsey Avenue	18th Avenue to Neptune Avenue
DeKalb Avenue	Nostrand Avenue to Flatbush Avenue Extension
Delavan Street	Columbia Street to Van Brunt Street
Driggs Avenue	South 4th Street to Broadway
East New York Avenue	Troy Avenue to Rockaway Avenue
Empire Boulevard	Flatbush Avenue to Utica Avenue
Flatbush Avenue	Fulton Street to Marine Parkway Bridge
Flatbush Avenue Extension	Manhattan Bridge to Fulton Street
Flatlands Avenue	Avenue N to Pennsylvania Avenue
Flushing Avenue	Navy Street to Queens County Line
Fort Hamilton Parkway	82nd Street to 92nd Street
Foster Avenue	Kings Highway to Remsen Avenue
Fountain Avenue	Linden Boulevard to Spring Creek Landfill Site
Franklin Street	Commercial Street to Kent Avenue
Freeman Street	Provost Street to McGuinness Boulevard
Front Street	Cadman Plaza West to Hudson Avenue
Fulton Street	Jewell Square to Pennsylvania Avenue

Furman Street	Cadman Plaza West to Atlantic Avenue
Gardner Avenue	Metropolitan Avenue to Grand Street
Gowanus Expressway	Brooklyn Battery Tunnel to Verrazano Narrows Bridge
Grand Street	Grand Street Extension to Queens County Line
Grand Street Extension	Havemeyer Street to Grand Street
Green Street	McGuinness Boulevard to Provost Street
Greenpoint Avenue	Van Dam Street to Queens Boulevard
Halleck Street	Otsego Street to Columbia Street
Hamilton Avenue	Van Brunt Street to 3rd Avenue
Havemeyer Street	Broadway to South 4th Street
Herkimer Street	Van Sinderen Avenue to Jewell Square
Hicks Street	Hamilton Avenue to Nelson Street
Hudson Avenue	Front Street to Navy Street
Irving Street	Van Brunt Street to Columbia Street
Jamaica Avenue	Broadway to Pennsylvania Avenue
Jay Street	Prospect Street to Fulton Street
Kane Street	Columbia Street to Van Brunt Street
Kent Avenue	Franklin Street to Myrtle Avenue
Kings Highway	Foster Avenue to Bay Parkway
Kingsland Avenue	Greenpoint Avenue to Norman Street
Lafayette Avenue	Flatbush Avenue to Nostrand Avenue
Lee Avenue	Taylor Street to Flushing Avenue
Linden Boulevard	Caton Avenue to Queens County Line
Lombardy Street	Vandervoort Avenue to Varick Avenue
Lorimer Street	Wallabout Street to Union Avenue
Louisiana Street	Vandalia Avenue to Seaview Avenue
Manhattan Avenue	Commercial Street to Greenpoint Avenue
Marcy Avenue	Metropolitan Avenue to Division Avenue
McDonald Avenue	20th Street to Shell Road
McGunness Boulevard	Ash Avenue to Meeker Avenue
Meeker Avenue	Metropolitan Avenue to Varick Avenue
Metropolitan Avenue	Kent Avenue to Queens County Line
Myrtle Avenue	Jay Street to Queens County Line
Nassau Street	Flatbush Avenue Extension to Flushing Avenue
Navy Street	Hudson Avenue to Tillary Street
Nelson Street	Hicks Street to Columbia Street
Neptune Avenue	Cropsey Avenue to Coney Island Avenue
Norman Avenue	North Henry Street to Bridgewater Street
North Henry Street	Greenpoint Avenue to Norman Street
North l0th Street	Union Avenue to Kent Avenue
North 11th Street	Kent Avenue to Union Avenue
Nostrand Avenue	Flushing Avenue to Flatbush Avenue
Old New Utrecht Road	Church Avenue to 14th Avenue
Paidge Avenue	McGuinness Boulevard to Provost Street
Pennsylvania Avenue	Jamaica Avenue to Vandalia Avenue; and Seaview Avenue to Spring Creek Landfill Site
Prospect Avenue	3rd Ave. to Prospect Expressway 4th Avenue Exit
Prospect Expressway	Gowanus Expressway to Church Avenue
Prospect Street	Cadman Plaza West to Jay Street
Provost Street	Paidge Avenue to Greenpoint Avenue

Ralph Avenue	Foster Avenue to Avenue T
Remsen Avenue	Empire Boulevard to Flatlands Avenue
Rockaway Avenue	Broadway to East New York Avenue
Rodney Street	Division Avenue to Metropolitan Avenue
Roebling Street	Metropolitan Avenue to South 5th Street; and Broadway to Lee Avenue
Rogers Avenue	Flatbush Avenue to Bedford Avenue
Sands Street	Adams Street to Navy Street
Schermerhorn Street	Smith Street to Flatbush Avenue
Seaview Avenue	Louisiana Avenue to Pennsylvania Avenue
Shell Road	McDonald Avenue to Neptune Avenue
Smith Street	Fulton Street to Atlantic Avenue; and Bay Street to 9th Street
South 3rd Street	Roebling Street to Grand Street Extension
South 4th Street	Rodney Street to Driggs Avenue
Taylor Street	Bedford Avenue to Lee Avenue
Terrace Place	McDonald Avenue to 11th Avenue
Tillary Street	Cadman Plaza West to Navy Street
Troy Avenue	East New York Avenue to Empire Boulevard
Union Avenue	North 11th Street to Lorimer Street
Utica Avenue	Atlantic Avenue to Flatbush Avenue
Van Brunt Street	Kane Street to Beard Street
Vandalia Avenue	Louisiana Avenue to Pennsylvania Avenue
Van Dam Street	Meeker Avenue to Bridgewater Street
Vandervoort Avenue	Meeker Avenue to Grand Street
Van Sinderen Avenue	Broadway to Herkimer Street
Varick Avenue	Lombardy Street to Meeker Avenue
Varick Street	Meeker Avenue to Bridgewater Street
Wallabout Street	Classon Avenue to Lorimer Street
Williamsburg Street East	Kent Avenue to Division Avenue
Williamsburg Street West	Park Avenue to Division Avenue
Woodhull Street	Hamilton Avenue Westbound to Hamilton Avenue Eastbound
York Street	Navy Street to Cadman Plaza West
1st Avenue	39th Street to 58th Street
2nd Avenue	58th Street to 60th Street
3rd Avenue	Flatbush Avenue to 65th Street
4th Avenue	Flatbush Avenue to 39th Street
5th Avenue	Atlantic Avenue to Bergen Street
6th Avenue	60th Street to 65th Street/Gowanus Expressway
7th Avenue	Prospect Expressway to 20th Street; and 65th Street to 92nd Street
9th Street	Clinton Street to 4th Avenue
l0th Avenue	Prospect Expressway to 20th Street
11th Avenue	18th Street to Terrace Place
14th Avenue	Church Avenue to 39th Street
18th Avenue	86th Street to Cropsey Avenue
20th Avenue	3rd Avenue to l0th Avenue
25th Street	Cropsey Avenue to 86th Street
39th Street	1st Avenue to 14th Avenue
43rd Street	3rd Avenue to 1st Avenue
58th Street	1st Avenue to 3rd Avenue
60th Street	2nd Avenue to 6th Avenue
65th Street	3rd Avenue to McDonald Avenue

86th Street	Fort Hamilton Parkway to l8th Avenue; and 25th Avenue toAvenue U
92nd Street	Fort Hamilton Parkway to 7th Avenue

(f) **Truck routing rules for the Borough of the Bronx.** (1) **Through trucks.** An operator of any truck as defined in paragraph (a)(1) above, having neither an origin nor a destination within the Borough of the Bronx, will restrict the operation of such vehicle to those street segments on the following list. These are designated as "Through Truck Routes." All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Through Truck Route Network

Street	Limits
Buckner Boulevard	Willis Avenue Bridge to Bruckner Expressway Approach
Bruckner Expressway	New England Thruway to Triborough Bridge
Cross Bronx Expressway	Alexander Hamilton Bridge to Cross Bronx Expressway
Cross Bronx Expressway	Cross Bronx Expressway to Extension Throgs Neck Expressway
East 135th Street	Major Deegan Expressway Westbound-Willis Avenue Exit to Third Avenue Bridge Approach
Exterior Street	Major Deegan Expressway Southbound-East 138th Street Exit to Third Avenue Bridge
Hutchinson River Parkway	Bruckner Expressway to Bronx-Whitestone Bridge
Major Deegan Expressway	City Line to Triborough Bridge
New England Thruway	City Line to Bruckner Expressway
Sheridan Expressway	Cross Bronx Expressway to Bruckner Expressway
Throgs Neck Expressway	Bruckner Expressway to Throgs Neck Bridge
Willis Avenue	Willis Ave. Bridge to East 135th Street

(2) **Local trucks.** An operator of any truck as defined in paragraph (a)(1) above, with an origin or destination for the purpose of delivery, loading or servicing within the Borough of the Bronx, will only operate such vehicle over the following listed streets, except that an operator may operate on a street not designated below for the purpose of arriving at his/her destination. This shall be accomplished by leaving a designated truck route at the intersection that is nearest and provides the most direct route to his/her destination, proceeding by the most direct route while observing existing street directions and turn restrictions, and then returning to the nearest designated truck route by the most direct route. If the operator has additional destinations in the immediate vicinity, he/she may proceed by the most direct route to his/her next destination without returning to a designated truck route, provided that the operator's next destination does not require that he/she cross a designated truck route. All trucks must adhere to all posted signs indicating locations that limit the height of vehicles permitted to operate thereon.

Local Truck Route Network

Street	Limits
Allerton Avenue	White Plains Road to Williamsbridge Road
Bailey Avenue	Van Cortlandt Park South to Sedgwick Ave.
Barry Street	Leggett Avenue to Oak Point Avenue
Bartow Avenue	East Gun Hill Road to Baychester Avenue
Baychester Avenue	East 241st Street to Edson Avenue, New England Thruway (Northbound) Bartow Avenue Exit to Co-op City Boulevard
Bergen Avenue	Willis Avenue to Westchester Avenue
Boone Avenue	West Farms Road to Whitlock Avenue
Boston Road	City Line to Bronx Park East, East Tremont Avenue to Third Avenue

Broadway	City Line to New York County Line
Bronx Park East	Boston Road to White Plains Road
Brook Avenue	Webster Avenue to Elton Avenue
Bruckner Boulevard (Northbound)	Third Avenue Bridge to Kearney Avenue, Kearney Avenue to MacDonough Place, MacDonough Place to Shore Road
Bruckner Boulevard (Southbound)	Shore Road to Third Avenue Bridge
Bruckner Expressway	New England Thruway to Triborough Bridge
Bryant Avenue	Bruckner Boulevard to Garrison Avenue
Castle Hill Avenue	East Tremont Avenue to Lacombe Avenue
City Island Avenue	City Island Road to Belden Street
City Island Road	Shore Road to City Island Avenue
Commerce Avenue	Westchester Avenue to Zerega Avenue
Conner Street	Provost Avenue to Tillotson Avenue
Cross Bronx Expressway	Alexander Hamilton Bridge to Cross Bronx Expressway Extension
Cross Bronx Expressway Eastbound Service Road	Park Avenue to Cross Bronx Expressway Eastbound Entrance Ramp, Harrod Avenue to Bruckner Interchange
Cross Bronx Expressway Extension	Cross Bronx Expressway to Throgs Neck Expressway
Cross Bronx Expressway Westbound Service Road	Bruckner Interchange to Westchester Avenue, Hugh J. Grant Circle to East 177th Street
Depot Place	Sedgwick Avenue to Exterior Street
Dickinson Avenue	West Gun Hill Road to Sedgwick Avenue
Dupont Street	Leggett Avenue to Oak Point Avenue
East Bay Avenue	Tiffany Street to Halleck Street
East Burnside Avenue	Jerome Avenue to Valentine Avenue
Eastchester Road	Boston Road to Williamsbridge Road
East Fordham Road	Jerome Avenue to Pelham Parkway
East Gun Hill Road	Jerome Avenue to New England Thruway
East Tremont Avenue	Valentine Avenue to Dewey Avenue
East 135th Street	Major Deegan Expressway Westbound-Willis Avenue Exit to Third Avenue Bridge Approach
East 138th Street	Madison Avenue Bridge to East River
East 148th Street	Third Avenue to Bergen Avenue
East 149th Street	145th Street Bridge to East River
East 150th Street	Third Avenue to Melrose Avenue
East 161st Street	Jerome Avenue to Elton Avenue
East 163rd Street	Elton Avenue to Stebbins Avenue, Stebbins Avenue to Hunts Point Avenue
East 167th Street	Jerome Avenue to River Avenue
East 174th Street	Webster Avenue to Park Avenue
East 175th Street	Cross Bronx Expressway (Westbound)-Webster Avenue Exit to Webster Avenue
East 177th Street	East Tremont Avenue to Cross Bronx Expressway Service Roads
East 233rd Street	Jerome Avenue to Boston Road
East 241st Street	White Plains Road to Baychester Avenue
Edgewater Road	Halleck Street to Bruckner Boulevard
Edson Avenue	Baychester Avenue to East Gun Hill Road
Edward L. Grant Highway	Washington Bridge to Jerome Avenue
Elton Avenue	East 163rd Street to East 161st Street
Exterior Street	Jerome Avenue to Third Avenue Bridge
Garrison Avenue	Leggett Avenue to Tiffany Street, Bryant Avenue to Edgewater Road
Givan Avenue	New England Thruway Southbound Service Road to Baychester Avenue

Halleck Street	Edgewater Road to Ryawa Avenue
Hollers Avenue	New England Thruway (Southbound)-Conner Street Exit to Conner Street
Hunts Point Avenue	Southern Boulevard to Bruckner Boulevard, Randall Avenue to Halleck Street, Ryawa Avenue to New Market Road
Hutchinson River Parkway and Southbound Service Road	Bruckner Interchange to Bronx-Whitestone Bridge
Jerome Avenue	City Line to Major Deegan Expressway Approaches at the Macombs Dam Bridge
Kearney Avenue	Bruckner Boulevard (Northbound) to Bruckner Boulevard (Northbound)
Lacombe Avenue	Soundview Avenue to Castle Hill Avenue
Lane Avenue (Westchester Square)	East Tremont Avenue to Westchester Avenue
Legget Avenue	Southern Boulevard to Randall Avenue
Macombs Dam Bridge Approach	Macombs Dam Bridge to Jerome Avenue
Major Deegan Expressway	City Line to Triborough Bridge
MacDonough Place	Bruckner Boulevard (Northbound) to Bruckner Boulevard (Northbound)
Melrose Avenue	Webster Avenue to Willis Avenue
Morris Park Avenue	Eastchester Road to East Tremont Avenue
Nereid Avenue	Webster Avenue to White Plains Road
New England Thruway	City Line to Bruckner Expressway
New England Thruway Southbound Service Road	Coroner Street to Givan Avenue
New Market Road	East Bay Avenue to Hunts Point Avenue
Oak Point Avenue	Barry Street to Halleck Street
Park Avenue	East 174th Street to Cross Bronx Expressway Eastbound Service Road
Pelham Parkway	East Fordham Road to White Plains Road
Pelham Parkway North	Eastchester Road to Boston Road
Pelham Parkway South	Boston Road to Eastchester Road
Provost Avenue	City Line to Conner Street
Randall Avenue	Leggett Avenue to Halleck Street, Cross Bronx Expressway Extension to East Tremont Avenue
River Avenue	Jerome Avenue to East 149th Street
Ryawa Avenue	Halleck Avenue to New Market Road
Sedgwick Avenue	Bailey Avenue to West Fordham Road-Jerome Avenue to Depot Place, Van Cortlandt Avenue West to Dickinson Avenue
Sheridan Expressway	East Tremont Avenue to Bruckner Expressway
Shore Road	Bruckner Expressway to City Island Road
Silver Street	Williamsbridge Road to East Tremont Avenue
Soundview Avenue	Bruckner Boulevard to Lacomb Avenue
Southern Boulevard	East Fordham Road to East 163rd Street, Leggert Avenue to East 149th Street
Stebbins Avenue	East 163rd Street to East 163rd Street
Third Avenue	Bruckner Boulevard to East Fordham Road
Throgs Neck Expressway	Bruckner Expressway to Throgs Neck Bridge
Tiffany Street	Bruckner Boulevard to Viele Avenue
Tillotson Avenue	Conner Street to Co-op City Boulevard
Truxton Street	Leggett Avenue to Oak Point Avenue
University Avenue	West Fordham Road to Washington Bridge
Valentine Avenue	East Burnside Avenue to East Tremont Ave.
Van Cortlandt Avenue West	Bailey Avenue to Sedgwick Avenue
Van Cortlandt Park South	Broadway to Bailey Avenue
Viele Avenue	Tiffany Street to Halleck Street

Webster Avenue	City Line to Melrose Avenue
West Burnside Avenue	University Avenue to Jerome Avenue
West Farms Road	East Tremont Avenue to Boone Avenue
West Fordham Road	University Heights Bridge to Jerome Avenue
West 230th Street	Broadway to Bailey Avenue
West Gun Hill Road	Dickinson Avenue to Jerome Avenue
Westchester Avenue	Third Avenue to Bruckner Boulevard
White Plains Road	City Line to Bruckner Boulevard
Whitlock Avenue	Boone Avenue to Bruckner Boulevard
Whittier Street	Bruckner Boulevard to Garrison Avenue
Williamsbridge	Boston Road to East Tremont Avenue
Willis Avenue	Willis Avenue Bridge to East 149th Street
Zerega Avenue	Westchester Avenue to Homer Avenue

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (b) par (1) open par. amended City Record Sept. 17, 2007 §1, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (1) Grand Central Parkway added City Record Sept. 17, 2007 §2, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) open par amended City Record Sept. 17, 2007 §3, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) 14th Road in Local Truck Route Network added City Record Aug. 14, 1997 eff. Sept. 13, 1997. [See Note 1]

Subd. (b) par (2) 81st Street in Local Truck Route Network repealed City Record Nov. 15, 1996 eff. Dec. 15, 1996.

Subd. (b) par (2) Cypress Avenue added City Record Sept. 17, 2007 §4, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) Flushing Avenue repealed City Record Sept. 17, 2007 §4, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) Fresh Pond Road (first entry) repealed City Record Sept. 17, 2007 §4, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) Fresh Pond Road (second entry) amended City Record Sept. 17, 2007 §4, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) Guy R. Brewer desig. and amended City Record Sept. 17, 2007 §4, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) New York Boulevard renamed City Record Sept. 17, 2007 §4, eff. Oct. 17, 2007. [See Note 4]

Subd. (b) par (2) Linden Boulevard in schedule amended City Record Jan. 31, 1995 eff. Mar. 2, 1995.

Subd. (c) par (1) open par amended City Record Sept. 17, 2007 §5, eff. Oct. 17, 2007. [See Note 4]

Subd. (c) par (2) subpar (i) amended City Record Sept. 17, 2007 §6, eff. Oct. 17, 2007. [See Note 4]

Subd. (c) par (2) subpar (ii) Bengal Avenue repealed City Record Sept. 17, 2007 §7, eff. Oct. 17, 2007. [See Note

4]

Subd. (c) par (2) subpar (ii) Castleton Avenue (second entry) added City Record Feb. 9, 2009 §1, eff. Mar. 11, 2009. [See Note 5]

Subd. (c) par (2) subpar (ii) Ebbitts Avenue amended City Record Feb. 9, 2009 §1, eff. Mar. 11, 2009. [See Note 5]

Subd. (c) par (2) subpar (ii) Edward Curry Avenue added City Record Sept. 17, 2007 §7, eff. Oct. 17, 2007. [See Note 4]

Subd. (c) par (2) subpar (ii) Glen Street added City Record Sept. 17, 2007 §7, eff. Oct. 17, 2007. [See Note 4]

Subd. (c) par (2) subpar (ii) Local Truck Route Network heading desig. and amended City

Record Sept. 17, 2007 §7, eff. Oct. 17, 2007. [See Note 4]

Subd. (c) par (2) subpar (ii) Mill Road amended City Record Sept. 17, 2007 §7, eff. Oct. 17, 2007. [See Note 4]

Subd. (c) par (2) subpar (ii) New Dorp Lane amended City Record Feb. 9, 2009 §1, eff. Mar. 11, 2009. [See Note 5]

Subd. (c) par (2) subpar (ii) Richmond Valley Road added City Record Feb. 9, 2009 §1, eff. Mar. 11, 2009. [See Note 5]

Subd. (c) par (2) subpar (ii) Vernon Avenue repealed City Record Sept. 17, 2007 §7, eff. Oct. 17, 2007. [See Note 4]

Subd. (d) par (1) open par amended City Record Sept. 17, 2007 §8, eff. Oct. 17, 2007. [See Note 4]

Subd. (d) par (2) open par amended City Record Sept. 17, 2007 §9, eff. Oct. 17, 2007. [See Note 4] Note: The roman language laid out in this amendment did not entirely corresond to existing language. NYLP carries the amendment as laid out.

Subd. (d) par (2) Avenue of the Americas amended City Record Sept. 17, 2007 §10, eff. Oct. 17, 2007. [See Note 4]

Subd. (d) par (2) Cathedral Parkway amended City Record Sept. 17, 2007 §10, eff. Oct. 17, 2007. [See Note 4]

Subd. (d) par (2) Central Park Traverse . . . amended City Record Sept. 17, 2007 §10, eff. Oct. 17, 2007. [See Note 4]

Subd. (d) par (2) 6th Avenue added City Record Sept. 17, 2007 §10, eff. Oct. 17, 2007. [See Note 4]

Subd. (d) par (3) subpar (i) amended City Record Sept. 17, 2007 §11, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (1) open par amended City Record Sept. 17, 2007 §12, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (1) Gowanus Expressway amended City Record Sept. 17, 2007 §13, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) open par amended City Record Sept. 17, 2007 §14, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Avenue U amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Bay Parkway amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Brooklyn-Queens Expressway amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Columbia Street amended City Record Feb. 4, 2004 eff. Mar. 5, 2004. [See Note 2]

Subd. (e) par (2) Driggs Avenue amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (2) par (2) Gowanus Expressway amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Grand Street amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Kings Highway amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Pennsylvania Avenue amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Remsen Avenue amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (e) par (2) Van Dam Street amended City Record Sept. 17, 2007 §15, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (1) open par amended City Record Sept. 17, 2007 §16, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) open par amended City Record Sept. 17, 2007 §17, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Barry Street added City Record June 21, 2004 eff. July 21, 2004. [See Note 3]

Subd. (f) par (2) Boston Road amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Broadway amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Bruckner Boulevard (Northbound) amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Bruckner Boulevard (Southbound) amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Bryant Avenue added City Record June 21, 2004 eff. July 21, 2004. [See Note 3]

Subd. (f) par (2) Castle Hill Avenue amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Dupont Street added City Record June 21, 2004 eff. July 21, 2004. [See Note 3]

Subd. (f) par (2) Garrison Avenue amended City Record June 21, 2004 eff. July 21, 2004. [See Note

3]

Subd. (f) par (2) Hunts Point Avenue amended City Record June 21, 2004 eff. July 21, 2004. [See

Note 3]

Subd. (f) par (2) Jerome Avenue amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Oak Point Avenue added City Record June 21, 2004 eff. July 21, 2004. [See

Note 3]

Subd. (f) par (2) Southern Boulevard amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) Truxton Street added City Record June 21, 2004 eff. July 21, 2004. [See Note 3]

Subd. (f) par (2) Westchester Avenue amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) West Fordham Road amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

Subd. (f) par (2) White Plains Road amended City Record Sept. 17, 2007 §18, eff. Oct. 17, 2007. [See Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 14, 1997:

The Commissioner of the Department of Transportation is authorized to regulate traffic pursuant to section 2903(a) of the New York City Charter.

Section 4-13(b)(2) is being amended to add 14th Road to the Local Truck Route Network in the Borough of Queens in order to improve truck access to industrial and commercial facilities and to reduce truck traffic on narrow residential streets.

2. Statement of Basis and Purpose in City Record Feb. 4, 2004 The Commissioner of the Department of Transportation is authorized to regulate traffic pursuant to §2903(a) of the New York City Charter. Section 4-13(e)(2) is being amended in connection with the recommendations contained in the Red Hook Truck Study. The study recommends truck route changes in order to minimize truck traffic on residential streets, regulate truck traffic in Red Hook, and to improve circulation and safety of vehicular and pedestrian traffic in Red Hook. The recommendations were reviewed and approved by elected officials, the community board, and other interested groups.

3. Statement of Basis and Purpose in City Record June 21, 2004: The Commissioner of the Department of Transportation is authorized to regulate traffic pursuant to §2903(a) of the New York City Charter. Section 4-13(f)(2) is being amended to improve traffic circulation and safety and reduce truck traffic in residential areas.

4. Statement of Basis and Purpose in City Record Sept. 17, 2007: The Commissioner of the Department of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. The Department of Transportation has undertaken a study of Truck Route Management and Community Impact Reduction. One goal of the study is to help improve the City's existing overall truck management framework. To assist in achieving this objective, the study recommends that the Department of Transportation amend specific provisions of Title 34, §4-13 of the Rules of the City of New York to ensure consistency and clarity among truck-related definitions, rules and regulations, and to ensure that changes made to the truck route network are accurately reflected. In addition, though height restrictions are eliminated from these rules in order to remove outdated and inconsistent information, trucks are still required to adhere to posted signs indicating any such restrictions on the City's streets and roadways.

5. Statement of Basis and Purpose in City Record Feb. 9, 2009: The Commissioner of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903(b) of the New York City Charter and Title 19 of the New York City Administrative Code. Castleton Avenue from Jewett Avenue to Port Richmond Avenue is being added as a local truck route in Staten Island to improve truck operations by allowing a connection to the Richmond Avenue local truck route. Westbound trucks at Castleton Avenue and Jewett Avenue are only allowed to turn left or right. If they turn right, they arrive at Jewett Avenue and Richmond Terrace which only allows right turns. The trucks are being forced into a circle as a result of the turn restrictions. By adding Castleton Avenue from Jewett Avenue to Port Richmond Avenue as a local truck route, truck operations will be improved in this area, and truck movements will be more efficient. Due to land use changes two local truck routes are being eliminated, specifically, New Dorp

Lane from Old Mill Road to Cedar Grove Avenue and Ebbitts Avenue from Old Mill Road to Cedar Grove Avenue. Adding Richmond Valley Road as a local truck route, between Arthur Kill Road and Page Avenue will allow for east-west connection between two north-south local truck routes.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-14

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-14 Parkways and Parks.

(a) **Parkways.** The following provisions shall govern the use of all parkways: (1) **Peddlers, vendors, hawkers and hucksters.** No peddler, vendor, hawker or huckster shall stop or remain on any part of the right of way or service roads or entrances.

(2) **Use of parkways restricted.** Commercial vehicles, pedestrians, horses, limited use vehicles and bicycles are prohibited on parkways.

(3) **Flat tires.** No operator shall stop his/her vehicle on the improved or paved roadway of a park or parkway for the purpose of removing or replacing a flat tire. No person shall remove or replace a flat tire unless the vehicle is completely off the improved or paved roadway so that no portion of the vehicle or the person is exposed to passing vehicles.

(b) **Restrictions on vehicles.** (1) **Commercial vehicles.** Commercial vehicles are prohibited from using any park, except under permit where necessary to make deliveries in such park. Wherever service roads adjoin the main roadway to a park such vehicles are required to use the service roads set apart for such use. In all cases such vehicles must enter the park from the nearest street intersection or entrance, in the direction of traffic, and leave by the nearest intersecting street or exit in the direction of traffic.

(2) **Business or advertising purposes.** Vehicles having any name, insignia, or sign painted or displayed thereon for business or advertising purposes are prohibited in parks or parkways except as provided in paragraph (b)(1), above.

(3) **Carriers of offensive refuse or heavy materials.** No garbage, ashes, manure, or other offensive material shall be carried through any park. When such refuse is to be removed from premises fronting on any park or improved or paved roadway in a park, the vehicle collecting it must leave the park or improved or paved roadway as soon as the collection has been accomplished, and within the time prescribed by the Commissioner of Parks.

(4) **Buses.** No persons shall, except under a permit, drive or operate a bus within any park or on a parkway. Charter buses will be permitted to operate between the shortest possible routes from outside a park to deliver or to pick up their passengers from a picnic, bathing or other recreation area only if a permit to enter the park has been issued to the person sponsoring the outing, picnic, etc. Buses must proceed over the route and to the parking space designated in the permit. Parking in the designated parking space will be limited to the time prescribed in the permit.

(5) **Hearses.** No hearse or other vehicles carrying or used for carrying the body of a dead person shall enter or be allowed in any park except by permit.

(c) **Restricted areas of parks.** No person shall, in any park, drive or operate a vehicle within or upon a safety zone, walk, bridle path or any part of any park designated or customarily used for such purposes. No person shall ride a bicycle, limited use vehicle, or scooter in any park, except in places designated for such riding; but persons may push such machines in single file to and from such places, except on beaches and boardwalks. No person shall ride a limited use vehicle upon any bicycle, pedestrian or bridle path or upon any street or walkway that has been set aside for bicycling while such designation is in effect. No wheelchairs shall be operated in any part of any park unless licensed by the Commissioner of Parks, except that invalids' wheelchairs may be pushed along the boardwalk and pedestrian walks. No person shall ride or lead a horse or other beast of burden in a park, except on a bridle path or along routes customarily used for access to and from bridle paths.

(d) **Projecting articles.** No person shall operate or drive in any park or parkway a vehicle containing any person or object projecting or hanging outside or on the top thereof; except that outdoor sports and recreation equipment such as skis, ski poles, fishing rods, beach chairs, beach umbrellas, tent poles, toboggans, and sleds may be carried on the rear of such vehicles or on a rack designed for the purpose and attached to the top thereof, provided that in all cases fastenings shall be secure and substantial, and provided that such equipment so carried shall in no case project more than 12 inches above the top or to the rear of such vehicle.

(e) **Driving off pavement.** (1) No vehicle shall be operated or driven off the improved or paved roadways of any park or parkway unless it is disabled.

(2) All stalled or disabled vehicles must be removed from paved roadways in parks and parkways so as to prevent obstruction of traffic. If not so removed by the owners then they may be removed by Department of Transportation forces or licensed tow operators at the expense of the owners and in such event neither the City nor such licensed tow operators shall be liable for damages caused to such vehicles during removal.

(3) No disabled vehicle shall be permitted to remain in a park for a longer period than two hours.

(f) **Parking.** No person shall, in any park area designated as a parking space,

(1) fail to comply with an order of a law enforcement officer or any park employee or disobey or disregard the notices, prohibitions, instructions or directions on any park sign or parking meter including the Rules of Museums or Zoological or Botanical Gardens, posted on the grounds or buildings of said institutions.

(2) between one-half hour after sunset and one-half hour before sunrise, stop or park in a vehicle, except at places designated or maintained therefor.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 4-15

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 4 TRAFFIC RULES AND REGULATIONS

§4-15 Limitations Upon Dimensions and Weights of Vehicles.

(a) **Definitions.** (1) **Highway.** When used in this section, a highway shall mean the entire width between the boundary lines of every public way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and includes any street, avenue, road, square, place, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct, underpass and any private street open to public motor vehicle traffic.

(2) **Exception.** The provisions of this section shall not apply to any vehicle authorized by the Federal Surface Transportation Assistance Act of 1982, as amended, when such vehicle is operating pursuant to the provisions of such act.

(b) **Dimensions and weights of vehicles.** No person shall operate or move, or cause or knowingly permit to be operated or moved on any highway or bridge any vehicle or combination of vehicles of a size or weight exceeding the limitations provided for in this subdivision (b).

(1) **Width of vehicle.** The width of a vehicle, inclusive of load, shall not be more than eight feet except that the width of school buses and fire vehicles shall not exceed 98 inches and the width of buses having a carrying capacity of more than seven passengers shall not exceed 102 inches.

(2) **Height of vehicle.** The height of a vehicle from underside of tire to top of vehicle, including its load, shall not be more than 13 1/2 feet; provided, however, that air cargo carried in containers and pallets loaded onto flatbed trucks that thereby exceed such height may travel between any airport under the jurisdiction of the port of New York authority

and off-airport facilities involved in the handling of air cargo located within one mile of such airport on local routes to be designated by the Commissioner. Any such vehicle on such route shall not be required to obtain a permit for such travel.

(3) **Length of single vehicles.** The length of a single vehicle, inclusive of load and bumpers shall not be more than 35 feet. The provisions of this paragraph (3) shall not apply to semitrailers, fire vehicles, single unit buses having a capacity of more than fifteen passengers, provided the length of such buses does not exceed 45 feet; or articulated buses provided the length of such bus does not exceed 65 feet. Operators of buses longer than 45 feet in length may be required to demonstrate that on-street stops and terminal areas used by such buses are of sufficient length to accommodate them. In no case shall any bus that has a turning radius greater than 50 feet operate without a permit for such operation issued by the Commissioner;

(4) **Length of combinations of vehicles.** The total length of a combination of vehicles, inclusive of load and bumpers, shall not be more than 55 feet, except that the combination of vehicle, load and bumper of vehicles hauling poles, girders, columns or other similar objects of great length which are indivisible, shall not be more than 60 feet. The provisions of this paragraph (4) shall not apply to any fire vehicle or to a vehicle or combination of vehicles that is disabled and unable to proceed under its own power and is being towed for a distance of not more than ten miles for the purpose of repair or removal from the highway.

(5) **Number of wheels and axles.** In determining the number of wheels and axles on any vehicle or combination of vehicles within the meaning of this subdivision (b), only 2 wheels shall be counted for each axle, and axles that are fewer than 46 inches apart from center to center shall be counted as 1 axle. However, in the case of multiple tires or multiple wheels, the sum of the widths of all tires on a wheel or combination of wheels shall be taken in determining tire width.

(6) **Weight per inch of tire.** The weight per inch width of tire of any one wheel of a single vehicle or a combination of vehicles, equipped with pneumatic tires, when loaded, shall not be more than 800 pounds.

(7) **Weight on one wheel.** The weight on any one wheel of a single vehicle or a combination of vehicles, equipped with pneumatic tires, when loaded, shall not be more than 11,200 pounds.

(8) **Weight on one axle.** The weight on any one axle of a single vehicle or combination of vehicles, equipped with pneumatic tires, when loaded, shall not be more than 22,400 pounds.

(9) **Weight on two axles.** The weight on any two consecutive axles of a single vehicle or a combination of vehicles, equipped with pneumatic tires, when loaded, and when such axles are spaced fewer than 10 feet from center to center, shall not be more than 36,000 pounds. Axles shall be counted as provided in paragraph (5) of this subdivision (b).

(10) **Weight on three axles.** A single vehicle or a combination of vehicles having 3 axles or more and equipped with pneumatic tires, when loaded, may have a total weight on all axles not to exceed 34,000 pounds, plus 1,000 pounds for each foot and major fraction of a foot of the distance from the center of the foremost axle to the center of the rearmost axle. Axles shall be counted as provided in paragraph (5) of this subdivision (b). In no case, however, shall the total weight exceed 80,000 pounds without any tolerance for enforcement purposes.

(11) **Weight on solid rubber tires.** A vehicle or combination of vehicles equipped with any solid rubber tires shall not have a load weighing more than 80% of the total weight permitted in this subdivision (b) for pneumatic tires.

(12) **Width of tires.** For the purpose of this subdivision (b), the width of pneumatic tires shall be ascertained by measuring the greatest width of the tire casing when the tire is inflated. The width of solid rubber tires shall be ascertained by measuring the width of the tire base channel or between the flanges of the metal rim. No vehicle equipped with solid rubber tires, which has at any point less than 1 inch of rubber above the top or beyond the flange or

rim, shall be operated upon a public highway. The width of metal tires shall be ascertained by measuring the width of contact of the tire with the road surface.

(13) **Weight and height restrictions on bridges, viaducts and other structures.** No person shall operate or move a vehicle or combination of vehicles over, on or through any bridge, viaduct or other structures on any highway if the weight of such vehicle or combination of vehicles and load is greater than the posted capacity of the structure or exceeds the height of the posted clearance as shown by an official sign or other marking or device.

(14) **Other limits also in effect.** Nothing m this subdivision (b) shall be construed as preventing the enforcement of rules now in effect or hereafter promulgated by the Department of Transportation further limiting the size and weight of vehicles in designated areas.

(15) **Permits.** Upon application in writing showing good cause, the Commissioner may issue a permit to operate or move a vehicle or a combination of vehicles, the weights and dimensions of which exceed the limitations provided for in this subdivision (b), upon any highway under his/her jurisdiction. Every such permit may designate the route to be traversed and may contain any other restrictions or conditions deemed necessary by the Commissioner. Every such permit shall be carried on the vehicle to which it refers and shall be open to the inspection of any law enforcement officer or any inspector of the Bureau of Weights and Measures of the Department of Consumer Affairs of the City of New York. All permits issued shall be revocable by the Commissioner at his/her discretion without a hearing or the necessity of showing cause.

(i) If an operator of a vehicle with a gross weight of 300,000 pounds or more seeks to cross a bridge under the jurisdiction of the Department of Transportation of the City of New York, the operator must comply with the following:

(A) A load rating determined by a New York State licensed Professional Engineer with at least three years experience in the design, inspection and load rating of bridges must be submitted with the permit application. The information contained within such load rating shall include, but is not limited to: (1) the ratings for the inventory and operating level for all structural elements of the bridge so that the critical element of the bridge is identified; (2) the actual weight of the vehicle per axle and the actual axle spacing; and (3) the method used for establishing the capacity of the bridge(s). Load ratings shall be submitted for each bridge on the travel route. Load ratings should conform to "Level 1" load ratings pursuant to New York State Department of Transportation Engineering Instructions for Load Ratings and the latest edition of the American Association of State Highway and Transportation Officials (AASHTO) Condition Evaluation of Bridges. Each load rating must be stamped and certified by the licensed Professional Engineer who prepared it.

(B) Within one week from the vehicle's crossover of the bridge(s), the permittee must file a post inspection report of the bridge(s) with the Department. The post inspection report should analyze the structural integrity of the bridge(s), to the Department's satisfaction, as a result of the vehicle's crossover. If the post inspection report indicates any type of distress to the bridge(s), the permittee must rectify the distress and/or damage to the Department's satisfaction. The permittee may submit a pre-inspection report of the bridge's structural integrity for comparison purposes; otherwise the Department will use its latest biennial inspection reports for such purposes. Any pre or post inspection report must comply with the requirements set forth in the latest edition of the New York State Department of Transportation Bridge Inspection Manual. Any distress that is not identified in the pre-inspection report or the biennial inspection reports will be deemed to have been caused by the move.

(C) Should the permittee fail to comply with any of the requirements contained in this subparagraph, the Commissioner may refuse to issue future overweight and/or overdimensional vehicle permits to the permittee.

(ii) Reserved.

(16) **Permits for vehicles operating pursuant to governmental regulation.** (i) Where compliance with the requirements of a governmental regulatory agency necessitates exceeding the weight limitations provided herein, a

permit may be issued by the Commissioner on application therefor, for a vehicle to exceed such prescribed weight limitations to the extent necessary to meet the governmental regulatory requirements, but in no event shall the allowable total vehicle weight provided herein be exceeded.

(ii) The application shall include the type of vehicle, the manner and extent to which the weight limitations are to be exceeded, the design details causing such excess and a copy of the governmental regulatory agency requirements.

(17) **Fees.** An administrative fee of $35.00 shall be charged for each and every permit issued under this subdivision (b) unless otherwise provided by law. This fee shall not be refundable and is payable in addition to any other fees or charges provided for under the rules of the Department of Transportation.

(18) **Exemptions.** (i) **Fire Department vehicles.** The provisions of this subdivision (b) with respect to the limitations of the weight on axles shall not apply to vehicles of the Fire Department, but in no event shall the allowable total vehicle weight provided hereby be exceeded.

(ii) **Department of Sanitation vehicles.** The provisions of this subdivision (b) with respect to the width of a vehicle shall not apply to the sweepers of the Department of Sanitation, provided they do not exceed 11 feet in width.

(iii) **Vehicles working on highways.** The provisions of this subdivision (b) with respect to the width of a vehicle shall not apply to vehicles engaged in work on a highway.

(c) **Enforcement; measurement and weight of vehicles.** Any law enforcement officer or any inspector of the Department of Consumer Affairs of the City of New York having reason to believe that any vehicle or load is in violation of the restrictions in subdivision (b), above, is authorized to stop the vehicle on any public highway or private street open to public motor vehicle traffic and measure and weigh it by means of portable or stationary measures and scales. Any law enforcement officer or such inspector may require that the vehicle be driven to the nearest scales, if they are within 3 miles.

(d) **Responsibility for damages.** The owner and operator of any vehicle used in the business of a motor carrier, and the carrier, if the vehicle is actually engaged in the conduct of the business, shall be jointly and severally responsible for all damages, to any highway, bridge or culvert resulting from the movement over or under them of any such vehicle that violates any of the weight or size provisions of subdivision (b) above.

(e) **Special concrete plant.** Upon application in writing and for cause shown, the Commissioner may issue permits to exceed the maximum weight limits provided for in these rules for two- or three-axle vehicles operated in connection with the manufacture or supply of concrete for construction projects located in New York City, provided that such vehicles are registered to or leased by the owner of a manufacturing facility constructed subsequent to January 1, 1986 on land provided by the City for such purposes.

(f) **Annual overweight load permit.** (1) **Permits generally.** Except where inconsistent with any federal law, rule or regulation, the Commissioner may issue an annual oveweight load permit, as provided in subdivision fifteen of section three hundred eighty-five of the Vehicle and Traffic Law, to expire on the date of expiration of the registration of the vehicle, for any vehicle designed and constructed to carry loads that are not of one piece or item, which vehicle currently is registered in this State and operational on public highways in this State and which was registered in this State and operational on public highways in this State immediately prior to January first, nineteen hundred eight-six, in accordance with the following subparagraphs. The Commissioner also may issue an annual permit to a vehicle or combination of vehicles which replaces a vehicle, which vehicle or combination of vehicles was registered in this State and operational on public highways in this State immediately prior to January first, nineteen hundred eighty-six, provided the manufacturer's recommended maximum gross weight of the replacement vehicle or combination of vehicles does not exceed the weight for which a permit may be issued and the maximum load to be carried on the replacement vehicle or combination of vehicles does not exceed the maximum load which could have been carried on the vehicle being replaced or the registered weight of such vehicle, whichever is lower, in accordance with the

following subparagraphs. Motor carriers having apportioned vehicles registered under the international registration plan either must have a currently valid permit as of January first, nineteen hundred ninety-four or shall have designated New York as their base state under the international registration plan in order to be eligible to receive such permit.

If a permit holder operates a vehicle or combination of vehicles in violation of any posted weight restriction, the permit issued to such vehicle or combination of vehicles shall be deemed void as of the next day and shall not be reissued for a period of twelve calendar months; provided, however, that if such violation is adjudicated in favor of the permittee by the New York State Traffic Violations Bureau, the permit shall be reinstated immediately upon presentation of a copy of such judgment to the Commissioner.

(i) A permit may be issued for a vehicle having at least three axles and a wheelbase not exceeding forty-four feet nor less than seventeen feet or for a vehicle with a trailer not exceeding forty feet.

A permit may only be issued for such a vehicle having a maximum gross weight not exceeding seventy-nine thousand pounds and any tandem axle group weight shall not exceed fifty-nine thousand pounds, and any tridem shall not exceed sixty-four thousand pounds.

(ii) A permit may be issued only until December thirty-first, nineteen hundred ninety-nine for a vehicle or combination of vehicles that has been permitted within the past four years having five axles and a wheelbase of at least thirty-six and one-half feet. The maximum gross weight of such a vehicle or combination of vehicles shall not exceed one hundred five thousand pounds and any tandem axle group weight shall not exceed fifty-one thousand pounds.

A permit may be issued for a vehicle or combination of vehicles having at least five axles and a wheelbase of at least thirty feet. The maximum gross weight of such vehicle or combination of vehicles shall not exceed ninety-three thousand pounds and any tandem axle group weight shall not exceed forty-five thousand pounds and any tridem axle group weight shall not exceed fifty-seven thousand pounds.

(iii) A permit may be issued for a vehicle or combination of vehicles having at least five axles or more and a wheelbase of at least thirty-six and one-half feet, provided such permit contains routing restrictions.

Until December thirty-first, nineteen hundred ninety-four, the maximum gross weight of a vehicle or combination of vehicles permitted under this subparagraph shall not exceed one hundred twenty thousand pounds and any tandem or tridem axle group weight shall not exceed sixty-nine thousand pounds, provided, however, that any replacement vehicle or combination of vehicles permitted after January first, nineteen hundred ninety-five, shall have at least six axles, any tandem axle group shall not exceed fifty thousand pounds and any tridem axle group shall not exceed sixty-nine thousand pounds.

After December thirty-first, nineteen hundred ninety-four, the tridem axle group weight of any vehicle or combination of vehicles issued a permit under this subparagraph shall not exceed sixty-seven thousand pounds, any tandem axle group weight shall not exceed fifty thousand pounds and any single axle weight shall not exceed twenty-five thousand seven hundred fifty pounds.

After December thirty-first, nineteen hundred ninety-nine, all vehicles issued a permit under this subparagraph must have at least six axles.

(iv) A permit may be issued for a vehicle having two axles and a wheelbase not less than ten feet, with the maximum gross weight not in excess of one hundred twenty-five percent of the total weight limitation as set forth in subdivision ten of section three hundred eighty-five of the New York State Vehicle and Traffic Law. Furthermore, any axle weight shall not exceed twenty-seven thousand pounds.

(2) **Combination permits.** (i) Each power unit of a combination of vehicles must have its own annual overweight load permit. A power unit may be used to obtain any number of permits for different combinations of vehicles as long

as each permit has a maximum of five trailers per power unit. Only the first permit issued to a power unit pursuant to this paragraph is transferable pursuant to subparagraph (ii) of paragraph three of this subdivision.

(ii) A permit issued to a power unit for a combination of vehicles under subparagraph (i) of this paragraph may not be used for trailers other than those specifically listed on each permit.

(iii) All trailers must be listed on the corresponding permit by vehicle identification number (VIN), license plate number or trailer certificate of title number.

(iv) For each permit issued to a power unit for a combination of vehicles, up to five trailers will be listed with the payment of a $25.00 fee for each trailer other than the first trailer in addition to the permit fee set forth in subparagraph (ii) of paragraph six of this subdivision.

(3) **Replacement vehicle permits.** A "replacement vehicle" is a vehicle or combination of vehicles that replaces a vehicle with a current annual overweight load permit. A replacement vehicle may be eligible for an annual overweight load permit, subject to the following:

(i) A replacement vehicle or combination of vehicles may be eligible for an annual overweight load permit, provided the manufacturer's recommended maximum gross weight of the replacement vehicle or combination of vehicles does not exceed the weight for which a permit may be issued pursuant to this section and the maximum load to be carried on the replacement vehicle or combination of vehicles does not exceed the maximum load which could have been carried on the vehicle being replaced or the registered weight of such vehicle, whichever is lower.

(ii) Effective October 1, 1995, an annual overweight load permit may only be transferred to a replacement vehicle with the same registrant or transferred with the permitted vehicle as part of the sale or transfer of the permit holder's business. Acceptable forms of proof of the sale or transfer of the permit holder's business shall include, but not be limited to, a notarized statement, a statement attested to by at least two independent witnesses, a certified copy of the document of sale or transfer, a will or other official document disposing of the business. Only one permit issued to a power unit pursuant to paragraph two above is eligible for transfer.

(iii) **Banking.** (A) For purposes of this section, "banked weight" shall mean the New York State highest registered gross legal weight of a vehicle or combination of vehicles prior to April first, nineteen hundred eighty-seven; such vehicle or combination of vehicles must have been registered in New York State and operational on public highways in this State immediately prior to January first, nineteen hundred eighty-six in order to be part of the banked weight system.

(B) Excess weight capacity that can be banked arises from the following situations:

(a) a replacement vehicle has a gross vehicle weight less than the banked weight capacity of the replaced vehicle; or

(b) the statutory reduction in allowable maximum weights under the permit results in a permissible maximum weight less than the banked weight capacity; or

(c) there is a voluntary surrender of a permit or permits in order to obtain one or more replacement permits, and there is excess weight after the issuance of the new permit or permits; or

(d) there is a voluntary surrender of a permit without obtaining a new permit.

(C) Any vehicle whose permit has been surrendered voluntarily, and its weight banked, cannot obtain another annual overweight load permit.

(D) Banked weight can be used only to justify the acquisition of additional vehicles or combinations of vehicles

pursuant to this subdivision.

(a) Claims of replacement vehicle rights based on banked weight capacity must indicate the source of the banked weight capacity.

(b) The banked weight capacity for any replacement vehicle or combination of vehicles shall not exceed the allowable permitted weight for such replacement vehicle or combination of vehicles, and shall not exceed the gross weight capacity of the replaced vehicle or combination of vehicles.

(c) Unused banked weight capacity cannot justify a replacement vehicle or combination of vehicles that has a gross weight capacity greater than the replaced vehicle or combination of vehicles.

(d) Any replacement vehicle may be replaced pursuant to the provisions of this section; when a replacement vehicle; has been replaced it becomes ineligible for further annual overweight load permits pursuant to this section.

(E) If a permit is revoked pursuant to the provisions of this subdivision, the permitted weight cannot be banked.

(4) **Leasing.** (i) The lessor of a leased vehicle may obtain a permit for the vehicle pursuant to this subdivision (f).

(ii) The lessee of a leased vehicle who has an exclusive leasing arrangement that exceeds thirty days will be presumed to be the registrant for purposes of obtaining a permit, unless shown otherwise.

(iii) Where a leasing agreement is for thirty days or less, and the lessor has not obtained a permit for the leased vehicle, the lessee must obtain a single use permit for each day of operation of the leased vehicle pursuant to paragraph fifteen of subdivision (b) of this section.

(5) **Permit application.** (i) **General.** (A) Except as otherwise provided in this section for daily permits, eligible vehicles or combinations of vehicles exceeding allowable weights pursuant to law are required to obtain an annual overweight load permit from the Commissioner pursuant to this subdivision in order to operate on those highways under the jurisdiction of the Commissioner. An annual overweight load permit is not valid unless the vehicle or combination of vehicles is operated and maintained in accordance with the provisions of these Rules and with any other special requirements indicated on the permit.

(B) All applications must be on the forms prescribed by and available from the Commissioner.

(C) The permit application and procedures for granting permits shall be made available to a registrant upon request at the Department of Transportation, Authorized Permits and Parking Division, by mail or in person, and must be completed in all respects by the registrant or his legal representative. The applicant must be the registrant of the vehicle, except where there is a leased vehicle as provided in this subdivision.

(ii) **Proof of registration.** (A) All vehicles, including vehicles to be replaced, must have been registered in this State and operational on public highways in the State of New York immediately prior to January first, nineteen hundred eighty-six. To obtain a permit, the registrant must show proof of valid New York State registration for the vehicle or combination of vehicles and must maintain such New York State registration for the duration of the permit.

(B) The applicant must submit with his application a copy of the registration of each vehicle or replacement vehicle.

(C) The burden of proof in establishing the validity and existence of the New York State registration is upon the applicant.

(iii) **Identification of vehicle and load.** (A) The power unit shall be identified by make, year of manufacture, model number, vehicle identification number (VIN), and license plate number.

(B) The manufacturer's recommended gross weight rating and the registered gross vehicle weight shall be indicated on an annual overweight load permit application for replacement vehicles.

(C) Manufacturer's maximum axle weight(s), axle spacing, number of tires, and maximum tire load spacing shall be indicated on an annual overweight load permit application for all vehicles.

(iv) **Procedure.** The applicant must complete the required application information and submit the required number of copies of such application, together with the required permit fee(s), as well as any required documentation, to the Commissioner by mail or in person. All applications must be signed by the registrant or his legal representative.

(v) **Reapplication fee.** When a reapplication is made for a permit for the same vehicle or combination of vehicles that have been denied a permit, the initial annual vehicle fee shall be increased by $25.00.

(vi) **No refund after granting of permit.** No refund shall be made once an application for a permit has been filed and a permit granted by the Commissioner.

(vii) **False information voids permit.** Permits which have been issued on the basis of falsely stated information shall be null and void.

(viii) **New owners must obtain new permits.** If the registrant of the vehicle has been changed after a permit has been issued, the new owner(s) must obtain a modified permit.

(ix) **Permit application information.** (A) Registrants of vehicles eligibile for permits pursuant to this section must furnish to the Commissioner a certified copy of the vehicle's current New York State registration or registration pursuant to the international registration plan with New York State designated as the base state. The registrant also must provide a certified copy of the vehicle's registration, or other verifiable proof acceptable to the Commissioner, demonstrating that the vehicle was registered in New York State immediately prior to January first, nineteen hundred eighty-six; once such fact has been established with the Commissioner, subsequent permit applications do not require such proof, provided the most recent permit number for the vehicle is provided in the new permit application.

(B) The registrant must furnish to the Commissioner, vehicle measurements consisting of:

(a) Trailer length; and

(b) Number of axles; and

(c) Axle spacing; and

(d) Manufacturer's recommended gross vehicle weight; and

(e) Total wheelbase measurement (including tractor/steering axle); and

(f) Tire size and number of tires of each axle; and

(g) Manufacturer's maximum axle weight rating.

(6) **Fees.** (i) The following fees shall be charged and collected by the Commissioner for obtaining an annual overweight load permit. Fees shall be paid by money order, certified check, bank check, check drawn on a New York State bank, or a negotiable instrument acceptable to and made payable to the "New York City Department of Transportation." Fees must accompany each permit application. Improperly filed permit applications shall be subject to an administrative fee of $25.00.

(ii) The fee for an annual overweight load permit shall be $600 if for a period of six months or more. The fee for an

annual overweight load permit shall be $300 if for a period of less than six months.

(iii) If a check delivered to the Commissioner or his agent as payment of any fee for the registration of any vehicle or combination of vehicles is dishonored for insufficient funds, all permits issued in the name of that registrant shall be suspended and no other permit shall be issued to such person until full satisfaction of the fee is made and an additional fee of $25.00 is paid to the Commissioner. No such suspension shall be issued until thirty days after notification is mailed to the registrant at the address given on the application for the permit. If satisfaction is made within thirty days from the date of mailing of such notification, no suspension shall be issued and no additional fee shall be charged.

(g) **Crane Permits.** (1) Upon application in writing, the Commissioner may issue a special hauling permit to move certain mobile hoisting machines, also known as self-propelled cranes, the weight and dimensions of which exceed the limitations provided herein, upon any highway under his/her jurisdiction. Such hoisting machines shall be considered to constitute a nondivisible load.

(2) The special hauling permit, which shall expire on the 31st day of December next succeeding the date of issuance, may designate the route to be traversed and contain any other restrictions deemed appropriate by the Commissioner.

(3) The permittee shall be required to secure and maintain owners' protective liability and property damage insurance coverage in such amounts and upon such terms as deemed appropriate by the Commissioner.

(4) The fee for the issuance of such annual special hauling permit or renewal thereof shall be $100.00.

(h) **Vehicular weights on F.D.R. Drive.** No person shall operate or cause to be operated any vehicle in excess of 8000 lbs. (4 tons), including the weight of passengers and cargo, on the F.D.R. Drive northbound from 23rd Street to 63rd Street and the F.D.R. Drive southbound from 63rd Street to 23rd Street. These vehicles include, but shall not be limited to trucks, vans, government-owned vehicles, stretch limousines and buses. For the purposes of enforcement, signs need not be posted for this rule to be in effect.

(i) **Overdimensional and/or Overweight Vehicle Bulk Milk Permit.**

(1) **Permits Generally.**

(i) Except where inconsistent with any federal or state law, rule or regulation, the Commissioner may issue a permit, as provided for in paragraph (c) of subdivision fifteen of section three hundred eighty-five of the Vehicle and Traffic Law, to operate or move a combination of vehicles, which for the purpose of this rule shall be limited to one power unit and one trailer except as provided in subparagraph (viii) of paragraph (3) of this subdivision, designed and constructed to carry milk in bulk, the lengths and/or weights of which exceed the limitations provided in subdivision b of this section.

(ii) The permit shall authorize only the transportation of bulk milk within the City of New York to a milk processing facility located within the City of New York or the transportation by such a combination of vehicles out of the City of New York empty or carrying bulk cream, at weights not to exceed the limitations provided in subdivision b of this section, from the milk processing facility.

(iii) A permit issued pursuant to this subdivision shall designate a route approved by the Commissioner. A combination of vehicles operating under a permit issued pursuant to this subdivision may only travel along the route designated on the permit. There shall be one permit per combination of vehicles allowing the combination of vehicles to enter the City of New York and a separate permit allowing the combination of vehicles to leave the City of New York.

(iv) Combinations of vehicles designed and constructed to carry milk in bulk that exceed allowable lengths and/or weights pursuant to law are required to obtain a permit from the Commissioner pursuant to this subdivision in order to

operate on those highways under the jurisdiction of the Commissioner.

(v) No permit shall be issued for a combination of vehicles that exceeds 99,000 pounds.

(vi) Permits shall be issued on a quarterly basis.

(2) **Permit Application.**

(i) **Generally.**

(A) A permit issued pursuant to this subdivision is not valid unless the combination of vehicles is operated and maintained in accordance with the provisions of this subdivision and with any other special requirements indicated on the permit.

(B) The applicant shall be the registrant of the combination of vehicles except, in the case of a combination of vehicles leased pursuant to an exclusive leasing arrangement that exceeds thirty days, the applicant shall be the lessee. The applicant shall supply his/her Federal Tax ID number.

(C) The permit application and the procedures for granting permits shall be made available to an applicant upon request at the Department of Transportation, Division of Bridges, Truck Permit Unit, by mail, email or in person, and shall be completed in all respects by the applicant or his/her legal representative.

(D) All applications shall be on the forms prescribed by and available from the Commissioner.

(ii) **Identification of vehicle and load.** The power unit and trailer(s) shall be identified on the application by make, year of manufacture and license plate numbers and State.

(iii) **Vehicle Measurements.** Applicants shall furnish to the Commissioner all of the following vehicle measurements:

(A) Trailer length;

(B) Number of axles, including axle spacing and axle weights;

(C) Total wheelbase measurement (including tractor/steering axle);

(D) Overall width;

(E) Overall length;

(F) Overall height; and

(G) Total gross vehicle weight including load (tractor, trailer and load).

(iv) **Attestation.** Applicants shall furnish to the Commissioner a sworn and notarized statement attesting that the vehicles for which a permit application has been submitted will be used solely for the transport of bulk milk or cream.

(v) **Procedure.** The applicant shall complete the required application information and submit the required number of copies of such application, together with the required permit fee(s), as well as any required documentation, to the Commissioner by mail or in person. All applications shall be signed by the applicant or his/her legal representative.

(vi) **Reapplication Fee.** When a reapplication is made for a permit under this subdivision for the same combination of vehicles that has been denied a permit, the initial permit fee shall be increased by an administrative fee of $25 in accordance with subparagraph (vii) of paragraph (3) of this subdivision.

(vii) **No refund after granting of permit.** No refund shall be made once an application for a permit under this subdivision has been filed and a permit granted by the Commissioner.

(viii) **False information voids permit.** Permits that have been issued on the basis of falsely-stated information shall be null and void.

(ix) **New owners shall obtain new permits.** If the ownership of a combination of vehicles, or the identity of the lessee in the case of a combination of vehicles leased pursuant to an exclusive leasing arrangement that exceeds thirty days, changes after a permit under this subdivision has been issued, the new owner(s) or lessee(s) shall obtain a modified permit and shall pay the applicable quarterly fee specified in paragraph (3) of this subdivision.

(3) **Permit Fees.**

(i) The following fees shall be charged and collected by the Commissioner for obtaining a permit or modified permit, issued on a quarterly basis, pursuant to this subdivision. Fees shall be paid by money order, certified check, bank check, check drawn on a New York State bank, or a negotiable instrument acceptable to and made payable to the "New York City Department of Transportation." Fees shall accompany each permit application. The fee for a permit issued pursuant to this subdivision shall be $650 per combination of vehicles, except as otherwise provided in this subparagraph (3).

(ii) At the beginning of the third year following the effective date of this Rule:

(a) If the total number of permits pursuant to this subdivision issued to the applicant in the second year following the effective date of this Rule is at least 25% less than the total number of permits issued to the applicant in the first year following the effective date of this Rule ("the base-line year amount"), then the fee for a permit shall be $650 per combination of vehicles.

(b) Otherwise, the fee for a permit shall be $715 per combination of vehicles.

(iii) At the beginning of the fourth year following the effective date of this Rule:

(a) If the total number of permits pursuant to this subdivision issued to the applicant in the third year following the effective date of this Rule is at least 50% less than the base-line year amount, then the fee for a permit shall be $650 per combination of vehicles.

(b) Otherwise, the fee for a permit shall be $780 per combination of vehicles.

(iv) At the beginning of the fifth year following the effective date of this Rule:

(a) If the total number of permits pursuant to this subdivision issued to the applicant in the fourth year following the effective date of this Rule is at least 75% less than the base-line year amount, then the fee for a permit shall be $650 per combination of vehicles.

(b) Otherwise, the fee for a permit shall be $812.50 per combination of vehicles.

(v) At the beginning of the sixth year following the effective date of this Rule:

(a) If the total number of permits pursuant to this subdivision issued to the applicant in the fifth year following the effective date of this Rule is 100% less than the base-line year amount, the fee for a permit shall be $650 per combination of vehicles.

(b) Otherwise, the fee for a permit shall be $845 per combination of vehicles.

(vi) Permit fees specified in this paragraph shall apply separately to permits to enter the City of New York and permits to leave the City of New York.

(vii) Reapplication for a permit that has been denied shall be subject to an administrative fee of $25.

(viii) The permit fees provided in subparagraphs (i) through (v) of this paragraph shall apply to permits for one specific power unit and one specific trailer. Applicants may apply for a quarterly permit under this subdivision to attach up to four additional specific trailers to one specific power unit, provided that only one trailer may be used with such power unit at any given time. The fee for a multiple trailer-single power unit combination permit shall be $100 per quarter more than the permits fees provided in subparagraphs (i) through (v) of this paragraph.

(ix) If a check delivered to the Commissioner or his/her agent as payment of any fee for the permitting of any combination of vehicles is dishonored for insufficient funds, all permits issued in the name of that applicant shall be suspended and no other permit shall be issued to such person until full satisfaction of the fee is made and an additional fee of $25 is paid to the Commissioner. No such suspension shall be issued until thirty days after notification is mailed to the applicant at the address given on the application for the permit. If satisfaction is made within thirty days of mailing such notification, no suspension shall be issued and no additional fee shall be charged.

(4) **Expiration of Permit Program.** After the sixth year following the effective date of this Rule, no permit shall be issued.

HISTORICAL NOTE

Section repealed and added City Record Apr. 22, 1992 eff. May 22, 1992.

Section in original publication July 1, 1991.

Subd. (b) par (2) amended City Record Mar. 17, 1995 eff. Apr. 16, 1995.

Subd. (b) par (10) amended City Record Feb. 9, 2009 §1, eff. Mar. 11, 2009. [See Note 2]

Subd. (b) par (15) amended City Record Jan. 3, 2007 §1, eff. Feb. 2, 2007. [See Note 1]

Subd. (b) par (17) amended City Record May 13, 2009 §1, eff. June 12, 2009. [See Note 3]

Subd. (f) repealed and added City Record Mar. 27, 1995 eff. Apr. 26, 1995.

Subd. (f) par (4) subpar (iii) amended City Record Mar. 28, 2005 §12, eff. Apr. 27, 2005. [See T34

§4-01 Note 2]

Subd. (f) par (5) subpar (i) item (C) amended City Record Mar. 19, 2001 eff. Apr. 18, 2001.

Subd. (h) amended City Record Apr. 1, 1999 eff. May 1, 1999.

Subd. (i) added City Record June 17, 2009 §1, eff. July 17, 2009. [See Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 3, 2007:

The Commissioner of the Department of Transportation is authorized to promulgate rules regarding traffic operations in the City pursuant to §2903(a) of the New York City Charter.

Paragraph (15) of subdivision (b) of §4-15 is being amended to require applicants filing for an overweight and/or overdimensional vehicle permit to file with their permit application an engineer's load rating for every bridge under the jurisdiction of the Department of Transportation which the applicant expects to cross. It also requires post inspection reports to be filed by the permittee's engineer for a structural integrity analysis of the bridge(s) crossed. This will expedite the permit process and safeguard the integrity of the bridges subjected to heavy loads.

2. Statement of Basis and Purpose in City Record Feb. 9, 2009: The Commissioner of Transportation is authorized to promulgate rules regarding streets and highways in the City pursuant to §2903(b) of the New York City Charter and Title 19 of the New York City Administrative Code. The Department is increasing the legal weight limit for trucks in order to comply with state-wide standards. Engineers within the Department currently use the same formula as those from the New York State Department of Transportation when evaluating the permissible weight of vehicles crossing structures in New York City. As State DOT permits weight of up to 80,000 pounds, the Department wants its rules to be accordingly consistent in order to minimize disruptions in interstate commerce.

3. Statement of Basis and Purpose in City Record May 13, 2009: The Commissioner of Transportation is authorized to promulgate rules regarding parking and traffic in the City pursuant to §2903 of the New York City Charter. Section 4-15 is being amended to increase the fees collected for overweight and overdimensional truck permits. The fee currently charged by the Department no longer accurately reflects administrative and labor costs incurred in processing these permits.

4. Statement of Basis and Purpose in City Record June 17, 2009: The Commissioner of Transportation is authorized pursuant to Section 2903(a)(1) of the New York City Charter to promulgate rules and regulations for the conduct of vehicular and pedestrian traffic in the streets, squares, avenues, highways and parkways of the City of New York. This rule amends section 4-15 of Chapter 4 of Title 34 of the Rules of the City of New York by adding a new subdivision (i) to authorize the issuance of permits for overdimensional and/or overweight combinations of vehicles utilized by haulers of bulk milk. On a daily basis, over one hundred vehicles hauling bulk milk enter the City of New York to transport bulk milk to processing facilities and exit the City empty or carrying bulk cream. The vast majority of these vehicles currently exceed the length and weight limitations set forth in section 4-15 for vehicles operating or moving on highways or bridges in the City. These overdimensional and overweight trucks damage City streets and highways. At the same time, milk haulers will require additional time to convert their fleets to trucks that comply with the City's length and weight requirements. Section 385(15)(d) of the Vehicle and Traffic Law recognizes that milk haulers may be offered permits not available to other truck haulers. Thus, the Commissioner promulgates a rule that will provide the haulers of bulk milk an incentive to phase in, over a six-year period, the use of smaller trucks that, when carrying bulk milk or cream, would meet the City's length and weight limitations. To accomplish this goal, the rule authorizes the issuance of quarterly overdimensional and overweight permits over a period of six years and imposes a schedule of fees that increase if the applicant does not decrease the number of permits required by a certain percentage. The increases will be implemented beginning with those permits issued during the third year of the rule if the number of permits issued during the prior year has not decreased by a fixed percentage from the first year that the proposed rule is in effect. After the sixth year, no permits will be issued.

CASE NOTES

¶ 1. Absent reasonable suspicion of a vehicle violation involving excess weights of vehicles, a "routine traffic check" to determine whether the vehicle is in compliance with the law is permissible only when conducted according to non-arbitrary, non-discriminatory uniform procedures for detecting violations. Where there is no evidence that the petitioner was stopped pursuant to such a procedure, the charges of violation of Section 34 RCNY §4-15 must be dismissed. Casolino Interior Demolition Corp. v. Martinez, 29 A.D.3d 691, 814 N.Y.S.2d 720 (2nd Dept. 2006).

34 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-01 Definitions.

Access-a-Ride. "Access-a-Ride" is the service name of the City-sponsored program to provide transportation to eligible persons.

Advance-reservation trip. "Advance-reservation trip," means a one-way trip for which a reservation shall have been made in accordance with §5-03(b) hereof.

Carrier. "Carrier" means a company that has contracted with the City to provide Access-a-Ride transportation to eligible persons in a borough of the City.

Director. "Director" means the official of the City Department of Transportation whose duties consist of or include the management and oversight of Access-a-Ride, or his or her designee.

Eligible person. An "eligible person" means a transportation-disabled person who has been certified as eligible to participate in Access-a-Ride, in accordance with the requirements established by the Transportation Disabled Committee and set forth in the Access-a-Ride registration form.

Late cancellation. "Late cancellation" means any cancellation received by a carrier after 3:00 p.m. on the day preceding a scheduled subscription trip or advance-reservation trip.

No show. A "no show" means an occasion on which a participant has not cancelled a prescheduled subscription trip or advance-reservation trip and has subsequently failed to be present at the scheduled pick-up site as provided in

§5-05(a) hereof.

Office of Paratransit Operations. "Office of Paratransit Operations" means the City Department of Transportation's Office of Paratransit Operations, and any successor governmental office, bureau, or agency thereof.

Participant. "Participant" means an eligible person.

Subscriber. "Subscriber" means an eligible person who has been granted an Access-a-Ride subscription by the Office of Paratransit Operations.

Subscription trip. "Subscription trip" means a regularly scheduled one-way trip taken pursuant to an Access-a-Ride subscription.

Transportation Disabled Committee. "Transportation Disabled Committee" means the committee established pursuant to §15-b of the Transportation Law, and any successor committee, agency, bureau or entity thereof.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-02 [Reserved]

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-03 Subscription and Advance-Reservation Trips.

(a) **Subscriptions.** (1) Subscriptions shall be for not less than one one-way trip per week and not more than five round trips per week. The Office of Paratransit Operations may set an expiration date for each subscription, which in no case shall be later than three years after the date the subscription was granted.

(2) The Office of Paratransit Operations may hold one or more lotteries to select subscribers, in which case the lottery pool shall consist of all eligible persons who have applied for an Access-a-Ride subscription.

(b) **Advance-reservation trips.** An advance-reservation trip shall be reserved in advance by a participant not more than three days and not less than one day preceding the trip. Such trip may be provided on a space available basis. A participant may request a same-day trip, which trip the carrier shall also provide on a space-available basis.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 5-04

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-04 Cancellations.

(a) **Required notification of a cancellation**. A participant who for any reason is unable to take a scheduled trip shall notify the carrier no later than 3:00 p.m. on the day preceding the scheduled trip.

(b) **Repeated late cancellations.** Six or more late cancellations within a six-month period may result in the suspension of a participant from Access-a-Ride for up to one month, at the discretion of the Director.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 5-05

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-05 Participant Obligations For Pick-Up.

(a) **Pick-up time**. A participant shall wait at the prearranged pick-up site for at least five minutes before and at least thirty (30) minutes after the scheduled pick-up time.

(b) **Effect of a "no-show."** If there has been a "no-show" in the first part of a round trip, the carrier may automatically cancel the participant's return trip. The participant may request the carrier to reinstate the return trip, which trip the carrier shall provide on a space-available basis.

(c) **Repeated "no-shows."** Three or more "no-shows" within a six month period may result in the suspension of a participant from Access-a-Ride for up to one month, at the discretion of the Director.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 5-06

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-06 Eligibility Review Board.

(a) There shall be in the Access-a-Ride program of the Department an eligibility review board (the "Board") consisting of the assistant director of Access-a-Ride, who shall be chairperson, and two persons who shall be appointed by the Director, who shall serve on the Board at the pleasure of the Director, without compensation, and who are not otherwise employed by the Department. One of such two members shall be one of the following: a licensed physician, a license occupational therapist, a licensed physical therapist, a licensed rehabilitation counselor, chiropractor, certified social worker (C.S.W.) or a registered nurse. The other member shall be an eligible passenger. The chairperson shall have the power to exercise or delegate any of his or her functions, powers or duties as chairperson and member of the Board to any employee of the Department, subject to the written approval of the Deputy Commissioner of Transit Operations.

(b) The Director may appoint an alternate member, who shall meet the qualification requirements of paragraph (a) of this section, for any member who is unable to attend a particular meeting. The Director may appoint a replacement member to fill any vacancy on the Board.

(c) A quorum shall consist of a majority of the members of the Board, and any decision of the Board shall be approved by vote of a majority of the board.

(d) Any person who is the subject of a decision of the Department for any of the reasons set forth below may request the Board to review such decision:

(1) a denial of participation in Access-a-Ride because of a decision that he or she does not meet the criteria for

eligibility; or

(2) a termination of participation in Access-a-Ride because of a decision that his or her application was not certified in accordance with the eligibility requirements established by the Transportation Disabled Committee; or

(3) a suspension or termination of participation in Access-a-Ride in accordance with the rules of the Access-a-Ride program.

(e) When a person requests Board review of a Department decision, the Board shall review written materials provided to the Board by the Department and the person who is making the request for review. The Board, in its sole discretion, may request additional information from the Department and/or the person making the request or may provide the person making the request an opportunity to appear before the Board.

(f) After reviewing all information provided, the Board shall make a recommendation to the director of Access-a-Ride, who shall make the final decision. The Director shall inform the person who made the request of the Department's final decision.

HISTORICAL NOTE

Section added City Record Apr. 10, 1991 eff. May 10, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 5-07

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 5 PARATRANSIT PROGRAM (ACCESS-A-RIDE)

§5-07 Participant Behavior.

(a) No participant shall perform any act which causes or may tend to cause harm, injury or damage to any other participant in Access-a-Ride, to an employee of an Access-a-Ride carrier or the Access-a-Ride program, or to any vehicle or other property of an Access-a-Ride carrier.

(b) No participant shall cause harm to or interfere with the safe and efficient operation of Access-a-Ride service.

(c) A violation of any of the provisions of this section by a participant may result in the suspension or termination of such participant from Access-a-Ride, at the discretion of the Director.

HISTORICAL NOTE

Section added City Record Oct. 25, 1991 eff. Nov. 24, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 6 GENERAL PROVISIONS

§6-01 Adjudications.

New York City Department of Transportation adjudications regarding the fitness and discipline of agency employees will be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commissioner.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-01 Definitions.

Administrative Code. "Administrative Code" means the Administrative Code of the City of New York.

Charter. "Charter" means the New York City Charter.

Commissioner. "Commissioner" means the Commissioner of the Department of Transportation of the City of New York or his or her designee.

Department. "Department" means the Department of Transportation of the City of New York.

DCP. "DCP" means the Department of City Planning of the City of New York.

DoITT. "DoITT" means the Department of Information Technology and Telecommunications of the City of New York.

Improvement. "Improvement" means a tangible thing or object which may be installed on, over or under a street, or any private use of a street.

Public Service Corporation. "Public Service Corporation" means an entity subject to the jurisdiction of the Public Service Commission under the Public Service Law.

Revocable Consent. "Revocable Consent" means a grant of a right, revocable at will, (1) to any person to construct and use for private use pipes, conduits and tunnels under, railroad tracks upon, and connecting bridges over inalienable

property, (2) to an owner of real property or, with the consent of the owner, to a tenant of real property to use adjacent inalienable property for the purposes stated in §7-04 hereof or as may be permitted by rules of DoITT, or (3) to a public service corporation for facilities ancillary to, but not within, a franchise granted prior to July 1, 1990.

ULURP. "ULURP" means the Uniform Land Use Review Procedure as set out in §§197-c and 197-d of the Charter.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

DERIVATION

Former §7-01 Definitions amended City Record Apr. 22, 1993 eff. May 22, 1993.

Section added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 7-02

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-02 Requirement to Obtain a Revocable Consent.

No person or entity shall install or maintain any of the improvements listed in §7-04 of these rules without first obtaining a revocable consent from the Department. The Department shall not issue a revocable consent for any improvement which, in the judgment of DCP, has land use impacts or implications, unless such revocable consent has been reviewed and approved pursuant to ULURP. Revocable consents may not be assigned, transferred or otherwise conveyed without the prior written approval of the Commissioner.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7 footnote]

DERIVATION

Former §7-02 Private Improvements Eligible for Revocable Consents amended City Record Apr. 22, 1993 eff. May 22, 1993.

Section added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

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On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-03 DCP Review.

(a) The Department shall submit to DCP petitions for those improvements listed in §7-04(a) of these rules that do not meet the locational or dimensional standards in such §7-04(a). The Department shall also submit to DCP all petitions for the following improvements: bridge, above-ground cable, guard booth, information sign/kiosk, parking area for private use, and above-ground pipe/fuel line.

(b) DCP shall review each petition submitted by the Department to determine whether or not a proposed revocable consent has land use impacts or implications and whether, as a result, ULURP applies, and shall notify the Department of its determination. The Department shall notify the petitioner of the determination by DCP regarding the applicability of ULURP and shall stay its final decision pending ULURP approval.

(c) If ULURP is required, the petitioner shall obtain information and application forms pertaining to ULURP from DCP and file a ULURP application with DCP in accordance with the rules governing ULURP.

(d) No revocable consent shall be granted by the Department if the application for such consent has been disapproved pursuant to ULURP. A revocable consent may be granted by the Department if the application for such consent has been approved pursuant to ULURP or if DCP determines the proposed improvement has no land use impacts.

(e) The Department shall submit to DCP for review any petition for a renewal or amendment for an improvement listed in §7-04(a) of these rules where:

(1) such renewal or amendment includes a modification that does not meet a locational or dimensional standard in §7-04(a) or increases the degree of non-compliance with such locational or dimensional standard; or

(2) such petition is for a bridge, above-ground cable, guard booth, information sign/kiosk, parking area for private use, above-ground pipe/fuel line, and the renewal or amendment includes a modification to the location or an increase in the dimension of such improvement; or

(3) such petition is for a renewal or amendment of a consent that was approved by the City Planning Commission for a specific term, and the renewal or amendment would extend the consent beyond the term approved by the Commission.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

DERIVATION

Former §7-03 Processing Fees for Revocable Consents added City Record May 31, 1991 eff. June

30, 1991.

Subd. (a) amended City Record Apr. 22, 1993 eff. May 22, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

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Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-04 Eligible Improvements; Standards; Annual Rates.

(a) The Commissioner may, in his or her discretion, grant, renew, modify, or rescind revocable consents for any of the improvements listed in this subdivision to be constructed or maintained on, over, or under City streets, in accordance with the requirements set forth in §364 of the Charter. Except as otherwise provided, annual compensation for the improvements listed in this subdivision shall be as set forth herein and, unless otherwise provided, shall not increase during the term of the revocable consent.

(1) **Accessibility lift to provide access for people with disabilities.**

(i) **Standard.** The lift shall be stored at the building end of its run and shall include appropriate safety devices. The lift shall not extend more than five and one half feet in the direction of the curb from the base of the steps when in use. In no instance shall the lift or any portion thereof extend beyond the curbline when in use.

(ii) **Annual rate.** $25. The annual fee for an accessibility lift shall be in addition to the normal fee for a stoop or stairway.

(2) **Bench.**

(i) **Standard.** No bench shall be greater than six feet in length. Benches greater than four feet in length shall be designed to discourage people from reclining. Benches adjacent and parallel to the building shall be installed no more than six inches from the building face and, if multiple benches are installed, they shall be at least three feet apart. A bench which is not anchored to the sidewalk shall be placed against the building face during hours that the benefited

property is open to the public and shall be stored inside the building when the building is closed.

(ii) **Annual rate.** $150.

(3) **Bridge.**

(i) To be referred to DCP to determine whether the improvement has land use impacts.

(ii) **Annual rate.** See §7-10. If the structure is not in use, the rate shall be 10% of the rate in effect pursuant to the formulas described in §7-10.

(4) **Cable, above-ground.**

(i) To be referred to DCP to determine whether the improvement has land use impacts.

(ii) **Annual rate.** See §7-10.

(5) **Cellar door, including stair.**

(i) **Standard.** All cellar doors required by §27-292(b)(4) of the Administrative Code shall be constructed pursuant to the requirements of the Administrative Code.

(ii) **Annual rate.** See §7-10.

(6) **Clock.**

(i) **Standard.** The base shall be no more than 18 inches in diameter. The lowest portion of the clock face shall be at least eight feet above the sidewalk. The overall height of the clock shall not exceed 15 feet. The clockface shall be no more than two feet in diameter. Time shall be maintained accurately. The name or logo and address of the adjacent premises may be displayed on the clockface; however, the total display space shall be no greater than one third of the square footage of the clockface.

(ii) **Annual rate.** $300.

(7) **Conduit and underground cable.**

(i) **Standard.** All conduit shall be underground.

(ii) **Annual rate.** See §7-10.

(8) **Electrical socket.**

(i) **Standard.** All electrical sockets shall be installed pursuant to the requirements of the New York City Department of Buildings.

(ii) **Annual rate.** $25.

(9) **Enclosure for trash receptacle, adjoining a building, for private use.**

(i) **Standard.** The enclosure shall be of non-flammable construction and shall be rodent proof. The enclosure shall be between three feet and five feet high, except in areas in the Bronx, Queens, Brooklyn and Staten Island zoned for manufacturing, mixed-use (MX), special purpose districts which allow manufacturing, or for automotive or other heavy commercial uses (C8), where the enclosure shall be between three feet and ten feet high, and shall be securely affixed to the sidewalk, fence, building, or other appropriate fixture.

(ii) **Annual rate.** The greater of $5 per square foot of area, as projected onto a horizontal plane or $25, except in areas zoned for manufacturing, where the annual rate shall be $1 per square foot of area, as projected onto a horizontal plane.

(10) **Fenced or walled-in area, including the enclosing structure, not used for planting or parking, including a fenced or walled-in area containing a drainage basin or a shopping cart storage area.** An area enclosed by a privately installed guard rail shall be deemed a fenced-in area and shall be subject to the standards below. Fences may be approved for no more than one year pursuant to the provisions in §2-10(j) of Chapter 2 of this Title 34, provided the placement of such fences is for temporary security purposes.

(i) **Standard.**

(A) The fence shall be no fewer than three and no greater than four feet high in residential and commercial zoning districts and shall be no fewer than three and no greater than ten feet high in manufacturing zoning districts, as such zoning districts are set forth in the Zoning Resolution, except that athletic play field fences may extend as high as 15 feet. Smooth edged finials may be attached to fence posts up to a maximum height of four feet, six inches in residential or commercial zoning districts. No chisel points or spikes shall be included on fences shorter than eight feet, except as approved by the Landmarks Preservation Commission.

(B) The fence shall be constructed of non-flammable, non-wood material. The use of opaque material (such as masonry) is limited to the base of the fence up to 21 inches in height and to vertical columns spaced at least five feet apart. Solid or opaque materials may comprise no more than 35 percent of the total vertical area of the fence above any opaque base. For metal fences, picket interspace shall measure between four and five and three-quarters inches, and picket width may measure up to one inch wide. Chain-link, where approved, shall have a two inch mesh and shall not include screening. Barbed wire is permitted in manufacturing zoning districts only. Razor wire is prohibited.

(C) No sign shall be attached to a fence.

(ii) **Annual rate.**

(A) Except as provided in §7-04(a)(10)(ii)(B), below, the first year's annual rate shall be the greater of $1500 or (C × L × 0.16 × A), as defined in §7-10(a) of these rules, and subsequent years' rates shall be determined in accordance with §7-10(c) of these rules.

(B) For non-commercial use connected to a residential building of six or fewer units, the greater of $100 or (C × L × 0.01 × A), as defined in §7-10(a) of these rules.

(11) **Flagpole.**

(i) **Standard.** The base shall be no larger than 18 inches in diameter and no fewer than 30 inches in height.

(ii) **Annual rate.** None (pursuant to §19-125(e) of the Administrative Code).

(12) **Guard booth.**

(i) To be referred to DCP to determine whether the improvement has land use impacts.

(ii) **Annual rate.** See §7-10.

(13) **Information sign or kiosk.**

(i) To be referred to DCP to determine whether the improvement has land use impacts.

(ii) **Annual rate.** See §7-10.

(14) **Litter receptacle for public use.**

(i) **Standard.** The litter receptacle shall be constructed of non-flammable, non-wood material and shall be securely affixed to the sidewalk or sufficiently heavy to prevent movement without considerable force. The minimum height of the receptacle shall be two feet, six inches, the maximum height shall be four feet and the maximum width shall be three feet, with an overall area not to exceed nine square feet. No side of the receptacle shall exceed three feet in width. The litter receptacle may include the grantee's logo and/or building or institution name no greater than one square foot in size, if the receptacle is adjacent to the named property.

(ii) **Annual rate.** $25.

(15) **Overhead Building Projection in excess of that allowed by the Administrative Code.**

(i) **Standard.** Overhead building projections shall be permitted over the street provided the minimum height above the siewalk is ten feet and the depth of the projection does not exceed three feet ten inches, inclusive of any depth permitted by §27-313(a) of the Administrative Code, to a height 30 feet above the sidewalk. Above 30 vertical feet the permitted depth shall be four feet, ten inches, inclusive of any depth permitted by the Administrative Code. Except for architectural details such as cornices, brackets and belt courses, which may extend across the full street frontage of a building, projections shall not have an aggregate width at any level of the building greater than 50 percent of the building frontage. Projections containing floor area shall be referred to DCP.

(ii) **Annual rate.** See §7-10.

(16) **Parking area for private use for non-residential property (if there is no charge to vehicle operator).**

(i) To be referred to DCP to determine whether the improvement has land use impacts.

(ii) **Annual rate.** The first year's annual rate shall be the greater of $600 or (C × L × 0.36 × A), as defined in §7-10(a) of these rules, and subsequent years' rates shall be determined in accordance with §7-10(c).

(17) **Pipe or fuel pipeline, above-ground.**

(i) To be referred to DCP to determine whether the improvement has land use impacts.

(ii) **Annual rate.** See §7-10. If the grantee is not using the structure, the Department may set rates without reference to the formulas described in §7-10.

(18) **Planted area, including any surrounding fence or wall.**

(i) **Standard.** Live vegetation shall occupy 80 percent of the area. No vegetation may overhang a sidewalk beyond the boundary of the planted area, including any fence, unless the overhanging vegetation is at least eight feet above the adjacent sidewalk area. No rocks, timbers, wickets (hoops) or other trip hazards shall serve as a border. Any surrounding fence or wall shall conform to the standards provided in item (10), above.

(ii) **Annual rate.** The greater of $2 per square foot of area, as projected onto a horizontal plane, or $25.

(19) **Planter that is larger than two feet in diameter or that occupies more than four square feet in area.** Planters may be approved for no more than one year pursuant to the provisions in §2-10(j) of Chapter 2 of this Title 34, provided the placement of such planters is for temporary security purposes. (Smaller planters may be approved through a permit obtained from the Department.)

(i) **Standard.**

(A) The planter shall be no fewer than 18 and no greater than 48 inches high. The maximum area, measured at the planter's widest point, shall be 25 square feet, and the maximum dimension of the planter shall be five feet along the side which is perpendicular to the curb or eight feet along the side which is parallel to the curb. (Planters installed against the building face may be continuous.)

(B) If a planter is proposed to be placed above a sidewalk vault, a professional engineer shall certify that the sidewalk can support a 600-pound per square foot live load.

(C) No planter shall be constructed of wood. Wood cladding of other planter types is permitted if such cladding is fireproof and graffiti resistant. Concrete tubs, two inches thick, are recommended.

(D) The Department recommends the planting of small shrubs and flowers as they require less maintenance and are hardier than small trees. No woody growth shall overhang the edge of the planter. Suggested tree species for planters are: Crab Apples (Florida Snow Drift); Euonymus Pateris (Shrub); Taxus O. Densifornius (Japanese Yew); Scotch Pine; Austrian Pine; Ilex Meserva; Cornus Mass (Corneliean Dogwood); Syringia Reticulata (Japanese Tree Lilac); Prunus Sargentii (Columnaris); Acer Ginnala (Amur Maple); Acer Truncatum; Viburnum Sieboldii (Tree Form Viburnum).

(E) Planters shall be maintained, shall contain live plants at all times and shall be kept free of debris and graffiti.

(ii) **Annual rate.** The greater of $2 per square foot of area as projected onto a horizontal plane, or $25 per planter.

(20) **Post, pole or bollard not otherwise governed by permit procedures contained in §19-125 of the Administrative Code.**

(i) **Standard.** The post, pole or bollard shall be no fewer than 30 inches high, no greater than 48 inches high, and no greater than 18 inches in diameter. If more than one post, pole or bollard is to be installed, they shall be at least four feet apart and shall not be joined with horizontal members. If a concrete-filled pipe design is used, it shall be capped or smoothed.

(ii) **Annual rate.**

(A) $125 each, minimum of $500 per consent.

(B) Post, pole or bollard adjacent to a building containing a marquee pursuant to a permit granted by the Department of Buildings, $25 each, minimum of $100 per consent.

(21) **Public service corporation facility ancillary to, but not within, a franchise granted prior to July 1, 1990.**

(i) **Standard.** Refer to standards in this section for individual structures.

(ii) **Annual rate.** See §7-10. This rate shall not apply to revocable consents approved as provided in subdivision (b) of this section.

(22) **Railroad tracks for private use.**

(i) **Standard.** Railroad tracks shall be located in an M or C8 zoning district outside any area improved for vehicular or pedestrian use, except that tracks may cross an existing or future driveway with the permission of the property owner served by such driveway.

(ii) **Annual rate.** The first year's annual rate shall be the greater of $500 or ($C \times L \times 0.04 \times A$), as defined in §7-10(a) of these rules, and subsequent years' rates shall be determined in accordance with §7-10(c).

(23) **Ramp intended to provide access for people with disabilities.**

(i) **Standard.**

(A) The Department may grant a revocable consent for a ramp which extends more than 44 inches from the building line for buildings erected prior to December 6, 1969, including any additional steps attached or ancillary to the ramp structure made necessary by the creation of the ramp. (§27-308 of the Administrative Code permits ramps to extend up to 44 inches from the building line for such buildings.) (Buildings erected after December 6, 1969 must contain ramps within the property line.)

(B) In the case of buildings erected between December 6, 1969 and September 5, 1987, the Department may grant a revocable consent for a ramp which extends more than 44 inches from the building line if the ramp will make a primary entrance to the building accessible.

(C) The ramp shall conform to the standards of the Americans With Disabilities Act, 36 CFR Part 1191, and §27-308 of the Administrative Code. A canopy may be erected above the ramp provided such canopy does not fully enclose the ramp and provided such ramp is adequately illuminated and complies with all other applicable regulations.

(ii) **Annual rate.** $25.

(24) **Retaining walls.**

(i) **Standard.** Retaining walls may be constructed only where warranted by existing grade or by a change in grade undertaken with prior approval by the Department of Buildings.

(ii) **Annual rate.** See §7-10.

(25) **Sidewalk plaque or logo.**

(i) **Standard.** The size of the logo or plaque shall not exceed nine square feet with a maximum dimension of three feet along any side. The plaque or logo shall be limited in design and content to a symbol or other element referring to or naming the adjoining property owner, a district organization, the district/neighborhood character, or consistent with an area-wide way-finding graphic design system. The plaque or logo shall consist of material that provides a stable, firm and slip-resistant surface and shall be installed flush with the sidewalk surface.

(ii) **Annual rate.** $300 per plaque or logo.

(26) **Socket with removable poles, posts, or similar devices, including any connecting devices such as ropes, ribbons, horizontal poles, and the area thereby enclosed.**

(i) **Standard.** Sockets shall be flush with the sidewalk and fitted with spring-mounted flush covers. Posts or poles shall be no fewer than 30 inches and no greater than 48 inches high, including any connecting devices.

(ii) **Annual rate.** The first year's annual rate shall be the greater of $750 or ($C \times L \times 0.16 \times A$), as defined in §7-10(a) of these rules, where A is the area of the enclosed area, and subsequent years' rates shall be determined in accordance with §7-10(c).

(27) **Stoop, step, ramp, vestibule or other entrance detail extending beyond limits set in Articles 8 and 9 of Subchapter 4 of Chapter 1 of Title 27 of the Administrative Code, other than a ramp described in §7-04(a)(23) hereof or a stoop or other improvement described in §7-04(a)(29) hereof.**

(i) **Standard.** Such structures shall be constructed pursuant to the requirements of the New York City Department of Buildings and shall have a maximum width of eight feet and shall extend as far as such structures on adjacent

buildings.

(ii) **Annual rate.** See §7-10.

(28) **Stoop or any other improvement eligible for a revocable consent pursuant to these rules and adjacent to a building which is located within a designated New York City historic district or which is a designated New York City landmark.**

(i) Standard. No revocable consent shall be granted for such a structure located in a designated New York City historic district or attached to a designated New York City landmark building without the prior written approval of the Landmarks Preservation Commission pursuant to Chapter 3 of Title 25 of the Administrative Code. Refer to standards in this section for individual structures.

(ii) **Annual rate.** $25 for residential buildings with fewer than six units. For all other buildings, see the appropriate paragraph of this subdivision.

(29) **Street lamp or light fixture.**

(i) **Standard.** Street lamps or light fixtures which replace or augment existing lighting shall be placed and illuminated as approved by the Department's Division of Street Lighting. The base shall be no greater than 18 inches in diameter. Hours of illumination shall coincide with those of the City's street lights.

(ii) **Annual rate.** $150.

(30) **Tunnel.**

(i) **Standard.** All tunnels and related structures shall be constructed underground or within the adjacent building pursuant to the requirements of the New York City Department of Buildings.

(ii) **Annual rate.** See §7-10. If the structure is not in use, the rate shall be 10% of the rate in effect pursuant to the formulas described in §7-10.

(31) **Vault extending beyond the curbline or underground improvement not otherwise governed by license procedures contained in §19-117 of the Administrative Code.**

(i) **Standard.** All vaults shall be constructed underground pursuant to the requirements of the New York City Department of Buildings.

(ii) **Annual rate.** See §7-10.

(32) **Any improvement listed in §7-04 for which a consent is proposed to be granted where the grantee has filed an application concerning the subject property pursuant to §4-105 of the Administrative Code, or any improvement listed in §7-04 of these rules where the construction of such improvement was funded 50 percent or more by a City agency.**

(i) **Standard.** Refer to standards listed above for individual structures.

(ii) **Annual rate.** The Department may set rates for such consents without reference to the formulas described in §7-10; such rates shall be set forth in the agreements memorializing the consents.

(33) **Any improvement listed in §7-04 which has been approved for use for security purposes by the New York City Police Department.**

(i) **Standard.** Refer to standards listed above for individual structures.

(ii) **Annual rate.** None.

(b) **Other improvements approved by the Board of Estimate.** Revocable consents that were granted by the Board of Estimate prior to July 1, 1990 for private improvements which are not listed in subdivision (a) above may be renewed, amended, or revoked by the Commissioner in his or her sole discretion, provided that any renewal or amendment shall be submitted to DCP when required pursuant to §7-03 of these rules. In each year of such consent, the annual rate shall increase by the average of the Consumer Price Index for All Urban Consumers in New York and New Jersey published by the U.S. Department of Labor's Bureau of Labor Statistics ("CPI") increase for the ten years prior to the date of the renewal of the consent.

(c) **Compliance with requirements.** All improvements for which a revocable consent is granted shall comply with the general conditions in §7-06 of these rules.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

Subd. (a) par (3) amended City Record July 26, 2005 eff. Aug. 25, 2005. [See Note 1]

Subd. (a) par (9) amended City Record July 26, 2005 eff. Aug. 25, 2005. [See Note 1]

Subd. (a) par (10) amended City Record Oct. 27, 2003 §4, eff. Nov. 26, 2003. [See T34 §2-10

Note 1]

Subd. (a) par (19) amended City Record Oct. 27, 2003 §4, eff. Nov. 26, 2003. [See T34 §2-10

Note 1]

Subd. (a) par (19) subpar (ii) amended City Record July 26, 2005 eff. Aug. 25, 2005. [See Note 1]

Subd. (a) par (25) subpar (ii) amended City Record July 26, 2005 eff. Aug. 25, 2005. [See Note 1]

Subd. (a) par (28) par heading, subpar (ii) amended City Record July 26, 2005 eff. Aug. 25, 2005.

[See Note 1]

Subd. (a) par (30) subpar (ii) amended City Record July 26, 2005 eff. Aug. 25, 2005. [See Note 1]

Subd. (a) par (32) par heading amended City Record July 26, 2005 eff. Aug. 25, 2005. [See Note 1]

Subd. (a) par (33) added City Record Oct. 17, 2005 §1, eff. Nov. 16, 2005. [See Note 2]

DERIVATION

Former §7-04 became §7-05.

See Derivation for §7-02 for this section.

NOTE

1. Statement of Basis and Purpose in City Record July 26, 2005:

The Commissioner of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to §364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

The annual rates for a bridge, planter, sidewalk plaque or logo, stoop and step or other entrance detail and tunnel rules are amended to more accurately reflect how the rates are calculated. Paragraph thirty-two, which refers to improvements funded 50% or more by a government agency, is being amended to read City agency to reflect current Department policy.

After consultation with the Department of City Planning, the Department is also proposing to amend standards for trash receptacle containers. This rule is being amended to allow for larger trash receptacle containers in districts zoned for manufacturing and in other districts that allow manufacturing because these types of districts have different needs than other districts. It is anticipated that this change will better fit the intent of the original rule as applied to manufacturing districts and other districts that allow manufacturing.

2. Statement of Basis and Purpose in City Record Oct. 17, 2005: The Commissioner of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to §364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation. Security concerns have grown citywide, as have the number of buildings installing structures for security purposes. The Department will grant consents for structures approved for these purposes by the Police Department and will not charge either an annual rate or a filing fee.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-05 Revocable Consents for Telecommunications Purposes.

Petitions for revocable consents for telecommunications purposes shall be reviewed and may be granted by DoITT, subject to approval by the Department and review by DCP, where appropriate. Petitions for such consents shall be filed with the Department and shall be forwarded by the Department to DoITT for processing. Petitioners shall submit any additional information which may be required by DoITT.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

DERIVATION

Former §7-05 became §7-09.

This section derived from former §7-04 added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003.
Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 7-06

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-06 General Conditions.

(a) **Advertising prohibited.** No advertising shall appear on any improvement which is the subject of a revocable consent agreement.

(b) **Maintenance.** Graffiti shall be removed within seven days of appearance. Art Commission approved colors shall be used and maintained. Sidewalks fronting the entire property must be in good condition, without violations or illegal encroachments.

(c) **Clearances for above-ground structures.**

(1) **Corner clearance policy.** No revocable consent will be granted for above-ground structures located within the corner quadrant (the area ten feet from either side of the area created by extending the building line to the curb) pursuant to Executive Order #22 of 4/13/95, as amended.

(2) Improvements shall be at least 18 inches from the curb line (front face of curb).

(3) **Clear path.** A straight unobstructed path ("clear path") for pedestrian circulation on the sidewalk shall remain after the installation of the improvement. The minimum width of the clear path shall be the greater of eight feet or one-half of the sidewalk width. The minimum width of the clear path shall be the greater of ten and one-half feet or one-half of the sidewalk width where a bench, information kiosk or bicycle rack with bicycles parallel to the curb or a queuing area enclosed by poles abuts the clear path. The minimum width of the clear path shall be the greater of $12^{1}/_{2}$ feet or one-half of the sidewalk width where a bicycle rack with bicycles perpendicular to the curb abuts the clear path.

The clear path shall be maintained for 15 feet to either side of the improvement. When possible, the improvement shall abut, be aligned with, or be located between other major obstructions such as subway entrances, bus stop shelters, newsstands, and sidewalk cafes.

(4) Improvements shall not be located under fire escapes.

(5) (i) The following minimum distances shall be required between the revocable consent improvement and the specified element or object, except as otherwise specified herein:

Subway Entrance (open side)

15'

Sidewalk Cafes

15'

Newsstand

15'

Bus Stop (with/without shelter)

15'

Fire Hydrant/Standpipe

10'

Driveway 10'

Bicycle Rack (including all bicycles)

8'

Street Tree

5'

Bench

5'

Principal Building Entrance

5'

Ramp intended to provide access for people with disabilities

5'

Subway Entrance (closed end or side)

5'

Public Telephone

5'

Planters on the sidewalk not adjacent to the building fa;alcade

5'

Mail Box

4'

Street Lights

4'

Parking Meters

4'

Edge of Tree Pit

3'

Street Signs

3'

Utility Hole Covers, Cellar Doors, Areaways

3'

Transformer Vault, Sidewalk Grates

3'

All Other Legal Street Furniture

5'

(ii) Benches, information kiosks, litter receptacles, mail boxes, planters and public telephones may be located in an aligned grouping with a reduced minimum clearance between them of three feet. Other structures may be incorporated into such groupings provided the minimum clearances in subparagraph (i) above are provided. In no case shall such groupings extend for a length greater than 30 feet along the sidewalk. The listed elements may also be combined, without separation, into a single structure provided the overall length of such unitary structure and any other of the listed elements outside the grouping or unitary structure shall be no more than 15 feet. In no case shall a grouping or unitary structure be less than 15 feet from another grouping or unitary structure.

(d) **Waiver.**

(1) Where strict compliance with these rules shall create undue hardship, the Commissioner may waive or modify these rules, in specific cases, except where prohibited by law, if in his/her opinion, the public health, safety and general welfare will not be endangered thereby. The petitioner shall request such waiver in writing and shall provide any information requested by the Department which may assist the Commissioner in his or her determination.

(2) Notwithstanding the above provisions, prior to waiving the standards or rules related to the location or dimensions of improvements, the Department shall refer the proposed change to DCP for review.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

DERIVATION

Former §7-06 Consent Solely for Benefit of Petitioner added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

The Commissioner of the Department of Transportation is authorized to grant revocable consents with respect to City property under its jurisdiction pursuant to section 364 of Chapter 14 of the New York City Charter. Since 1991 the granting of such revocable consents has been made in accordance with rules promulgated by the Department of Transportation.

These proposed amendments are intended to update and simplify the rules. The standards and rates have been combined with the list of improvements for ease of reference. The rates have increased slightly more than the rate of inflation since they were last amended in 1990. In addition, these amendments streamline the approval process and make the rates and requirements more equitable for revocable consent applicants. After consultation with the Department of City Planning the Department of Transportation is proposing standards for the following improvements: bench, fenced or walled-in area, flagpoles, stoop in landmark district or at landmark building, planted area, planter, post, pole or bollard, accessibility ramp, sockets for poles or stanchions, stoop, step or other entrance detail, street lamp, trash receptacle container and litter receptacle for public use.

On February 10, 2003, Mayor Bloomberg signed Local Law 8 of 2003, which provides for the transfer of authority to issue revocable consents for sidewalk cafes from the Department of Transportation to the Department of Consumer Affairs. Accordingly, these proposed rules for revocable consents make no reference to sidewalk cafes.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 7-07

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 7 REVOCABLE CONSENTS*1

§7-07 Application Requirements.

(a) **Petition form.** An application for a new revocable consent or for a renewal, modification, assignment or rescission of an existing revocable consent shall be made on a petition form obtained from the Department, and shall be signed by the petitioner or a person authorized to enter into binding agreements on behalf of the petitioner. In the case of a new consent, the petitioner shall submit the original plus ten copies of the completed form; in the case of a renewal, modification, assignment or rescission, petitioner shall submit the original plus five copies.

(b) **Business certificates.** The petitioner shall submit a copy of any applicable business certificate, such as a certificate of incorporation or partnership certificate. With respect to petitions for an assignment or transfer of a revocable consent, the petitioner shall submit a copy of the business certificate of the assignee or transferee.

(c) **Plans.**

(1) Paper or mylar prints of a plan shall be submitted in the equivalent number of prints as are required for the petition form. Each plan print shall measure 18 by 24 inches unless otherwise authorized by the Department.

(2) The plan shall bear the seal of a Professional Engineer or Registered Architect licensed by the State of New York.

(3) The plan shall be drawn to scale and shall indicate the block and lot number of the property of the petitioner. The plan shall indicate in detail the method of construction, applicable technical information, and the materials to be used. A title box shall be placed on the right hand side of each sheet containing the words "Plan Showing Location of

Proposed (structure type) to be Constructed in (name of street), Borough of (borough), to Accompany Application of (petitioner's name), dated (petition date), to the Department of Transportation of the City of New York" and shall indicate the date it was prepared and any subsequent revisions.

(4) All details of existing structures shall be shown in standard line thickness. All proposed new construction and existing structures which are the subject of the petition shall be plainly shown in red. Proposed removals or relocations, if any, of existing conduits, pipes lines, or other structures shall be clearly indicated by red dashed lines.

(5) The plan shall show the building lines and curb lines, railroad tracks, and, if applicable, any electrical conduits, sewers and other substructures in the street which may be affected in any manner by the proposed construction. All such information shall be obtained and verified by the petitioner. The location, character and dimensions of all such structures and substructures shall be accurately shown and indicated by dimensions on the plan.

(6) The plan shall include longitudinal and transverse sections to show the relative position of the existing structures in the street and the proposed new construction.

(7) The applicant shall provide photographs of the existing conditions and may be required to provide photo simulations of the proposed structure and its surroundings as they would appear after installation.

(8) The plan shall also include the Profesional Engineer's or Registered Architect's estimate of the current cost to remove or deactivate the proposed improvement and restore all sidewalks and pavements to current Department standards for new construction. Alternatively, the cost of removal may be provided on a separate sheet of paper provided that it is signed and sealed by a Professional Engineer or Registered Architect.

(9) Following the installation of any improvement for which a consent has been granted, the petitioner shall submit to the Department two copies of a plan indicating the "as built" condition. Such plan shall include any changes approved by the Department, with any deviations from the original plan shown by a double red line. Such plan shall be signed, sealed and dated by a Professional Engineer, Registered Architect or a Licensed Land Surveyor and shall include a certification which reads: "This drawing represents the as-built condition and shows the actual location of all subsurface conditions uncovered during this installation."

(d) **Pedestrian congestion.** The Department may require a petitioner to submit additional information concerning pedestrian density and volume as well as the width of the usable pedestrian path at the site of a proposed revocable consent structure. The Department may require that such information include a pedestrian flow analysis conducted according to the performance standards described in the Transportation Research Board's Highway Capacity Manual chapter on pedestrian flow.

(e) **Additional copies and information.** Upon the request of the Department, the petitioner shall provide additional copies of the petition and/or plan. The petitioner shall also provide any additional supporting information requested by the Department or by DCP, where referral has been made to DCP.

(f) **Waiver of plan requirements.** For petitions concerning minor improvements, such as planters, trash and litter receptacles, or benches, the Department may waive the requirement that the plan be prepared by a Professional Engineer or Registered Architect where such submission is not otherwise required by law, and where the petitioner has requested a waiver in writing.

(g) **Exception.** The requirements of this section shall not apply to revocable consents for public service corporation facilities ancillary to, but not within, a franchise, if the revocable consent covers multiple structures whose locations are not known at the time of the granting of the consent. Plans for each such structure shall be submitted prior to construction and shall meet the requirements of Chapter 2 of Title 34 of the Rules of the City of New York.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

DERIVATION

Former §7-07 Applicability of the Uniform Land Use Review Procedure added City Record May 31, 1991 eff. June 30, 1991, Subd. (a) amended City Record Apr. 22, 1993 eff. May 22, 1993.

This section was derived from former §7-08 amended City Record Apr. 22, 1993 eff. May 22, 1993, added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 7 REVOCABLE CONSENTS*1

§7-08 Filing Fees.

(a) **General information.** Filing fees for petitions shall be submitted with the petition form and any required plans or supporting documents. Filing fees shall be non-refundable.

(b) **Specified improvements.** The filing fees listed in this paragraph shall apply to petitions for the following specified types of improvements: accessibility lift; bench; enclosure for trash receptacle; litter receptacle; planted area; planter; ramp intended to provide access for people with disabilities; stoop or step; or any improvement which has been approved by the Landmarks Preservation Commission:

(1) initial petition

$100.00

(2) renewal

100.00

(3) modification

100.00

(4) assignment or transfer

100.00

(5) recission

100.00

(c) **All other improvements, except for improvements approved for use for security purposes by the New York City Police Department.**

(1) initial petition

750.00

(i)

initial petition with a Special Street Plan Type F application with proof of payment of a fee in excess of $650.00

100.00

(2) renewal

500.00

(3) modification

(i) contractual

375.00

(ii) structural

550.00

(4) assignment or transfer

200.00

(5) rescission

375.00

(d) **Improvements approved for use for security purposes by the New York City Police Department.** Filing fees shall not apply to any improvements approved for use for security purposes by the New York City Police Department.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

Subd. (b) heading, open par amended City Record Oct. 17, 2005 §2, eff. Nov. 16, 2005. [See T34

§7-04 Note 2]

Subd. (c) heading amended City Record Oct. 17, 2005 §2, eff. Nov. 16, 2005. [See T34 §7-04 Note 2]

Subd. (d) added City Record Oct. 17, 2005 §3, eff. Nov. 16, 2005. [See T34 §7-04 Note 2]

DERIVATION

Former §7-08 became §7-07.

See Derivation for §7-03 for fee history.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

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CHAPTER 7 REVOCABLE CONSENTS*1

§7-09 Action by the Department.

(a) The Department shall, within 30 calendar days of receipt of a complete petition for a revocable consent, forward a copy of such petition to: the Borough President for the borough in which the proposed improvement is to be located; all Community Boards in whose districts the proposed improvement is to be located; DCP, if required to do so pursuant to §7-03; and all other City agencies affected by the proposed consent. The Department shall allow 30 calendar days for the Borough President, Community Board, and other affected agencies to comment on the petition.

(b) The Department shall inform the petitioner in writing of all objections. Review of the petition shall be stayed until all objections are resolved. The petitioner shall be given the opportunity to revise the petition or plan in order to resolve the objection(s). If any objection has not been resolved within 90 days from the date the petitioner was informed of the latest objection, such petition may, in the discretion of the Department, be deemed to have been withdrawn.

(c) Prior to granting any revocable consent or renewal or modification to the location or an increase in the dimension of an improvement, the Department shall hold a public hearing on the terms and conditions of the proposed revocable consent agreement. Notice of such hearing shall be published by the Department at the expense of the petitioner in accordance with §371 of the Charter.

(d) Notwithstanding the foregoing, the Department may deny a petition for a revocable consent without a hearing if, in the sole judgement of the Commissioner, the grant of such consent would interfere with the use of the inalienable property of the City (including streets and sidewalks) for public purpose or would otherwise not be in the best interest of the City.

(e) The revocable consent agreement shall be filed by the Department with the appropriate County Clerk.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7

footnote]

DERIVATION

This section was derived from former §7-05 added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 (§§7-01-7-14) repealed and added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose of Proposed Rules.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 7 REVOCABLE CONSENTS*1

§7-10 Annual Rate Schedule for Revocable Consent Improvements.

For all improvements that do not have an annual rate set forth in §7-04(a), the annual rate of compensation for the first year of the term of each revocable consent shall be calculated in accordance with the following:

(a) **Definitions and variables.**

"A" means the maximum area of the improvement for which a consent has been or is proposed to be granted, as projected onto a horizontal plane (the "footprint").

"Benefited Property" means the real property which is adjacent to the improvement for which a revocable consent has been or is proposed to be granted, and which is benefited by the improvement.

"C" means 100 percent plus the percent change (plus or minus) in the Consumer Price Index for All Urban Consumers in New York and New Jersey published by the U.S. Department of Labor's Bureau of Labor Statistics ("CPI") on July 1 of the year for which the revocable consent annual rate is being calculated, compared to the CPI on July 1, 2003.

"E" means the standard escalating factor, which shall be a percentage equal to the average annual percentage increase in the CPI for the ten years immediately preceding the year for which the standard escalating factor is being determined; the Department shall determine the standard escalating factor on July 1 of the year to be applied to all consents granted or renewed between that July 1 and the next succeeding June 30, inclusive.

"L" means the Current Transitional Assessed Value or the Actual Assessed Value, whichever is lower, of the Benefited Property, in its unimproved state (in dollars and cents per square foot); provided, however, that if there is more than one Benefited Property, "L" shall be equal to the average of the Current Transitional Assessed Values of all the Benefited Properties in their unimproved states (in dollars and cents per square foot). Note: For cables contained within conduit owned by another entity, L=0.

"M" means the applicable multiplier. For pipes and conduits with up to 25 square feet in cross-sectional area, the applicable multiplier is 0.04. For all other improvements, the applicable multiplier is 0.08.

"Minimum Annual Charge" shall be assessed as follows: For improvements having a maximum cross-sectional area greater than four square feet, the Minimum Annual Charge shall be $3,000. For improvements having a maximum cross-sectional area of four square feet or less, the Minimum Annual Charge is $1,500, except that pipes and conduits having an outside diameter of three inches or less (inclusive of any protective sheath or casing) shall be assessed a Minimum Annual Charge of $750.

"R1" means the rate of compensation for the first year of the revocable consent agreement which shall be determined in accordance with §7-10(b), below.

"V" means the rate (in dollars and cents) obtained from Table A relating to the volume occupied by the improvement. For improvements exceeding nine feet in height, the computation will be made in units up to nine feet in height and then added together.

(b) **Rate for first year.** R1 shall equal C[V + (L × M × A)], or the Minimum Annual Charge, whichever is greater.

(c) **Rate for each subsequent year.**

second year = R1 + (E × R1)

third year = R1 + (2E × R1)

fourth year = R1 + (3E × R1)

fifth year = R1 + (4E × R1)

sixth year = R1 + (5E × R1)

seventh year = R1 + (6E × R1)

eighth year = R1 + (7E × R1)

ninth year = R1 + (8E × R1)

tenth year = R1 + (9E × R1)

(d) **Consents granted on or prior to June 30, 1991.** For those consents granted on or before June 30, 1991 which provide for annual fees to be computed based upon the rate schedule currently in effect, annual compensation shall equal R1 as calculated pursuant to §7-10(b).

(e) **Revenue.** All revocable consent revenue shall be collected by the Department.

Table A

Length	Cross-Section Area Up to 1.4 sq.	1.4 to 4	4 to 20 sq.	20 to 81	81 to 162 sq.	162 to 243	Smaller Pipes up to 3"

in feet	ft.	sq. ft.	ft.	sq. ft.	ft.	sq. ft.	
Up to 100'	$13.90 per ft.	$27.83 per ft.	$34.78 per ft.	$41.72 per ft.	$69.56 per ft.	$83.48 per ft.	$7.26 per ft.
100'-150'	$1,390 + $8.17 per ft. over 100 ft.	$2,783 + $16.35 per ft. over 100 ft.	$3,478 + $20.43 per ft. over 100 ft.	$4,172 + $24.51 per ft. over 100 ft.	$6,956 + $40.87 per ft. over 100 ft.	$8,348 + $49.04 per ft. over 100 ft.	$726 + $4.26 per ft. over 100 ft.
150'-200'	$1,799 + $7.72 per ft. over 150 ft.	$3,600 + $15.45 per ft. over 150 ft.	$4,499 + $19.30 per ft. over 150 ft.	$5,397 + $23.16 per ft. over 150 ft.	$9,000 + $38.62 per ft. over 150 ft.	$10,800 + $46.34 per ft. over 150 ft.	$939 + $4.03 per ft. over 150 ft.
200'-250'	$2,185 + $7.29 per ft. over 200 ft.	$4,373 + $14.59 per ft. over 200 ft.	$5,464 + $18.23 per ft. over 200 ft.	$6,555 + $21.87 per ft. over 200 ft.	$10,931 + $36.46 per ft. over 200 ft.	$13,117 + $43.76 per ft. over 200 ft.	$1,140 + $3.80 per ft. over 200 ft.
250'-300'	$2,549 + $6.83 per ft. over 250 ft.	$5,102 + $13.67 per ft. over 250 ft.	$6,376 + $17.08 per ft. over 250 ft.	$7,649 + $20.49 per ft. over 250 ft.	$12,754 + $34.16 per ft. over 250 ft.	$15,305 + $41.00 per ft. over 250 ft.	$1,330 + $3.56 per ft. over 250 ft.
300'-350'	$2,891 + $6.40 per ft. over 300 ft.	$5,786 + $12.81 per ft. over 300 ft.	$7,230 + $16.00 per ft. over 300 ft.	$8,673 + $19.20 per ft. over 300 ft.	$14,462 + $32.01 per ft. over 300 ft.	$17,355 + $38.42 per ft. over 300 ft.	$1,508 + $3.34 per ft. over 300 ft.
350'-400'	$3,211 + $5.94 per ft. over 350 ft.	$6,426 + $11.89 per ft. over 350 ft.	$8,030 + $14.85 per ft. over 350 ft.	$9,633 + $17.82 per ft. over 350 ft.	$16,062 + $29.71 per ft. over 350 ft.	$19,276 + $35.66 per ft. over 350 ft.	$1,675 + $3.10 per ft. over 350 ft.
400'-450'	$3,508 + $5.70 per ft. over 400 ft.	$7,021 + $11.41 per ft. over 400 ft.	$8,772 + $14.25 per ft. over 400 ft.	$10,524 + $17.10 per ft. over 400 ft.	$17,548 + $28.51 per ft. over 400 ft.	$21,059 + $34.22 per ft. over 400 ft.	$1,830 + $2.97 per ft. over 400 ft.
450'-525'	$3,793 + $5.21 per ft. over 450 ft.	$7,591 + $10.43 per ft. over 450 ft.	$9,485 + $13.03 per ft. over 450 ft.	$11,379 + $15.63 per ft. over 450 ft.	$18,973 + $26.06 per ft. over 450 ft.	$22,770 + $31.28 per ft. over 450 ft.	$1,979 + $2.72 per ft. over 450 ft.
525'-600'	$4,183 + $4.33 per ft. over 525 ft.	$8,373 + $9.48 per ft. over 525 ft.	$10,462 + $11.85 per ft. over 525 ft.	$12,551 + $14.22 per ft. over 525 ft.	$20,928 + $23.71 per ft. over 525 ft.	$25,116 + $28.45 per ft. over 525 ft.	$2,183 + $2.47 per ft. over 525 ft.
600'-30,000'	$4,508 + $4.33 per ft. over 600 ft.	$9,084 + $8.66 per ft. over 600 ft.	$11,351 + $10.83 per ft. over 600 ft.	$13,618 + $12.99 per ft. over 600 ft.	$22,706 + $21.66 per ft. over 600 ft.	$27,249 + $25.99 per ft. over 600 ft.	$2,368 + $2.26 per ft. over 600 ft.
For More Than	$134,408 + $2.82 per ft. over 30,000 ft.	$268,884 + $5.64 per ft. over 30,000 ft.	$336,251 + $7.05 per ft. over 30,000 ft.	$403,318 + $8.46 per ft. over 30,000 ft.	$672,506 + $14.11 per ft. over 30,000 ft.	$806,949 + $16.93 per ft. over 30,000 ft.	$70,168 + $1.47 per ft. over 30,000 ft.

HISTORICAL NOTE

Section repealed and added City Record May 30, 2003 eff. June 29, 2003. [See T34 Chapter 7 footnote]

DERIVATION

Former §7-09 amended City Record Apr. 22, 1993 eff. May 22, 1993, added City Record May 31, 1991 eff. June 30, 1991.

FOOTNOTES

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RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-01 Background and Authority.

Section 182(d)(1)(B) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7511(a)(d)(1)(B), requires states with severe or extreme nonattainment areas for ozone to revise their state implementation plans by adopting new regulations to reduce work-related vehicle trips and miles traveled by employees. The New York State Consolidated Metropolitan Statistical Area, which includes New York City was designated by the Federal Environmental Protection Agency ("EPA") as a severe ozone nonattainment area, 40 C.F.R. §81.333. Section 14(31) of the New York State Transportation Law authorizes the State Department of Transportation to promulgate rules and regulations to implement the requirements of §182(d)(1)(B) of the Clean Air Act Amendments and to establish an employee commute options ("ECO") program. The state rules require employers of one hundred or more employees at work locations within severe ozone nonattainment areas in New York State to develop and implement employee trip reduction programs and to make a good faith effort to achieve a twenty-five percent increase in average vehicle occupancy for commuting trips by November 15, 1996. The state transportation law and the rules promulgated pursuant to it also delegate the local administration of the program to counties in the severe ozone nonattainment areas and pursuant to such delegation, the New York City Department of Transportation ("the Department") has been designated the local administrative agency.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Rules of the City of New York

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34 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-02 Applicability.

This chapter shall apply to any affected employer in the City of New York who is subject to the ECO rules of the New York State Department of Transportation, codified at 17 NYCRR Part 38. This chapter shall apply with respect to any and all affected worksites. Pursuant to 17 NYCRR §38.4(b)(3), the counties of New York (Region 1) and Bronx, Kings, Queens, and Richmond (Region 2) shall be consolidated into a single region consisting of the subregions identified in table one below.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 8-03

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-03 Definitions.

For purposes of ECO, the definitions set forth in 17 NYCRR Part 38 shall apply; provided, however, that in this chapter, "Commissioner" shall mean the Commissioner of the New York City Department of Transportation and "Department" shall mean the New York City Department of Transportation.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 8-04

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-04 AVO Subregions.

The Average Vehicle Occupancy ("AVO") subregions established pursuant to 17 NYCRR Part 38.4(c) are specified in table one below.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Rules of the City of New York

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34 RCNY 8-05

RULES OF THE CITY OF NEW YORK

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CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-05 Target APOs.

The specific target Average Passenger Occupancy ("APO") for each subregion is specified in Table one below.

Table 1

Average Vehicle Occupancy and Target

Average Passenger Occupancy by Subregion

Subregion Number	Boro/County	Subregion Name	1994 AVO	Target APOs	
33	M	Times Square		9.08	9.98
31	M	Plaza		8.84	9.73
36	M	Madison Square		7.59	8.35
39	M	Battery Park		6.78	7.46
26	M	Fifth Avenue		6.42	7.06
29	M	Central Park West		5.88	6.47
32	M	Queensboro Bridge		5.58	6.13
35	M	Stuyvesant Square		5.24	5.77
34	M	Chelsea		5.20	5.71
37	M	Greenwich Village		5.16	5.67
28	M	Manhattanville		5.05	5.56
30	M	Lincoln Square		4.30	4.73

27	M	Yorkville	4.16	4.57
24	M	Mt. Morris Park	3.78	4.16
23	M	Columbia University	3.70	4.07
38	M	Lower East Side	3.66	4.03
22	M	Harlem	3.58	3.93
79	K	Brooklyn Heights	3.37	3.71
80	K	Brooklyn CBD	3.36	3.69
82	K	Park Slope	3.21	3.53
20	M	Washington Heights	3.15	3.46
21	M	City College	3.06	3.37
25	M	Harlem Bridge/ Jefferson Park	2.80	3.11
19	M	Inwood	2.75	3.06
83	K	Sunset Park	2.71	3.02
74	K	Ft. Greene Park	2.68	2.99
72	K	Williamsburg	2.52	2.83
15	B	North New York	2.49	2.80
11	B	High Bridge	2.47	2.78
7	B	Fordham Heights	2.46	2.77
76	K	Stuyvesant/ Eastern Parkway	2.42	2.73
1	B	Riverdale	2.40	2.71
3	B	Jerome Park	2.35	2.66
84	K	Kensington	2.30	2.61
85	K	Flatbush	2.28	2.59
75	K	Bushwick	2.27	2.58
8	B	Bronx Park	2.26	2.57
58	Q	Elmhurst	2.25	2.56
87	K	South Greenfield	2.23	2.54
86	K	Holy Cross	2.19	2.50
6	B	Baychester/City Island	2.18	2.49
61	Q	Long Island City	2.17	2.48
14	B	Park Versailles	2.16	2.47
55	Q	Ridgewood	2.15	2.46
92	K	Bensonhurst	2.13	2.44
66	Q	Richmond Hill	2.12	2.43
77	K	Bronsville	2.12	2.43
96	K	Coney Island	2.11	2.42
16	B	St. Mary's Park	2.11	2.42
47	Q	Corona	2.10	2.41
57	Q	Forest Hills	2.09	2.40
52	Q	Jamaica	2.05	2.36
62	Q	Sunnyside	2.05	2.36
81	K	South Brooklyn	2.04	2.35
71	K	Greenpoint	2.04	2.35
91	K	Borough Park	2.03	2.34
90	K	Bay Ridge	2.03	2.34
13	B	Morrisania	2.02	2.33
5	B	Williamsbridge	2.02	2.33
60	Q	Astoria	2.01	2.32
93	K	Gravesend/Neck Road	2.01	2.32
4	B	Gun Hill Road	2.00	2.31

88	K	Flatlands	1.99	2.30
56	Q	Nassau Heights	1.99	2.30
70	Q	Far Rockaway	1.97	2.28
73	K	English Kills	1.95	2.26
78	K	Highland Park	1.94	2.25
9	B	Union Port	1.93	2.24
	Q	Neponsit/Hammels	1.91	2.22
95	K	Sea Gate	1.89	2.20
41	Q	Whitestone	1.89	2.20
12	B	Throg's Neck/ Pelham Bay Park	1.88	2.19
59	Q	Jackson Heights	1.87	2.18
46	Q	Flushing	1.86	2.17
63	Q	Woodside	1.84	2.15
10	B	Westchester Heights	1.81	2.12
2	B	Edenwald/Woodlawn	1.80	2.11
53	Q	Hollis	1.78	2.09
42	Q	Cunningham Park	1.76	2.07
17	B	Hunt's Point	1.71	2.02
18	B	Clason Point	1.70	2.01
94	K	Mill Basin/Canarsie	1.70	2.01
50	Q	St. Albans/Springfield	1.70	2.01
45	Q	College Point	1.69	2.00
65	Q	Woodhaven/Ozone Park	1.69	2.00
48	Q	Flushing South	1.63	1.94
51	Q	South Jamaica	1.62	1.93
97	S	Brighton	1.59	1.90
49	Q	Queens Village	1.58	1.89
54	Q	Maspeth	1.58	1.89
89	K	Spring Creek Basin	1.57	1.88
43	Q	Douglaston	1.56	1.87
69	Q	Arverne	1.55	1.86
98	S	Stapleton	1.52	1.83
44	Q	Bellerose	1.51	1.82
40	Q	Bayside	1.49	1.80
99	S	Port Richmond	1.48	1.79
64	Q	Howard Beach/ Laurelton/Rosedale	1.47	1.78
103	S	Great Kills	1.31	1.62
100	S	Dongan Hills	1.31	1.62
67	Q	South Laurelton	1.23	1.53
102	S	Travis	1.22	1.53
104	S	Tottenville/Prince's Bay	1.22	1.52
101	S	Mariner's Point	1.22	1.52

AVO AND TARGET APO METHODOLOGIES

ESTABLISHING AVO VALUES

The 1994 AVO values were established by applying the methodolgy mandated by the New York State Dept. of Transportation Employee Commute Options Regulations. These Regulations require the use of United States Census Journey-to-Work data for 1980 and 1990 to estimate the number of employees and the number of vehicles used to get to

work in 1994. The method consists of subtracting 1980 total workers from 1990 total workers, and dividing the result by the number of years (ten, in this case), thereby yielding an "annual change." This "annual change" then is used to project the number of employees for 1994 by adding the "annual change" multiplied by the number of years (four, in this case) to 1990 total workers.

A comparable process is used to estimate the number of vehicles used to get to work. The projected number of workers in 1994 then is divided by the projected number of commuter vehicles in 1994 to establish the 1994 AVO. It is important to note that these projected numbers are not intended to represent actual employment or vehicle numbers for 1994, but are solely for the purpose of establishing an AVO.

ESTABLISHING TARGET APOs

Target APOs are also derived following the methodology mandated by the New York State Regulations. The target APO for the region equals the regional AVO multiplied by 1.25. Reaching the APO target is equivalent to reducing the number of vehicles to the "permitted" number. The "permitted number" of vehicles equals the number of employees at all worksites with 100 or more employees, divided by the target APO. We are required to calculate the number of "permitted" vehicles in order to determine whether achieving Target APOs for all the subregions taken together would reduce the number of commuter vehicles to the level required to meet the APO Target for the region.

Target APOs for each subregion were established by increasing the AVO for each subregion by between 10 and 25%.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Rules of the City of New York

34 RCNY 8-06

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-06 Schedule for Submission of Initial Compliance Plans.

(a) For each affected worksite, the affected employer shall prepare and submit to the Department an initial compliance plan not later than November 15, 1994.

(b) Plans submitted earlier than November 15, 1994, pursuant to the schedule set forth in §8-08 below, shall be eligible for a reduction in fees as set forth in that section.

(c) A plan shall be deemed submitted upon receipt by the Department.

(d) An affected employer shall submit a revised initial compliance plan if the circumstances warrant, subject to the approval of the Commissioner. The Commissioner shall notify the affected employer of approval or rejection of the revised plan within thirty (30) days of filing of such revised plan.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 8-07

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-07 Scedule for Submission of Compliance Plan Updates and Maintenance Reports.

(a) For each affected worksite, the affected employer shall prepare and submit to the Department a compliance plan update or maintenance report not later than November 15, 1996.

(b) Plans submitted earlier than November 15, 1996, pursuant to the schedule set forth in §8-08 below, shall be eligible for a reduction in fees as set forth in that section.

(c)(1) Affected employers who have not achieved the target APO must submit compliance plan updates annually.

(2) Affected employers who have achieved the target APO must submit maintenance reports biannually on the anniversary of their initial submission, starting in 1996.

(d) An affected employer shall submit a revised compliance plan update or maintenance report if the circumstances warrant, subject to the approval of the Commissioner.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 8-08

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-08 Fees.

(a) Each affected employer shall submit its annual fee on the date its initial compliance plan is submitted, and thereafter on each subsequent anniversary of such date.

(b) Fees are as follows:

(1) for employers with one thousand one (1,001) or more affected employees, the fee shall be two thousand dollars ($2000.00);

(2) for employers with five hundred one (501) to one thousand (1,000) affected employees, the fee shall be twelve hundred dollars ($1200.00);

(3) for employers with two hundred fifty-one (251) to five hundred (500) affected employees, the fee shall be six hundred dollars ($600.00);

(4) for employers with thirty-three (33) to two hundred and fifty (250) affected employees, the fee shall be three hundred dollars ($300.00);

(c) Fees shall be reduced by fifty percent (50%) of the amount due for all affected employers submitting plans not later than August 15 of the year a submission is due. Fees shall be reduced by thirty-three and one third percent (33 1/3%) of the amount due for all affected employers submitting plans not later than September 15 of the year a submission is due. Fees shall be reduced by twenty percent (20%) of the amount due for all affected employers

submitting plans not later than October 15 of the year submission is due. Fee reductions shall be available only in years when such plans are required to be filed.

(d) An affected employer filing a consolidated plan or report shall submit a fee equal to the total of the fees that the affected employer would pay if filing separate plans or reports for each affected worksite.

(e) Fees shall be in the form of a company check, bank check, money order, or other form of payment acceptable to the commissioner, made payable to the New York City Department of Transportation. Cash and credit card payments shall not be accepted.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Subd. (b) amended City Record Nov. 10, 1994 eff. Dec. 10, 1994.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 8-09

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-09 Penalties.

(a) The Department shall send a notice of violation fo any provision of this chapter by registered mail to the affected employer. Such notice shall specify the nature of the violation and the fine due.

(b) Failure of an affected employer to comply with the requirements specified in the rules of the ECO program at 17 NYCRR §38.11(a) shall constitute a violation of such rules. The civil penalty for each violation shall be no less than fifty cents ($.50) and no more than one dollar ($1.00) per employee per day for each affected work site, not to exceed five hundred dollars ($500.00) per day for each affected worksite.

(c) Failure of an affected employer to register pursuant to 17 NYCRR §38.3(b) shall constitute a violation of such rules. The penalty for such violation shall not exceed one dollar ($1.00) per employee per day for each affected work site, not to exceed five hundred dollars ($500.00) per day for each affected worksite.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 8-10

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-10 Department Conference.

(a) Any affected employer who receives a notice of violation may request a conference with the Commissioner or his/her representative at which the employer shall have the opportunity to explain or justify the actions that are the subhect of the notice. Such request must be made in writing and sent by registered mail within thirty (30) days of the date of receipt of such notice. If a conference is not requested, the full amount of the penalty shall be due not later than thirty days from the receipt of the notice.

(b) Any employer who, within thirty (30) days of the date of any notice of violation, fails either to pay the penalty stated in the notice or request a conference with the Department in writing, shall be liable for the penalties specified in the notice. Such employer shall be liable for additional penalties for the continuing violation of the rule until the violation is corrected.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 8-11

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-11 Hearings.

(a) Any affected employer who has received a notice of violation from the Department, has had a Department conference, and does not consent to a settlement agreement with a settlement officer, may appeal the determination of the Department, as provided in 17 NYCRR §38.13, by requesting a hearing with the New York City Office of Administrative Trials and Hearings ("Oath"). A petition appealing the determination, as well as a copy of the notice of violation, and the factual findings and decision of the Department shall be filed with OATH, with proof that copies were sent to the Department, not later than fifteen (15) days after the date of the settlement offer of the Department.

(b) Hearings to review decisions of the Department shall be conducted by OATH in accordance with its rules of practice and procedure, except that for the purposes of this chapter, (i) the petition shall be deemed to consist of the notice of violation and the factual findings and decision of the Department filed by the affected employer, (ii) the answer shall be deemed to consist of the employer's petition appealing the decision, (iii) the Department shall be deemed the petitioner, and (iv) the affected employer shall be deemed to be the respondent. Notwithstanding the provisions of §1-23, subdivision (a) of OATH's rules (48 RCNY §1-23, subdivision (a)), the Department shall not be required to serve the petition on the respondent. Notwithstanding the provisions of §1-26, subdivision (d) of OATH's rules (48 RCNY §1-26, subdivision (d)), the employer shall not place the case on OATH's trial or conference calendar **ex parte.**

(c) The proceeding at OATH shall be **de novo** and the determination of OATH shall be final.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

Rules of the City of New York

***** Current through December 2009 ****

34 RCNY 8-12

RULES OF THE CITY OF NEW YORK

Title 34 Department of Transportation

CHAPTER 8 EMPLOYEE COMMUTE OPTIONS PROGRAM

§8-12 Post Hearing Relief.

An employer may make a motion to reopen a proceeding at OATH if such employer alleges that the violation that is the subject of the proceeding has been cured and that the Department has rejected such determination.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

34 RCNY 8-13

RULES OF THE CITY OF NEW YORK

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§8-13 Severability.

If any provision of this rule is deemed to be invalid or unenforceable by any court of competent jurisdiction, such provision shall be severed from this rule and the remainder of this rule shall continue in full force and effect.

HISTORICAL NOTE

Section added City Record Apr. 15, 1994 eff. May 15, 1994.

35 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-01 Definitions.

Accessible taxicab. An "accessible taxicab" is a taxicab that complies with section 3-03.2 of this title.

Adequate Mail Notice to Claimant. "Adequate mail notice to claimant" shall mean for the purposes of §1-81 of this chapter, notice by certified mail, return receipt requested, with a copy by regular mail and with a copy to the Commission, attention legal department, transfer division, to holders of claims that may be excess claims as follows, provided that proof of attempted mailing is provided to the Chairperson:

(1) to a holder of a claim as may be disclosed by the lien, judgment and lawsuit searches required to be obtained in §1-80.1(p) of this chapter, to the address for such claimant disclosed by such search and, if such notice is returned as non-deliverable, to any other address for such claimant or attorney of record of such claimant as disclosed by such search, with such notice to be deemed given if attempts to mail are made to all such addresses even if any such notice is returned as non-deliverable;

(2) to a holder of a claim as may be disclosed by a prior claim letter or a valid claim letter, to the address for such claimant as disclosed by such letter and to the sender of the letter, or, if there is no such address disclosed for the claimant, to the address of the sender of such letter, or such address as the sender may provide, with such notice to be deemed given if an attempt is made to mail to such address even if any such notice is returned as non-deliverable; provided that, if the sender provides another address for the claimant (or recipients at any such subsequent address provide a further address for claimant), notice must be mailed to all such other, subsequently provided, addresses;

(3) to a holder of a claim as may be disclosed by tort letters provided as required in §1-80.1(q) of this chapter, to

the address as may be disclosed in, by or through any such tort letter, or to any counsel of record as may be disclosed in, by or through such tort letter, or, if neither is indicated, by consultation with the insurers providing the tort letters as to either an address of a claimant or a counsel of record for such claimant as obtained therefrom, with such notice to be deemed given, even if any such notice is returned as non-deliverable after two mailings; provided that, if any recipient of such notice provides another address for the claimant (or recipients at any such subsequent addresses provide a further address for claimant), notice must be mailed to all such other, subsequently provided addresses; provided, further however, if no address for either a claimant or claimant's counsel or representative can be obtained, public notice of the contents of the notice must be provided by running the notice in The New York Times and The New York Law Journal as a public notice for one business day (that is, not a Saturday, Sunday, or public holiday).

Agent. An individual, partnership, or corporation that acts, by employment, contract or otherwise, on behalf of one or more owners to operate or provide for the operation of a licensed vehicle in accordance with the requirements of these rules. The term "agent" shall not include an attorney or representative who appears on behalf of one or more owners before the Commission or the TLC hearing tribunal, and taxicab drivers licensed pursuant to Chapter 5, Title 19 of the Administrative Code when acting in that capacity.

Applicant. (a) An "applicant" is an individual, partnership, limited liability company or corporation seeking a license for a medallion taxicab.

(b) Whenever within this chapter reference is made to the partners, general partners, shareholders and/or officers of an applicant, such reference shall also include the members and managing members of any applicant which is a limited liability company.

Association. An "association" is a group of owners which has registered its name and business address with the Commission and furnished a copy of its emblem, if any.

Chairperson. The "Chairperson" shall mean the Chairperson of the Commission, or his or her designee.

Chauffeur's license. A "chauffeur's license" is a valid license of the State of New York to operate a vehicle for hire, or a valid license of similar class from another state of which the licensee is a resident.

Claim Letter. A "claim letter" is a letter asserting a possible excess claim against an owner of a taxicab medallion or against the taxicab medallion itself. Claim letters which are neither prior claim letters nor valid claim letters will not be considered for purposes of the escrow determination to be made in §1-81 of this chapter.

Clean air taxicable. A "clean air taxicab" is a taxicab that complies with section 3-03.3 of this title.

Commission. "Commission" means the New York City Taxi and Limousine Com- mission.

Compliance date. The compliance date for the installation of taxicab technology systems in medallion taxicabs shall be the date of the first regularly scheduled inspection for each taxicab on or after October 1, 2007, unless extended pursuant to section 1-11(g) of this chapter.

Driver. A "driver" is a person licensed by the commission to drive a medallion taxicab in the City of New York.

Escrow Amount. The "escrow amount" is the amount for which an escrow account is required to be established in order to satisfy one or more excess claims. The escrow amount will be determined as set forth in §1-81 of this chapter and shall not in any event exceed the maximum escrow amount.

Excess Claim. An "excess claim" is a tort claim asserted against the owner of a taxicab medallion for an amount in excess of the amount covered by an insurance policy in effect at the time the claim arose.

Fair Market Value. The "fair market value" in reference to the transfer of a taxicab medallion shall be the average

value for arms-length transactions for similar medallions for the prior calendar month as maintained by the Commission.

Fleet. A "fleet" is a corporate entity or limited liability company:

(1) organized for the ownership or operation of twenty-five (25) or more taxicabs;

(2) which are dispatched from a single location serving as both garage and office of record, which has been approved by the Commission as adequate for the storage, maintenance, repair and dispatch of the fleet taxicabs; and

(3) which has a dispatcher on the premises at least eighteen (18) hours every day, who is responsible for assigning drivers to fleet taxicabs.

Independent taxicab owner. An "independent taxicab owner" is an individual, partnership, limited liability company or corporation owning only one medallion taxicab in the City of New York.

Licensed vehicle. A "Licensed vehicle" is a medallion taxicab authorized by the Commission to accept passengers for hire.

Long-term driver. A long-term driver is a licensed taxi driver who meets all of the following conditions: The driver must be:

(1) A steady driver, who drives the taxicab at the rate of at least 160 hours per month; and

(2) A named driver, who is named on the rate card pursuant to Rules 1-47 and 1-48; and

(3) Either an owner of the medallion (including a shareholder in a corporation owning the medallion) or a lessee of the medallion pursuant to a lease with a term of no less than five months; and

(4) A long-term driver on no more than one taxicab.

Mailing address. A "mailing address" is the address designated by the owner for the mailing of all notices and correspondence from the commission and for service of summonses. A post office box is not acceptable. An owner may designate the address of the owner's agent as the owner's mailing address.

Market Value. The "market value" in reference to the transfer of a taxicab medallion shall mean the consideration for the transfer unless the transfer is for less than fair market value, in which case the "market value" shall be the fair market value of the medallion being transferred.

Maximum Escrow Amount. The "maximum escrow amount" equals the greater of (a) the market value of a taxicab medallion being transferred less the value of any debt or liens secured by such medallion and the costs of transfer (including the costs of any foreclosure or similar action and any outstanding fines or fees owed to the Commission or the Parking Violations Bureau) or (b) the market value of a taxicab medallion being transferred less the value of any debt or liens secured by such medallion and the costs of transfer (including the costs of any foreclosure or similar action and any outstanding fines or fees owed to the Commission or the Parking Violations Bureau) PLUS the value of any proceeds of any refinancing received by the owner which was not used to reduce any previously existing debt or liens secured by such medallion following the date of an occurrence of an alleged tort involving the taxicab which tort gives rise to a potential excess claim, except that in a transfer resulting from a sale by a lender or judgment creditor, the maximum escrow amount in respect of proceeds of sale held by such lender or creditor shall not exceed (a).

Medallion. A "medallion" is a plate issued by the Commission as the physical evidence of a taxicab license, and affixed to the outside of such taxicab.

Merchant. A "merchant" is an individual or business entity licensed by the Commission that contracts with a merchant bank provider of credit/debit card services and other merchant account related services, which merchant bank provider is approved by the Commission as a subcontractor to one or more taxicab technology service providers for the purpose of providing in-cab payment of taxicab fares, surcharges, tolls and tips by credit/debit cards.

Minifleet. A "minifleet" is a limited liability company or corporation licensed by the Commission to own and operate two (2) or more taxicabs.

MTA Tax. The "MTA Tax" is the 50-cent tax on taxicab trips that is imposed by article 29-A of the New York State Tax Law.

Owner. (a) An "owner" is an individual, partnership, limited liability company or corporation licensed by the Commission to own and operate a medallion taxicab or taxicabs. A trust, foundation, or non-profit or not-for-profit entity may not be an owner and may not own any interest in an owner except as specifically provided in this chapter.

(b) Whenever within this chapter reference is made to the partners, general partners, shareholders and/or officers of an owner, such reference shall also include the members and managing members of any owner which is a limited liability company.

Passenger. A "passenger" is any individual seated in a taxicab for travel for hire to a given destination.

Prior Claim Letter. A "prior claim letter" is a claim letter received by the Commission prior to February 1, 2009.

Prospective passenger. A "prospective passenger" is a person who has hailed or sought to hire a taxicab for the purpose of being transported to a destination, or one who is awaiting the arrival of a radio dispatched taxicab and who is not seated in the taxicab.

Rate card. A "rate card" is a card issued by the Commission for each medallion taxicab, which displays the taxicab license number, rates of fare, and such other data as the Commission may prescribe.

Renewal applicant. A "renewal applicant" is an owner seeking a renewal of a valid taxicab license.

Standby vehicle. A "standby vehicle" is any vehicle approved by the Commission for use as a replacement vehicle.

Taxicab. A "taxicab" is a motor vehicle licensed by the Commission to carry passengers for hire, designed to carry a maximum of five (5) passengers, and authorized to accept hails from prospective passengers in the street. As used in these rules the term taxicab also includes the license issued by the Commission to operate the motor vehicle as a taxicab.

Taxicab drivers license. A "taxicab driver's license" is the authority granted by the Commission to an individual to drive a taxicab in the City of New York.

Taxicab license. A "taxicab license" is the authority granted by the Commission to an owner to operate a designated vehicle as a taxicab in the City of New York.

Taxicab technology service provider. A "taxicab technology service provider" is a vendor who has contracted with the Commission to install and maintain the taxicab technology system in taxicabs.

Taxicab technology system. The "taxicab technology system" is hardware and software that provides the following four core services (collectively "four core services"): (i) allows credit, debit and prepaid card payment required by section 3-03(e)(7) of this title, (ii) text messaging required by section 3-03(e)(8) of this title, (iii) trip data collection and transmission required by section 3-06 of this title, and (iv) data transmission with the passenger information monitor required by section 3-07 of this title.

Taximeter. A "taximeter" is an instrument or device approved by the Commission by which the charge to a passenger for hire of a licensed taxicab is automatically calculated and on which such charge is plainly indicated.

Taxpayer. "Taxpayer" is a person or entity who is liable under article 29-A of the New York State Tax Law to pay the MTA Tax to the New York State Department of Taxation and Finance.

Tort Letter. A "tort letter" is a statement from the insurer of a taxicab as to whether or not the insurer is aware of excess claims against the taxicab medallion or its owner.

Transfer. A "transfer" is a conveyance of an interest in a taxicab license or interest in a limited liability company owning a taxicab license or stock in a corporation owning a taxicab license, from one party to another.

Transferee. A "transferee" is an applicant approved by the Chairperson to own and operate a medallion taxicab which is acquiring an interest, either directly or indirectly, in a taxicab license pursuant to §§1-80, 1-80.1 and 1-80.2 of this chapter. A secured lender foreclosing upon, repossessing, or otherwise realizing against its security interest in, a taxicab license is not a transferee provided that such lender places the medallion in storage as required by §1-80.2(c) of this chapter.

Transfer form. A "transfer form" is a document, kept in a standby vehicle with an SBV rate card when such standby vehicle is used as a replacement vehicle, containing the medallion number and SBV number.

Trip record. A "trip record" also known as a trip sheet or trip log, is the written, computerized, automated and/or electronic accounting of a taxicab ride. The trip data to be transmitted or recorded shall include the taxicab license number (medallion number); the taxicab driver's license number; the location of trip initiation; the time of trip initiation; the number of passengers; the location of trip termination; the time of trip termination; the itemized metered fare for the trip (tolls, surcharge, and tip if paid by credit or debit card); the distance of the trip, the trip number, the method of payment, the total number of passengers, as well as such other information as may be required by the Commission. The data captured by the trip record may be stored in paper, electronic or such other form as approved by the Commission. Trip record information shall be available to the TLC, the taxicab driver, medallion owner, taxicab owner and/or leasing agent at the end of each shift and/or lease term. The trip record shall be kept in an approved archived form for a minimum of three years after the data of the taxicab ride.

Valid Claim Letter. A "valid claim letter" is a claim letter which is not a prior claim letter, and which must (a) be dated no more than one year prior to the date of submission to the Chairperson of the documentation seeking approval for a proposed transfer of a taxicab medallion as set forth in this chapter, (b) set forth a minimum claim amount in an amount sufficient to be an excess claim, (c) include a copy of the police report regarding the incident in question, and (d) include a representation by the sender that the party against which the excess claim has been asserted has been provided with a copy of the claim letter.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

Accessible taxicab added City Record May 23, 2007 §1, eff. June 22, 2007. [See T35 §1-35 Note 1]

Agent amended City Record Mar. 29, 1996 §2, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Adequate . . . Claimant added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Agent added City Record Oct. 30, 1995 §1, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

Applicant amended City Record June 20, 2006 §1, eff. July 20, 2006. [See Note 2]

Association amended City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Chairperson added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Chauffeur's license amended City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Claim Letter added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Clean air taxicab added City Record May 23, 2007 §1, eff. June 22, 2007. [See T35 §1-35 Note 1]

Coach repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Compliance date added City Record June 12, 2007 §1, eff. July 12, 2007. [See Note 3]

Escrow Amount added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Excess Claim added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Fair Market Value added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Fleet amended City Record June 20, 2006 §2, eff. July 20, 2006. [See Note 2]

Fleet added City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Independent taxicab owner amended City Record June 20, 2006 §3, eff. July 20, 2006. [See Note 2]

Lease card repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Log book repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Long-term driver added City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See T35 §1-78 Note 1]

Mailing address amended City Record Oct. 30, 1995 §1, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

Market Value added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Maximum Escrow Amount added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Merchant added City Record June 12, 2007 §1, eff. July 12, 2007. [See Note 3]

Minifleet amended City Record June 20, 2006 §4, eff. July 20, 2006. [See Note 2]

Minifleet added City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

MTA Tax added City Record Sept. 25, 2009 §1, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Office of record repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Owner amended City Record Dec. 24, 2008 §2, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Owner amended City Record June 20, 2006 §5, eff. July 20, 2006. [See Note 2]

Prior Claim Letter added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Taxicab fleet repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Taxicab minifleet repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Taxicab technology service provider added City Record June 12, 2007 §1, eff. July 12, 2007. [See Note 3]

Taxicab technology service added City Record June 12, 2007 §1, eff. July 12, 2007. [See Note 3]

Taxpayer added City Record Sept. 25, 2009 §1, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Tort Letter added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Transfer amended City Record June 20, 2006 §6, eff. July 20, 2006. [See Note 2]

Transferee added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Trip record amended City Record May 11, 2005 §17, eff. June 10, 2005. [See T35 §3-03 Note 10]

Two-way radio communication system repealed City Record Dec. 29, 1995 §1, eff. Feb. 1, 1996. [See Note 1]

Valid Claim Letter added City Record Dec. 24, 2008 §1, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 29, 1995:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgation amends the Drivers Rules in the following manner: nine penalties are eliminated; drivers are able to go off-duty for more than an hour; drivers are not responsible if an owner placed unauthorized signs in taxi or failed to place required signs; the penalty for failure to safeguard the hack license is eliminated, as that is a summons which drivers often find galling, as it penalizes them for mishaps.

The promulgation amends the Owners Rules in the following manner: nine penalties are eliminated and five changed to permit guilty pleas by mail instead of requiring personal appearances at hearings; requirement that owners must sign trip sheets daily is eliminated; owners will take possession of trip records on a weekly basis; taxis may be driven to a repair facility by someone other than a licensed taxi driver; less restrictive rules for markings and emblems.

In addition, unnecessary definitions and duplicative sections are eliminated from both sets of rules.

The purpose of the promulgation is to simplify and consolidate the Taxicab Owners and Drivers Rules. Streamlining and clarifying the regulations, we believe, better enables the individuals working in the taxi industry to be aware of and follow the requirements. The proposed changes would also present clearer guidelines for enforcement personnel and the TLC adjudications tribunal.

The proposal did not appear in a regulatory agenda for the agency. The preparation of an agenda for this fiscal year was postponed, until after the appointment of a new Chairman. The new Chairman has established this proposal as a priority.

2. Statement of Basis and Purpose in City Record June 20, 2006: The rules amend existing rules to allow limited liability companies to own and operate taxicab medallions. In addition, the rules provide that members and managing members of such limited liability companies will be subject to the same requirements as are partners, shareholders, officers and directors of corporate and partnership owners and operators of taxicab medallions, for all purposes of the Taxicab Owners Rules, including with respect to fitness to own taxicab medallions. The prior rules provide that taxicab medallions may be owned by individuals, partnerships and corporations. The governing statute, §19-502(i) of the New York City Administrative Code, authorizes a broader scope of entities that may own taxicab medallions: "any person, firm, partnership, corporation or association." The limited liability company structure may offer certain advantages for some owners when compared with the personal, partnership or corporate forms of ownership-in particular, industry representatives have indicated that the limited liability company structure can have tax advantages over other forms of taxicab medallion ownership. At the same time, based on review of the law governing limited liability companies, the Taxi and Limousine Commission believes that taxicab medallion owners' use of the limited liability company structure will not impair the Commission's ability to regulate and monitor the taxicab industry.

3. Statement of Basis and Purpose in City Record June 12, 2007: These rules revise the existing Taxi and Limousine Commission ("TLC") rules applicable to the requirements of the taxicab technology system, which consists of hardware and software that allows credit and debit card payment of taxicab fares, text messaging to taxicab drivers, electronic taxicab trip data collection and transmission, and data transmission to a passenger information monitor. The rules provide exemptions from the system installation requirement to taxicabs that will be retired within six (6) months following the installation date, and provide that any taxicab technology service provider who has contracts for installation of the taxicab technology systems in more than three thousand (3,000) taxicabs may, upon prior written approval from the Chairperson, or his or her designee, extend the date for each taxicab to receive such taxicab technology system to the next date that each such taxicab is due for inspection at the TLC's Safety and Emissions Facility following February 1, 2008. The taxicab technology system is in development by vendors pursuant to contracts with the TLC. These rules require installation of the taxicab technology system in taxicabs on the date of the first regularly scheduled inspection for each taxicab on or after October 1, 2007, unless the taxicab is exempt. The rules allocate responsibility for the operation and maintenance of the taxicab technology system among the taxicab driver, owner and agent, and require the driver, owner and agent to report malfunctions in the taxicab technology system within prescribed times after the malfunction is discovered or should reasonably have been discovered. Provided that those reporting requirements are met, the rules allow continued operation of the taxicab, with a written trip sheet if the electronic trip data collection is malfunctioning, for up to 48 hours after the malfunction is reported. If the taximeter fails to operate, however, the taxicab is prohibited from picking up a passenger. Further, if the taxicab technology system in a particular taxicab requires six or more repairs within any thirty-day period, the taxicab must promptly be brought for inspection to, or an inspection must be scheduled with, the TLC Safety and Emissions Facility. Pursuant to the contracts between the Commission and the taxicab technology service providers, the service providers are subject to audits by the City and the Commission, and they are required to provide the City and the Commission with periodic reports and reasonable access to the service providers' performance measurement and management reporting tools. The rules increase from two to six the number of different fare calculations that the taximeter must be capable of processing. Existing rules require that the taximeter be capable of processing the regular fare pursuant to section 1-70 of the TLC rules, and the flat fare between Kennedy Airport and Manhattan pursuant to section 1-69 of the TLC rules. These rules require that the taximeter be capable of processing the fare to Newark Airport pursuant to section 1-73 of the TLC rules, the adjustment of the metered fare to points in Westchester and Nassau counties pursuant to section 1-73(b) of the TLC rules, the negotiated flat fares to points outside New York City other than the Newark Airport and Westchester and Nassau counties pursuant to section 1-73(a) of the TLC rules, and flat fares per person for group rides pursuant to section 1-71 of the TLC rules. The rules also require taxicabs equipped with taxi technology systems to display signs or logos identifying the credit and debit cards that are accepted for payment on the passenger information monitor screen and to permit advertising on the passenger information monitor screen. The rules also require that the taxicab technology system ports and peripheral connections be secured from tampering and that the connections to the taximeter harness, roof light wires and pulse wires use switches, wiring and wire caps meeting the specifications of the Society of Automotive Engineers. The rules at Sections 1-85(b) and 12-06(u)(4) contained a cap of 5 % that medallion owners, or

their agents, would be able to charge drivers for credit/debit card transactions. The rules set forth terms that explicitly require that each taximeter approved by the Commission be capable of transferring data and communicating with the taxicab technology system of all taxicab technology service providers that have chosen to interface with the taximeter. Section 15-44, added by the rules, requires that taximeter businesses which manufacture taximeters make available to taxicab technology service providers certain of their taximeter specifications, subject to appropriate confidentiality obligations, to enable the taxicab technology service providers to effect an interface between their systems and each taximeter; or, alternately, that the taxicab technology service providers make available to taximeter businesses which manufacture taximeters certain of their system specifications, again subject to appropriate confidentiality obligations, to enable the taximeter businesses to effect an interface between their taximeters and each of the taxicab technology systems. The rules also make clear that, effective July 18, 2007, manufacturers of taximeter devices must be licensed by the TLC in order for their taximeters to be installed or maintained in taxicabs licensed by the TLC. Development and implementation of the taxicab customer service enhancements has made it clear that manufacturers of taximeters must work with the taxicab technology service providers, which are TLC contractors, to ensure that all equipment interfaces properly. The Commission achieves this purpose by requiring manufacturers to hold a license and to implement the interface requirements set forth in section 15-44 of the TLC rules. To alleviate difficulties in licensing manufacturing entities which may not be located in New York City, the Commission allows that a manufacturer may meet its licensing requirement by designating a representative to hold a license on its behalf. Any representative designated must hold, and will be deemed to hold, all the necessary authority to carry out the manufacturer's duties as a licensee, including duties regarding interface requirements. The licensing of a representative shall not relieve a manufacturer of its duties with respect to such requirements.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-02 General Provisions for Licensing.

(a) An applicant for a taxicab license shall file an application jointly with the transferor of the license.

(b)(1) An individual, the members of a partnership, or the officers and shareholders of a corporation, applying for a taxicab license must provide to the Commission proof of identity in the form of

(i) A valid form of photo identification issued by the United States, any state or territory thereof or any political subdivision of such state or territory, and

(ii) A valid, original social security card.

(2) An individual, the members of a partnership, or the officers and shareholders of a corporation applying for a taxicab license or its renewal

(i) must be at least 18 years of age; and

(ii) must be of good moral character.

(c) The applicant must demonstrate to the satisfaction of the commission:

(1) that he is qualified to assume the duties and obligations of an owner of a taxicab license;

(2) that he is the owner of a vehicle meeting all requirements of the commission and those of all other

governmental agencies having concurrent jurisdiction;

(3) that he has liability insurance coverage by bond or policy as required by the State of New York and the rules of the Commission;

(4) that he has the certificate of title or photostat thereof and the certificate of registration, both of which must be in the name of the applicant unless title is retained by a lessor or conditional vendor; and

(5) that he has furnished to the Commission all required information concerning the financing of the purchase price of the medallion and/or taxicab.

(6) in the case of an applicant on or after January 7, 1990 to acquire a medallion owned by an independent taxicab owner, that he possesses a current taxi driver's license issued by the Commission and represents that he will drive the taxicab himself in fulfillment of the service requirements of §l-09(b). In the event that the applicant is a corporation or partnership, then one shareholder or partner, as the case may be, must fulfill this requirement.

(d) An individual, the members of a partnership, and officers and shareholders of a corporation applying for an owner's license shall be fingerprinted. Fingerprinting shall also be required of new officers and shareholders of a corporation holding a taxicab license, and of the officers and shareholders of a management company which operates a taxicab fleet. An individual, the members of a partnership and officers and shareholders of a corporation, who provide funds for any owner, shall also be fingerprinted, unless such provider is a licensed bank or loan company. The requirements of this paragraph may be waived by the Commission in its discretion. All such fingerprints must be submitted in the manner prescribed by the Chairperson prior to the approval of the application for ownership of any interest in any medallion and each person fingerprinted must pay any required fees or costs for the taking and processing of fingerprints and securing criminal history records from the New York State Division of Criminal Justice Services, provided that, if any person required to be fingerprinted hereby has an electronic fingerprint record made no earlier than one year prior to the date of the proposed transfer on file with the Commission, such person need not submit an additional set of fingerprints.

(e) If the owner is a partnership, it shall file with its license application a certified copy of the partnership certificate from the clerk of the county where the principal place of business is located.

(f) No corporate or trade name will be accepted by the Commission which is similar to a name already in use by another owner.

(g) If the applicant is a corporation, it shall file with its license application a certified copy of its certificate of incorporation. A list of officers and shareholders and a certified copy of the minutes of the meeting at which the current officers were elected shall also be furnished. Each officer or shareholder shall disclose to the Commission each medallion in which he or she has any interest whatsoever, including but not limited to, any interest as individual owner, partner, shareholder, director or officer. Such disclosure shall be made upon original application for a vehicle license, upon application for renewal of such license, and upon application for transfer of such license.

(h) An applicant or renewal applicant shall not offer or give any gift or gratuity to any employee, representative or member of the Commission, or any public servant, and shall immediately report to the inspector general of the Commission or to the New York City Department of Investigation any request or demand for any gift or gratuity by any employee, representative or member of the Commission, or any public servant.

(i) If the Commission determines that the applicant has failed to meet the requirements for a taxicab license it may deny the license or its renewal and specify in writing to the applicant the reason for such denial.

(j) Any material falsification contained in an original or renewal application for a license, any failure to notify the commission of any material change in the information contained therein or any attempt by an owner or applicant to

conceal the identity of a party having an interest in the ownership of a taxicab shall be cause for denial of such application or revocation or suspension of such license, in addition to any other sanctions imposed by the Commission.

(k) If at anytime during the term of the taxicab owner's license the Commission becomes aware of information that the owner no longer meets the requirements for a taxicab owner's license the Commission may deny his renewal application or suspend or revoke his license.

(l) Each individual medallion owner, member of a partnership owning one or more medallion taxicabs, or shareholder, director or officer of any corporation owning one or more medallion taxicabs shall furnish to the Commission a financial disclosure statement, executed under oath, together with all attachments and documentation required by the Commission. This disclosure statement will be completed on a form provided by the Commission, and shall include but not be limited to the entire disclosure of assets, liabilities, income and net worth of the owner, partner, shareholder, officer or director.

(m) Each individual applicant and renewal applicant shall submit with his or her application the child support certification required by New York General Obligation Law §3-503.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

Subd. (b) amended City Record Oct. 31, 2006 §1, eff. Nov. 30, 2006. [See Note 2]

Subd. (c) par (3) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 2]

Subd. (d) amended City Record Dec. 24, 2008 §3, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Subd. (g) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 1]

Subd. (l) added City Record June 26, 1998 eff. July 26, 1998. [See Note 1]

Subd. (m) added City Record Dec. 24, 2008 §4, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1998:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, which permits TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b)(13) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The regulations require corporate officers or directors and shareholders of corporations owning medallions to reveal their ownership interests in other medallions to the Commission. It also requires all medallion owners to disclose financial information concerning assets, liabilities, income and expenses, to the Commission.

The purpose of these regulations is to enable the Commission to identify officers, directors and shareholders who possess multiple ownership interests in corporations which own medallion taxicabs. This regulation will assist the Commission in protecting the riding public by assuring that beneficial ownership interests in medallion taxicabs are

fully disclosed. The Commission will now be able to determine: (1) who are the true owners of each licensed medallion; and (2) how many medallions are owned, in whole or in part, by each individual.

The regulation requiring financial disclosure will enable the Commission to protect the public by assuring that medallion owners have sufficient income and assets to operate their businesses, and sufficient assets available to protect the public in the event of serious personal injury and/or other loss where the medallion owner is held liable. The Commission is charged with the responsibility of making certain that persons who have ownership interests in medallion taxicabs have sufficient resources to enable them to operate their taxicabs safely and responsibly.

In addition, this information will enable the Commission to assure that persons who have financial interests other than ownership in medallion taxicabs, such as creditors, financiers and lienholders, are identified and known to the Commission. This will enable the Commission to protect the riding public by preventing fraud, undisclosed interests in medallions, and other forms of abuse.

2. Statement of Basis and Purpose in City Record Oct. 31, 2006: The rules amend existing Taxi and Limousine Commission ("TLC") rules to eliminate the requirement that applicants for certain licenses issued by the TLC must prove their citizenship or residency status in order to obtain licenses. This change is made to enhance consistency of application requirements for the various licenses issued by TLC. The rules as amended would preserve the TLC's ability to verify the identity of those applicants who formerly had to prove their citizenship or residency status. Verifying identity is crucial to the completion of accurate background checks and fitness assessments, and therefore is necessary to protect the public interest in the safety and integrity of operations of the for-hire transportation industry. The rules provide that each applicant must establish his or her identity by producing a government-issued photo ID and an original social security card. These standards apply to applicants who are individuals, and to partners, officers, members and/or shareholders of applicants who are partnerships or corporations. These rules leave unchanged the TLC's ability to fingerprint applicants for the purpose of conducting criminal background checks.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The regulation requiring financial disclosure from taxi cab owners, members of partnerships, or shareholders, directors or officers of corporations owning medallions, has been upheld. The regulation furthers legitimate governmental objectives of assuring sufficient information to identify taxi cab owners who have abused the corporate form by fragmenting their ownership into many undercapitalized corporations in order to shield assets from persons injured as a result of negligence. New York City Committee for Taxi Safety v. New York City Taxi and Limousine Commission, 256 A.D.2d 136, 681 N.Y.S.2d 509 (App. Div. 1st Dept. 1998).

¶ 2. Medallion owners brought a challenge to the financial disclosure regulations, claiming that the Taxi and Limousine Commission (TLC) lacked statutory authority to enact the regulation and that the regulation was an unconstitutional infringement on the right of privacy. The court, however, said that the TLC had the necessary authority. Specifically, under City Charter Section 2303, the TLC was given authority to enact regulations relating to financial responsibility of owners. The court also held that the regulations did not violate the right of privacy. In any privacy case, the court said, it was necessary to balance the right to be left alone, against the value of disclosure as a remedy for adverse social conditions. The plaintiffs had cited a number of cases in which financial disclosure requirements for public employees had been upheld, and sought to distinguish them on the grounds that they were private businesses or individuals. The court, however, said that while taxi owners might not be in the same category as public employees, they had chosen to enter a highly regulated industry. Thus, the court applied an "intermediate scrutiny" standard to the constitutional challenge. Under that standard, the regulation was to be upheld if it was designed to further a substantial governmental interest and did not land wide of any reasonable mark in making the classifications. The regulation had a legitimate objective-to insure that owners were adequately capitalized to operate the business safely and to satisfy any tort judgments obtained by persons injured in accidents involving taxi cabs. Even though, as pointed out by the owners, the regulations did not specify a minimum capitalization requirement, they were needed to insure that the corporate form was not being abused. The information should be made available to persons

injured in accidents involving cabs owned by undercapitalized corporations. In other words, the injured persons would need that information in order to prove, if they could, that the corporation was being used to conduct personal business and that there was a basis for piercing the corporate veil. The owners also challenged those parts of the regulation that potentially permitted members of the public to obtain the financial information through a Freedom of Information Law (FOIL) request. The court did not reach this issue, since the TLC promised to implement procedures under which sensitive information would not be released to people not involved in TLC work. If the TLC later fails to safeguard owners' privacy, a new challenge can be expected. Statharos v. New York City Taxi & Limousine Commission, 198 F.3d 317 (2d Cir. 1999).

¶ 3. TLC inspector's testimony that taxicab owners had bribed him to pass taxicabs at inspection was insufficient to establish the charge under section 1-02(k) due to the inconsistencies in and lack of credibility of the Inspector's testimony. **Taxi and Limousine Comm'n v. Chrisanthos, Inc.,** OATH Index Nos. 1626-32/95 (July 21, 1998).

¶ 4. Taxicab owner's license should be revoked based on a finding that he attempted to bribe a TLC inspector to pass his taxicab at inspection. **Taxi and Limousine Comm'n v. N & J Taxi, Inc.,** OATH Index Nos. 1542-53/95 (Jan. 9, 1996), **aff'd in part, remanded on other grounds sub nom. Statharos v. NYC Taxi & Limousine Comm'n,** 269 A.D.2d 280, 703 N.Y.S.2d 461 (1st Dep't 2000). The court had affirmed the administrative law judge's findings of fact but remanded on penalty, holding that one of the owner-driver respondent's had not been given notice in the petition that ownership of his taxicab medallion was at risk. After a hearing on remand, the administrative law judge adhered to her original recommendation that the owner's license be revoked and that he be forced to divest himself of all ownership interest he may have in any corporation owning a taxicab medallion.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-03 Standards and Criteria for Ownership.

(a) All medallion transfers together with all transferees, owners or officers of transferees must be approved by the Taxi and Limousine Commission. Otherwise, transfer will not be effective.

(b) Corporate officers are subject to the same standards and criteria as are individual owners. Corporate officers will not be recognized by the Commission unless they have met with the approval of the Commission. It is a violation of the owners rules for a corporate owner to appoint a new officer without the approval of the Commission; and upon a finding of guilt, an appropriate penalty will be imposed. Temporary approval contingent on final approval may be permitted in cases in which an officer has resigned or died and another individual must be able to continue the regular daily operation of the owner corporation.

(c) The standards and criteria for ownership are to be equally applicable when the stock or shares of a corporate owner are held by another corporation or by an association. Each principal, shareholder, and officer of an entity succeeding in interest to any party must be approved by the Commission, and particularly before that entity can purchase an interest in an additional medallion.

(d) The following criteria shall be considered by the TLC in granting permission to own a medallion or additional medallions. For purposes of this subdivision, the term applicant refers to both an individual and to officers and shareholders of a legal entity.

(1) Applicant's criminal history will be considered in a manner consistent with the Corrections Law of the State of New York.

(2) Applicant's TLC and DMV records. TLC History Check will determine whether a prospective owner has owned or currently owns other medallions, directly or as a shareholder, or has been an officer of such a corporation; or possessed or currently possesses a TLC driver license. Ownership or transfer will not be approved if in the past two years, the prospective owner has been found guilty of rule violations involving:

(i) assaultive behavior toward a passenger, official or member of the public in connection with any matter relating to a taxicab,

(ii) any instance of bribery or unlawful gratuity toward a city employee not otherwise covered in §l-03(d)(1), above,

(iii) providing TLC with false information,

(iv) two or more passenger service refusals,

(v) two or more incidents of overcharging, as a driver,

(vi) three failures to respond to an official communication,

(vii) three or more vehicle safety violations for a particular taxicab, or

(viii) ten or more outstanding unexcused failures to appear at scheduled TLC hearings or unsatisfied TLC fines that remained or remain unsatisfied until renewal, or, if other than personal summons, was a stockholder or officer of such an entity.

A prospective owner or shareholder will not be approved to own another medallion, hold stock or be an officer in another corporate medallion owner if he has evidenced a chronic disregard for the rules and regulations that impact on the welfare, safety or security of the riding public.

(3) A medallion owner, stockholder or owner of any type of interest in a taxicab license must be at least eighteen (18) years of age. Stock or membership interests in a limited liability company may be owned in the form of a formal trust for the benefit of a minor who retains equitable interest, only as provided by §1-82(d) of this chapter.

(4) If an owner dies or is declared incompetent by a court of competent jurisdiction, the interest in the medallion or the medallion owning entity must be transferred to an owner approved as required by this chapter and meeting the requirements of §§1-02, 1-03, 1-80, 1-80.1, 1-80.2 and 1-81 of this chapter or must be operated by an administrator, executor, conservator or guardian as provided in §1-82 of this chapter.

(5) An independent taxicab owner must also possess a taxi driver's license issued by the Commission, and for any individual medallion transferred on or after January 7, 1990, he must represent that he will drive the taxi himself in fulfillment of the service requirements of §l-09(b). In the event that the independent taxicab owner is a corporation or partnership, then one shareholder or partner, as the case may be, must fulfill this requirement.

(e) In addition to the foregoing, the Commission will require shareholder responsibility as follows:

A stockholder in a closed corporation that owns a medallion will be personally accountable for adherence to TLC regulations and relevant law directly and uniquely pertaining to medallion ownership.

The Commission will require that prior to approval of any future stock transfers or medallion transfer to a closed corporate owner that all stockholders execute a personal assumption of all the duties and responsibilities in the Commission's Owners Rules and Regulations including personal indemnification for all unpaid Commission fines or fees regarding the medallion or medallions owned by the corporation. This will be the assumption and indemnification agreement.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

Subd. (d) amended City Record Dec. 29, 1995 §2, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (d) par (3) amended City Record Dec. 24, 2008 §5, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

Subd. (d) par (4) amended City Record Dec. 24, 2008 §6, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

DERIVATION

Former §1-03 subds. (l), (m) added City Record Jan. 2, 1992 eff. Feb. 1, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Testimony from TLC inspector, who admitted that he accepted bribes from those who presented taxicabs to him for inspection, was found insufficient to establish charges that taxi owners had bribed the inspector, due to inconsistencies in the inspector's testimony and other problems with his credibility. **Taxi and Limousine Comm'n v. Chrisanthos, Inc.,** OATH Index Nos. 1626-32/95 (July 21, 1998).

¶ 2. TLC inspector's testimony was found to be sufficient to establish that medallion owners attempted to bribe the inspector. **Taxi and Limousine Comm'n v. N & J Taxi, Inc.,** OATH Index Nos. 1542-53/95 (Jan. 9, 1996), **aff'd in part, remanded on other grounds sub nom. Statharos v. NYC Taxi & Limousine Comm'n,** 269 A.D.2d 280, 703 N.Y.S.2d 461 (1st Dep't 2000).

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35 RCNY 1-04

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-04 License Fees.

(a) Pursuant to §19-504(b) of the Administrative Code of the City of New York, the license fee for each taxicab and coach shall be five hundred fifty dollars ($550) annually, pro rated if the license period is for a period other than one year.

(b) Except as set forth in subdivision (e), a license to operate a taxicab shall be for a term of two years and shall expire on May 31 each alternate year. The Chairman may, however, extend the effectiveness of a taxicab license until the completion of the next scheduled inspection of the taxicab, or until such other time as may be appropriate in the administration of the renewal of taxicab licenses.

(c) Unless the time to renew the license has been extended by the Chairman, an owner shall be responsible for filing a completed renewal application for the vehicle license together with the required fee no later than April 30 of each year in which a license is scheduled to expire. It shall be the owner's responsibility to obtain said renewal application in order to comply with the filing requirements described above.

(d) Pursuant to §19-504(j) of the Administrative Code of the City of New York, the fee for replacement of a medallion "tin" when such medallion is replaced shall be ten dollars ($10).

(e) Taxicab licenses expiring on May 31, 2003 shall be renewed for one year, except for licenses containing the letters A, E, J, and N in their license designation, which shall be renewed for two years. Taxicab medallion licenses expiring on May 31, 2004 shall be renewed for one year, except for licenses containing the letters B, F, K and P, which shall be renewed for two years. Taxicab medallion licenses expiring on May 31, 2005 shall be renewed for one year,

except for licenses containing the letters A, C, E, G, J, L, N, W, and all Standby Vehicles, which shall be renewed for two years. All taxicab licenses expiring on or after May 31, 2006 shall be renewed for two years.

HISTORICAL NOTE

Section amended City Record Apr. 8, 2003 §1, eff. May 8, 2003. [See Note 1]

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Apr. 8, 2003:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under §2303(b)(5) of such Charter, authorizing the TLC to promulgate rules and regulations relating to issuance of licenses to owners of taxicabs; under §19-504(b) of the Administrative Code of the City of New York, authorizing the TLC to issue taxicab licenses for a period of at least one, but not more than two years.

The rules of the Commission currently provide that all taxicab licenses are issued for a one-year period and expire on May 31st of each year. Most other licenses issued by the TLC are valid for two years.

This amendment provides that taxicab licenses are renewed on a biennial basis. All licenses would continue to expire on May 31st. A phase in of this requirement over a three-year period will enable the TLC to process these transactions without an increase in staff and other resources, and ultimately, approximately one-half of all licenses would be subject to renewal each year.

The issuance of two-year taxicab licenses will reduce the number of renewals processed each year, and will conform the procedures for processing renewals of taxicab licenses with the procedures for processing the renewal of other licenses issued by the TLC.

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35 RCNY 1-05

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§1-05 Inspection Fees.

(a) The fee payable to TLC for the inspection required for the issuance of a certificate of inspection of a taxicab, inclusive of the issuance of such certificate, shall be fifty dollars ($50).

(b) An owner shall pre-pay upon license renewal the inspection fees, set by §l-05(a), for the three inspections per year required by §l-10(b). Pre-payment for each inspection scheduled during renewal period shall be made in connection with an application for renewal of a taxicab license and shall be a condition for license renewal.

(c) If any taxicab fails to pass any of the inspections required by §l-10(b), it shall be reinspected for no additional fee. If any taxicab fails to pass such reinspection, it shall be reinspected a second time for an additional fee of thirty-five dollars ($35). If any taxicab fails to pass such second reinspection, it shall be reinspected a third time. No additional fee shall be charged for third or subsequent reinspections.

HISTORICAL NOTE

Section amended City Record Apr. 8, 2003 §2, eff. May 8, 2003. [See §1-04 Note 1]

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

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35 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-06 Administrative Fees.

(a) Pursuant to §19-504(k) of the Administrative Code of the City of New York, the fee for replacement of license plates issued by the New York State Department of Motor Vehicles shall be twenty-five dollars ($25) per vehicle.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

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35 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-07 Licensing Requirements.

(a) A taxicab in operation for hire shall be currently licensed by the Commission and have a current medallion affixed thereto.

(b) An owner who is not currently licensed shall not advertise or hold himself out as doing business as a "taxi," "taxicab" or "hack" service.

(c) A taxicab may be operated only while the registration of the vehicle remains valid. Operation of a vehicle without a valid registration shall constitute operation without a Commission-issued license in violation of §19-506 of the Administrative Code of the City of New York, regardless of whether a Commission-issued license had previously been obtained while a registration was valid.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

Subd. (c) added City Record Nov. 2, 2006 §1, eff. Dec. 2, 2006. [See Note 1]

DERIVATION

Former §1-07 subd. (v) par (3) added City Record Jan. 2, 1992 eff. Feb. 1, 1992.

NOTE

1. Statement of Basis and Purpose in City Record Nov. 2, 2006:

These rules create procedures for suspending licenses pending compliance with applicable rules, as an alternative to the existing procedure for suspending licenses pending revocation of those licenses. This rulemaking follows the pattern of recently promulgated amendments to the Commission's drug testing rules, which provided for suspension of licensees who fail to submit to required annual drug testing-the new rule provides for suspension pending compliance as an alternative to suspension pending revocation. This rulemaking creates the alternative of suspension pending compliance for several rules violations involving pre-hearing suspensions, in order to protect against an imminent threat to the health and safety of the riding public.

Because the suspensions are pre-hearing, prompt post-suspension review of the suspension is provided for in these rules. Section 8-17(a) provides for post-suspension review based on the submission of papers, and is applicable only to a suspension imposed for failure to submit to required annual drug testing. Section 8-17(b) provides for post-suspension hearings, and is applicable to all other summary suspensions that are imposed pending compliance. Both §8-17(a) and §8-17(b) provide deadlines within which the suspended licensee may contest the suspension. Where a suspension is imposed and a summons is issued for the same violation, the hearing on the summons will be consolidated with any hearing on the suspension pursuant to §8-17(b). Each rule that may result in a summary suspension pending compliance includes a reference to 8-17(a) or (b) in the penalty in these rules.

In addition to or instead of contesting a summary suspension that is imposed pending compliance, a licensee has the alternative of complying with the underlying rule, and demonstrating compliance to the Commission, whereupon the suspension will be lifted without a hearing, and regardless of whether a hearing has been scheduled or has been held.

Other substantive changes in these rules include:

· Elimination of suspensions for failure to comply with Commission rules requiring personal appearances at hearing. This requirement is eliminated in anticipation of future rulemaking to substitute fixed fines for "range fines," which were the reason underlying the personal appearance requirements.

· Amendment of §8-15 to provide for pre-hearing suspension of a licensee pending a fitness hearing, where the licensee fails a drug test and the licensee's continued operation would pose a threat to the public safety. As with other summary suspensions, the amendment provides for prompt post-suspension process-in this case, a prompt fitness hearing.

· Explicit provision for summary suspension pending revocation where the licensee is arrested on charges that are relevant to the licensee's qualification for licensure and pose a threat to public health or safety. Prompt post-suspension challenges are provided for, and a revocation proceeding must be commenced, or the suspension lifted, promptly upon notice to the Commission of disposition of the criminal proceedings.

· Provision that holders of probationary taxicab driver licensees must complete their continuing education requirements within a prescribed time, and that failure to do so results in expiration of their licenses.

· Elimination of the existing rule requiring surrender of a license as a precondition to appearing at a hearing. The new rule requires only that photo identification be shown, in conformance with current practice.

· Rule 8-11(e) is deleted and instead incorporated into each penalty table, to make the requirement of paying fines more clear throughout the rules.

Finally, this rulemaking corrects various typographical errors, eliminates references only to the male pronoun, and provides for more consistent usage of terms.

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§1-08 [Reserved]

HISTORICAL NOTE

Section repealed and reserved City Record Dec. 29, 1995 §3, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

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35 RCNY 1-09

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§1-09 Service Requirements.

(a) A taxicab fleet or minifleet owner shall operate each taxicab or its replacement standby vehicle of such fleet for a minimum of two (2) shifts of nine (9) hours each day including weekends and holidays.

(b) An independent owner, while not required to double shift his vehicle, is nevertheless required to provide service to the public on a regular basis. An independent owner must provide service for at least two hundred ten (210) nine (9) hour shifts in every calendar year. An independent owner who obtained the medallion through a transfer on or after January 7, 1990 must drive the taxicab himself to fulfill the above-stated requirement. In the event that the independent taxicab owner is a corporation or partnership, then one shareholder or partner, as the case may be, must fulfill such requirement. Upon written request by an owner, the Commission may waive or modify the requirements of this rule, for a limited time, for good cause shown.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

DERIVATION

Former §1-09 subd. (e) amended City Record Jan. 2, 1992 eff. Feb. 1, 1992.

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35 RCNY 1-10

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§1-10 Taxicab Inspections.

(a) No new or replacement taxicab shall operate for hire unless it has been inspected and approved by the Commission.

(b) An owner shall have his taxicab inspected every four months at a date and time designated by the Commission and at any other time deemed necessary by the Commission.

(c) An owner shall comply with all notices and directives to correct defects in taxicabs.

(d) An owner shall repair or replace a taxicab when the Commission determines that the vehicle is unsafe or unfit for use as a taxicab, and directs the owner to remove it from service. The owner shall surrender the medallion and rate card to the Commission for storage and shall be suspended pursuant to §8-17(b) of this title.

HISTORICAL NOTE

Section amended City Record Nov. 2, 2006 §2, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

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35 RCNY 1-11

RULES OF THE CITY OF NEW YORK

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§1-11 Vehicle Condition.

(a) While a taxicab is in operation, all equipment, including brakes, tires, lights and signals must be in good working order and meet all requirements of the New York State Vehicle and Traffic Law, the Commission, and sections 3-03 and/or 3-03.1 or 3-03.2 of this title and these rules.

(b) The taxicab's exterior and interior must be clean.

(c) The medallion number on the front and rear of the roof light must be clean and unobstructed so that the medallion number is plainly visible.

(d) The trunk compartment must be capable of securely holding passengers' baggage.

(e) (i) For any taxicab that is required to be equipped with the taxicab technology system, such equipment shall at all times be in good working order and each of the four core services shall at all times be functioning. (ii) In the event of any malfunction or failure to operate of such taxicab technology system, the owner shall file an incident report with the authorized taxicab technology service provider promptly and in no event more than two (2) hours following the owner's discovery of such malfunction or failure to operate or such time as the owner reasonably should have known of such malfunction or failure to operate. If the driver or taxicab agent previously filed a timely incident report regarding such malfunction or failure to operate, the owner shall not be required to file a separate incident report but shall obtain an incident report number from the driver, agent or authorized taxicab technology service provider. The owner shall meet, or shall instruct the taxicab agent to meet the appointment for repair scheduled by the authorized taxicab technology service provider following the filing of an incident report with such authorized taxicab technology service provider. A

taxicab in which any of the four core services of the taxicab technology system, or any part thereof, are not functioning shall not operate more than forty-eight (48) hours following the timely filing of an incident report by the owner, driver or agent.

(f) The owner of any taxicab required to be equipped with the taxicab technology system shall equip such taxicab, except as provided in subdivision (g) of this section, with a taxicab technology system as set forth in sections 3-03(e)(7) and (8), 3-06 and 3-07 of this title.

(g) The owner of any taxicab required to be equipped with a taxicab technology system shall contract to procure such equipment on or before August 1, 2007. Except as provided in this subdivision, the owner shall install a taxicab technology system no later than the compliance date set forth in section 1-01 of this chapter. Taxicabs that are to be retired within six (6) months of the compliance date for each such taxicab shall be exempt from the requirement that the taxicab technology system be installed in the taxicab. If any taxicab technology service provider contracts to provide more than three thousand (3,000) taxicabs with its taxicab technology system on or before August 1, 2007, the date by which each such taxicab is required to be equipped with such taxicab technology system may, upon prior written approval from the Chairperson, or his or her designee, be extended to each such taxicab's first scheduled inspection at the Commission's Safety and Emissions Facility on and after February 1, 2008.

(h) The owner of any taxicab requiring six (6) or more repairs of the taxicab technology system in any thirty (30) day period shall promptly take such vehicle for inspection to, or schedule an inspection with, the Commission's Safety and Emissions Facility. Such requirement shall not apply to the owner if compliance is made by the driver or agent of such vehicle.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

Subd. (a) amended City Record June 12, 2007 §2, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 1]

Subds. (e), (f) amended City Record June 12, 2007 §2, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subds. (e), (f) added City Record Apr. 14, 2004 §3, eff. May 14, 2004. [See T35 §3-03 Note 8]

Subds. (g), (h) added City Record June 12, 2007 §2, eff. July 12, 2007. [See T35 §1-01 Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 29, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgated amendments are technical changes to the Taxicab Owners Rules which correspond with rules recently adopted by the Commission. At the Commission meeting held on January 25, 1996, the taxicab rate of fare was increased and the Taxicab Specifications were renumbered. The amendments change the references to the Taxicab

Specifications to reflect the new section numbers, and ensure that the Taxicab Marking Specifications correspond to the increased taxicab rate of fare.

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CHAPTER 1 TAXICAB OWNERS RULES

§1-12 Illumination.

(a) When a taxicab is in operation for hire after sunset, the following items must be illuminated so that they are clearly visible from the rear seat:

(1) the face of the taximeter;

(2) the taxicab driver's license; and

(3) the rate card.

(b) The dashboard dimmer switch or any other device may not control the candlepower of the roof light, taximeter light, card frame light or interior lighting.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

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35 RCNY 1-13

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§1-13 Optional Equipment.

(a) A taxicab may be equipped with a two-way radio only in the Citizens Radio Service and only on the forty frequencies, within allowed deviation, specifically authorized under the rules of the Federal Communications Commission. Emissions, transmission power and antenna length shall be in accordance with limits established by the rules of the Federal Communications Commission. Such two-way radio may not be used for purposes of dispatch or passenger reservations.

(b) (1) A taxicab may be equipped with a cellular telephone which is accessible for passenger use and driver use by use of a credit card and by use of a calling card. Such cellular telephone may also be accessible by third party billing.

Such a cellular telephone must be of a make and type acceptable to the Commission, and installed in a manner approved by the Commission. Such a cellular telephone must be equipped with an emergency 911 feature, which does not require a telephone card or a credit card to operate. Such a cellular telephone shall not receive incoming telephone calls.

(2) Such a cellular telephone shall not be used for purposes of dispatch or passenger reservations.

(3) An owner of a taxicab equipped with a cellular telephone shall not charge a passenger or a driver a fee to use such telephone.

(4) A taxicab equipped with a cellular telephone must display a sign describing the cost per telephone call in the interior of the taxicab next to the telephone, in accordance with §1-36.

(5) A taxicab equipped with a cellular phone may indicate that a telephone is available with a sign on the exterior of the taxicab, in accordance with §1-36.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section repealed and added City Record Mar. 6, 1992 eff. Apr. 5, 1992.

Section in original compilation July 1, 1991.

Subd. (a) amended City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Subd. (c) repealed City Record Feb. 8, 1994 eff. Mar. 6, 1994.

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35 RCNY 1-14

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

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§1-14 Air Conditioning.

(a) Each taxicab commencing with the 1990 model year and for all model years thereafter shall be equipped with an operable air conditioning system; when the vehicle is also equipped with a partition, the air conditioning system must be able to provide cool air to the rear passenger area.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

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35 RCNY 1-15

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§1-15 Safety Belts.

(a) All seat belts and shoulder belts shall be clearly visible, accessible and in good working order.

(b) Each taxicab commencing with the 1990 model year and for all model years thereafter shall in addition to seat belts for each seating position and shoulder belts for both outside front seat positions be equipped with shoulder belts for both outside passenger rear seat positions.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

DERIVATION

Former §1-15 subd. (a) amended City Record Feb. 22, 1993 eff. Mar. 20, 1993. Subds. (k), (l) added City Record Mar. 6, 1992 eff. Apr. 5, 1992.

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35 RCNY 1-16

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

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§1-16 Structural Changes.

(a) An owner, without the Commission's written approval, shall make no structural change in a taxicab deviating from the Commission taxicab specifications.

HISTORICAL NOTE

Section repealed and added City Record Apr. 30, 1992.

Section in original compilation July 1, 1991.

DERIVATION

Former §1-16 amended City Record Mar. 6, 1992 eff. Apr. 5, 1992.

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35 RCNY 1-17

RULES OF THE CITY OF NEW YORK

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§1-17 Partition.

(a) An owner shall equip all taxicabs, except as provided in subdivision (b) of this section, with a partition that meets the specifications set forth in section 3-03(e)(3)(i) of this title and with provision for air conditioning for the rear passenger compartment, as set forth in section 3-05 of this title.

(b) An owner of an independent taxicab or a shareholder of a corporation owning one or more medallions shall be exempt from the provisions of subdivision (a) if:

(1) the taxicab is driven by the medallion owner or corporate shareholder(s), and

(2) the rate card lists only the persons named in subdivision (1) as driver(s), and

(3) the taxicab is equipped with a cellular telephone which has an emergency dialing feature, in accordance with section 1-13(b) of this chapter, and the taxicab is equipped with some other device specifically approved by the Commission to satisfy this requirement in addition to the trouble light required by section 1-18(a) of this chapter, and

(4) the owner has not previously been in violation of this rule with respect to the subject medallion, and

(5) the owner has applied for and received a certification of exemption from the Commission. Notwithstanding compliance with above conditions, if a partition is the only approved location for display of the rate card and driver license in a particular model of automobile, then a partition is required.

(c) A taxicab that is equipped with factory installed curtain airbags shall be equipped with a partition which shall

not extend the full width of the interior of the taxicab, but instead shall allow a space of six inches at each side, sufficient to permit proper deployment of the curtain airbags, and shall conform in all other respects with the applicable requirements of section 3-03(e)(3)(i) of this title.

(d) Where section 3-03(e)(3)(v) of this Title applies, the taxicab shall be equipped with a cellular telephone as set forth in subdivision (b) of this section and an in-vehicle camera system that meets the specifications set forth in such section 3-03(e)(3)(v), in addition to the trouble light required by section 1-18(a) of this chapter.

(e) An in-vehicle camera system shall be installed and maintained by the manufacturer's authorized installer and shall be in good working order.

(f) Each taxicab equipped with an in-vehicle camera system shall display decals on each rear passenger window, visible to the outside, that contain the following information: "This vehicle is equipped with camera security. YOU WILL BE PHOTO- GRAPHED."

HISTORICAL NOTE

Section amended City Record Apr. 23, 2007 §1, eff. May 23, 2007. [See Note 4]

Section amended City Record June 1, 2000 §1, eff. July 1, 2000. [See Note 2]

Section amended City Record May 3, 2000 §2, eff. June 2, 2000. This Emergency Rule was also

added in City Record Apr. 21, 2000 eff. May 21, 2000. [SeeNote 1]

Section amended City Record Dec. 29, 1995 §4, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section added City Record Feb. 8, 1994 eff. Mar. 6, 1994.

Section heading changed to include "in-vehicle camera system", an inadvertent error.

Subd. (a) amended City Record Dec. 18, 2007 §1, eff. Jan. 17, 2008. [See Note 5]

Subd. (a) amended City Record May 26, 2006 §1, eff. June 25, 2006. [See Note 3]

Subd. (a) amended City Record June 3, 1998 eff. July 3, 1998. [See T35 §3-05 Note 1]

Subd. (a) amended City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §3-03 Note 3]

Subd. (c) added City Record May 26, 2006 §2, eff. June 25, 2006. [See Note 3]

NOTE

1. Statement of Basis and Purpose in City Record May 3, 2000:

In accordance with §1043(h)(1) of the New York City Charter, the Taxi and Limousine Commission ("Commission") hereby makes the following finding of imminent and immediate threat to public health, safety, and property, and the provision of a necessary public service.

Since January 1, 2000, seven (7) for-hire vehicle drivers have been murdered while operating livery vehicles in the City of New York. In addition, eleven (11) for-hire vehicle drivers were killed during 1999. The recent increase in crimes committed against for-hire vehicle drivers has occurred at a time when overall crime rates, and in particular, crimes committed against medallion taxicab drivers, has been steadily declining.

Since March 1, 1996, the Taxi and Limousine Commission has mandated that virtually all New York City taxicabs be equipped with protective partitions. In March 2000, the Commission also approved an in-vehicle security camera as an alternative to the partition. Since partitions or other security devices have become mandatory in taxicabs, there has been a significant decrease in the number of crimes committed against taxicab drivers.

On June 1, 1997, a rule mandating partitions in certain for-hire vehicles became effective. Although the rule mandates that all for-hire vehicles be equipped with a partition, unless the vehicle owner qualifies for one of the enumerated exemptions, most for-hire vehicles have not been equipped with partitions or other security devices.

Section 6-13(a)(2) of the for-hire vehicle rules provides that a vehicle owner shall be exempt from the partition requirement if, **inter alia,** the vehicle is driven exclusively by the owner. A similar exemption exists in the Taxicab Owners' Rules, §1-17(b). Since approximately ninety (90%) percent of all for-hire vehicles, and a smaller but significant number of taxicabs are driven by owner-operators, a substantial percentage of vehicles transporting passengers for hire are presently exempt from the partition requirement. This exemption was created because many taxicab and for-hire vehicle owners also use their vehicles as private and family vehicles, and the Commission had allowed such owner/operators the option to purchase partitions to protect themselves. However, many taxicab and for-hire vehicle owners place themselves at risk by not installing protective equipment in their vehicles where such equipment has been proven to be an effective deterrent to crime.

Independent studies have clearly demonstrated that the installation of partitions has reduced the number of crimes committed against taxicab and for-hire vehicle drivers. Accordingly, mandating the use of such devices will have a positive effect on reducing crimes committed against the drivers of such vehicles.The mandatory use of partitions or other safety devices is directly related to public safety. In light of the recent increase in the number of serious crimes committed against such drivers, immediate action is necessary.

On April 18, 2000, the Commission found an imminent threat to public health and safety, and voted to amend its Rules to eliminate the provisions that exempted for-hire vehicles and medallion taxicabs driven exclusively by owner-operators from the mandatory partition requirement.

It is hereby certified that the immediate effectiveness of rule amendments eliminating certain exemptions to the requirement for the mandatory installation of protective partitions or other security equipment in for-hire vehicles, as provided herein, is necessary to address an immediate threat to public safety.

. . . . . .

Statement of Basis and Purpose The emergency rule adopted herein by the New York City Taxi and Limousine Commission ("TLC") is promulgated pursuant to §1043(h)(1) of the Charter of the City of New York, authorizing the Commission to promulgate emergency rules upon a declaration of an emergency relating to the public health, safety or welfare, or the provision of public services; §2303(a) of the Charter of the City of New York, which permits the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under §19-503 [City Record Apr. 21, 2000 read "§§19-503 and 19-503.1-Editor] of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. In accordance with §1043(h)(1) of the New York City Charter, the TLC has made a finding of imminent and immediate threat to public health, safety, and property, and to the provision of a necessary public service. ["This finding has been approved by the Mayor." This sentence is in City Record Apr. 21, 2000.] On June 1, 1997, a rule mandating partitions in certain for-hire vehicles became effective. Although the rule mandates that all for-hire vehicles be equipped with a partition, unless the vehicle owner qualifies for one of the enumerated exemptions, most for-hire vehicles have not been equipped with partitions or other security devices. Sections 1-17(b) of the Taxicab Owners' Rules and 6-13(a)(2) of the For-Hire Vehicle Rules provide that a vehicle owner may be exempt from the partition requirement if, **inter alia,** the vehicle is driven exclusively by the

owner. Since approximately ninety (90%) percent of all for-hire vehicles are driven by owner-operators, the vast majority of for-hire vehicles are presently exempt from the partition requirement. In addition, a substantial number of taxicabs are driven exclusively by the vehicle owner or long-term lessee ["long term lessee" reads "shareholder" in City Record Apr. 21, 2000], and are exempt from this requirement. This exemption was created because many for-hire vehicle owners and individually-owned taxicabs also use their vehicles as private and family vehicles, and the Commission allowed such owner/operators the option to choose to purchase partitions to protect themselves. Many taxicab and for-hire vehicle owners have placed themselves at risk by not installing protective equipment in their vehicles, where such equipment has been proven to be an effective deterrent to crime. Independent studies have clearly demonstrated that the installation of partitions has reduced the number of crimes committed against taxicab and for-hire vehicle drivers. Accordingly, eliminating exemptions from the mandatory use of partitions or other security devices will promote driver safety. Taxicabs that are presently mandated to have partitions shall not be relieved of this requirement through the installation of an in-vehicle camera or other approved security device. Taxicabs presently not required to have partitions could comply with this rule through the installation of either a partition or an approved security device.

2. Statement of Basis and Purpose in City Record June 1, 2000: This Rule by the New York City Taxi and Limousine Commission ("TLC") is promulgated pursuant to authority conferred under §2303(a) of the Charter of the City of New York, which permits the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under §§19-503 and 19-503.1 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. In 1996, the Taxi and Limousine Commission mandated that most taxicabs be equipped with partitions. Immediately after the enactment of this Rule, the number of violent crimes committed against taxicab drivers dropped significantly. On June 1, 1997, a Rule mandating partitions in certain for-hire vehicles became effective. That Rule requires that all for-hire vehicles be equipped with a partition, unless the vehicle owner qualifies for one of the enumerated exemptions. Section 6-13(a)(2) of the For-Hire Vehicle Rules provides that a vehicle owner may be exempt from the partition requirement if, **inter alia,** the vehicle is driven exclusively by the owner. Since most for-hire vehicles qualify for an exemption from the partition requirement since they are driven exclusively by the vehicle owner, relatively few for-hire vehicles have been equipped with partitions or other security devices. Section 1-17(b) of the Taxicab Owners' Rules also exempts certain taxicabs driven exclusively by the vehicle owner or a shareholder in the corporation owning taxicabs from the mandatory partition requirement. These exemptions to the partition requirements were enacted primarily because many for-hire vehicle owners and individually-owned taxicabs also use their vehicles as private and family vehicles, and the Commission allowed such owner/operators the option to choose to purchase partitions to protect themselves. Many taxicab and for-hire vehicle owners have placed themselves at risk by not installing protective equipment in their vehicles, where such equipment has been proven to be an effective deterrent to crime. A recent increase in the number of assaults and violent crimes committed against drivers of for-hire vehicles prompted the Commission to issue a declaration of an immediate and imminent threat to the public health and safety on April 18, 2000, which was approved by the Mayor. The Commission also adopted an Emergency Rule pursuant to §1043(h) of the New York City Charter, repealing both the taxicab and the for-hire vehicle owner-operator exemptions to the partition requirement. The Rule promulgated herein adopts the text of this Emergency Rule as a final Rule of the Commission. Independent studies have clearly demonstrated that the installation of partitions has reduced the number of crimes committed against taxicab and for-hire vehicle drivers. Accordingly, eliminating exemptions from the mandatory use of partitions or other security devices will promote driver safety. Taxicabs that are presently mandated to have partitions shall not be relieved of this requirement through the installation of an in-vehicle camera. Taxicabs presently exempt from the partition requirement may comply with this Rule through the installation of either a partition or the in-vehicle camera, presently approved by the Commission as an alternative safety device, or another security device that may be approved by the Commission in the future. For-hire vehicles that are not equipped with partitions may install either a partition or an approved in-vehicle camera to comply with the requirements of this Rule.

3. Statement of Basis and Purpose in City Record May 26, 2006: This rulemaking amends existing rules requiring

installation of partitions in taxicabs, to create an exception for taxicabs that are equipped with factory installed curtain airbags. Taxi and Limousine Commission ("Commission") staff have found that partitions that conform to existing rules will impede the proper deployment of curtain airbags that are factory installed in 2006 Toyota Sienna minivans, a vehicle model that is approved for use as a taxicab pursuant to §3-03(c)(7) of the Commission's rules, thereby reducing or eliminating the safety value of those curtain airbags, and creating additional risk of injury to the driver and passengers of a taxicab in the event of an accident. In order to permit proper deployment of curtain airbags, this rule allows the owner of a taxicab equipped with factory installed curtain airbags to install a modified partition or to install no partition, and requires the owner in either event to install a cellular telephone with an emergency dialing feature and a security camera system approved by the Commission pursuant to §1-17(b)(3) of the Commission's rules. This rule further provides that the penalty for installation of an improper partition or for the failure to install a proper cellular telephone and security camera system is the same as the penalty provided in existing rules for failure to install a proper partition.

4. Statement of Basis and Purpose in City Record Apr. 23, 2007: The rules promulgated herein enhance and clarify the requirements for security equipment in taxicabs and for-hire vehicles. Existing rules require, with certain exceptions, that taxicabs be equipped with partitions, and that each taxicab without a partition be equipped with a cellular telephone that has an emergency dialing feature, and with "some other device specifically approved by the commission" (section 1-17(b)(3)). Existing rules provide that a for-hire vehicle affiliated with a livery base station must have either a partition or both an FCC commercial two-way radio with an emergency button and "[s]ome other device specifically approved by the Chairperson" (section 13(a)(3)(ii)). The only device the Commission has approved pursuant to section 1-17(b)(3) and the only device the Chairperson has approved pursuant to section 6-13(a)(3)(ii) is an in-vehicle camera system. Therefore, the rules promulgated herein specify that the "other device" for taxicabs and liveries that are not furnished with partitions must be an in-vehicle camera system. In addition, the rules promulgated herein add an alternative in the for-hire vehicle rules to the outmoded FCC commercial two-way radio, specifically a cellular telephone with an emergency dialing feature. The rules promulgated herein also provide further specifications for the transparent portions and protective plate of partitions. Existing taxicab rules require that a partition have a protective plate as part of the partition and a bullet-resistant, clear and scratch-resistant material for the transparent portion of the partition, and further require that the partition allow passengers to pay fares either by cash or by credit card should the taxicab be capable of accepting credit card payments. The rules promulgated herein for taxicabs require the transparent portion of partitions be a mar-resistant polycarbonate that shall be not less than 0.375 inch thick and a protective plate that shall be constructed of a 0.085 inch thick ballistic steel or its equivalent. Existing rules for for-hire vehicles require that a partition have a protective plate and a transparent portion of the partition that is made of lexan, margard or other polycarbonate material not less than 0.375 inch thick. The rules promulgated herein for for-hire vehicles delete the two brand name polycarbonates, lexan and margard, and require that the polycarbonate material be mar-resistant, and further that the partition allow passengers to pay fares either by cash or by credit card should the livery vehicle be capable of accepting credit card payments. In addition, the rules promulgated herein allow for a new L-shaped partition that separates the driver from both front-seat and rear-seat passengers and a new partition that accommodates curtain airbags, as alternatives to the traditional flat partition that separates the front and rear areas of the vehicle. An L-shaped partition model was approved by the Commission on September 14, 2006, and the partition model for vehicles that are factory-equipped with curtain airbags was approved on December 14, 2006. The rules promulgated herein codify those approvals. Presently, taxicabs that are equipped with factory installed curtain airbags are exempted by existing rules from the partition requirement, and the for-hire vehicle rules are silent as to vehicles with curtain airbags. The rules promulgated herein require partitions for all such taxicabs and for all such for-hire vehicles which are not equipped with a cellular telephone with an emergency dialing feature and an in-vehicle camera system. On and after the effective date of the rules promulgated herein, a taxicab or for-hire vehicle affiliated with a livery base station, when its existing partition is required to be replaced or when a partition is installed (including, but not limited to, at hack-up or first licensing), must be equipped with a partition that meets or exceeds the new specifications, unless the taxicab or for-hire vehicle is exempt from the partition requirement and complies with the alternative requirements. Finally, on and after the effective date of the rules promulgated herein, a taxicab or a for-hire vehicle that does not have a partition, when its existing in-vehicle camera system is required to be replaced or when an in-vehicle camera system is installed (including,

but not limited to, at hack-up or first licensing), shall have installed an in-vehicle camera system that complies with these rules. Some taxicabs may have in-vehicle camera systems that comply with the specifications promulgated herein. Others may need expanded memory and, therefore, may require upgrades to comply with these rules. Similarly, in-vehicle camera systems previously approved for use in for-hire vehicles do not have sufficient memory to comply with the rules promulgated herein. Therefore, on and after the effective date of these rules, when in-vehicle camera systems are required to be replaced or installed, those systems previously approved for for-hire vehicles will require upgrades, if available, or replacement. The rules promulgated herein do not alter the exemptions from the partition requirement for taxicabs that are subject to existing rules, with the exception of taxicabs equipped with factory-installed curtain airbags. Existing rules exempt the following taxicabs from the partition requirement: owner driven taxicabs (section 1-17(b)), taxicabs equipped with factory-installed curtain airbags (section 1-17(c)) and hybrid electric taxicabs (section 3-03.1(c)(10)). Now that there is an approved partition that can accommodate the deployment of curtain airbags, the rules promulgated herein require that such a partition be placed in taxicabs and for-hire vehicles equipped with factory-installed curtain airbags, unless they are otherwise exempt. Existing rules exempt the following for-hire vehicles from the partition requirement: for-hire vehicles affiliated only with black car and/or luxury limousine base stations (section 6-13(a)(2)), and for-hire vehicles equipped with in-vehicle camera systems and two-way radios (section 6-13(a)(3)). The rules promulgated herein for for-hire vehicles add a cellular telephone with an emergency dialing feature as an alternative to the two-way radio. The rules promulgated herein also require that taxicabs and for-hire vehicles equipped with in-vehicle camera systems be provided with decals on the rear passenger windows advising that the vehicle is equipped with camera security and that passengers will be photographed. Section 3-03(e)(3)(v)(U) of the rules promulgated herein was amended after publication in order to permit not only manufacturer authorized installers of in-vehicle camera systems that were also taximeter businesses licensed by the Commission but also such installers who are currently licensed by the Department of Consumer Affairs to install, repair or modify such systems. Further, section 3-03(e)(3)(v)(V) of these rules was amended to provide that within fourteen (14) calendar days after installation, repair or modification, rather than upon installation, repair or modification, a notarized affidavit signed by a manufacturer's authorized installer attesting to the proper functionality of the in-vehicle camera system shall be provided to the Commission by the authorized installer.

5. Statement of Basis and Purpose in City Record Dec. 18, 2007: The rule promulgated herein requires that taxicabs, other than accessible taxicabs, put into service beginning on October 1, 2008, must have a minimum rating of 25 miles per gallon in city driving and beginning on October 1, 2009, must have a minimum rating of 30 miles per gallon in city driving. In order to enable taxicabs to satisfy that standard, taxicabs will be permitted to meet the smaller vehicle specifications currently in place for hybrid electric vehicles (section 3-03.1(c)). The rule also specifically permits the operation of taxicabs fueled only by Compressed Natural Gas if such vehicles are originally manufactured vehicles and meet other requirements of the taxicab specifications. Only accessible vehicles as defined in section 3-03.2 are exempt from these minimum gas mileage requirements. The city gas mileage rating of a vehicle is determined pursuant to chapter 329 of title 49 of the United States Code and regulations promulgated pursuant thereto. Ratings for 2008 model vehicles are available at **http://www.fueleconomy.gov/feg/FEG2008.pdf,** and it is anticipated that the 2009 ratings will be available at a similar Web site. When fully phased in, the rule is expected to result in savings of more than $4,500 in gasoline costs per vehicle per year. Therefore, the rule is expected to result in industry-wide gasoline savings of approximately $60,000,000 per year. These savings are expected to increase the economic health of the industry by decreasing driver costs and increasing medallion value, and to further benefit the public by reducing upward pressure on taxicab fares. In light of recent advancements in the design of driver-passenger partitions, the new higher-mileage taxicabs put into service pursuant to this rule will not be exempt from partition requirements. In addition, the rule eliminates the exemption from partition requirements for hybrid electric taxicabs. When the use of hybrid electric vehicles as taxicabs was first approved by the Commission in September 2005, there was no existing partition design that would retain sufficient passenger legroom in the smaller vehicles. However, experience with an "L-shaped" partition, first approved by the Commission in September 2006, and subsequently incorporated into the Commission's rules in April 2007, has resolved this concern. Therefore, given the importance of driver safety, and given the demonstrated effectiveness of partitions over the years in furthering driver safety, the rule requires partitions in smaller vehicles that already operate as hybrid electric taxicabs and will operate under the rule as higher mileage

taxicabs. The exemption from partition requirements for owner-driven taxicabs that deploy security camera systems (section 1-17(b)) is not affected by this rule.

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35 RCNY 1-18

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-18 Trouble Lights.

(a) An owner shall equip all taxicabs with a help or distress signaling light system in accordance with §3-03(e)(3)(ii) of the Taxicab Specifications.

HISTORICAL NOTE

Section added City Record Feb. 8, 1994 eff. Mar. 6, 1994.

Subd. (a) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See T35 §1-11 Note 1]

Subd. (a) amended City Record Dec. 29, 1995 §5, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

CASE NOTES

¶ 1. Taxi cabs are equipped with distress lights, which are designed for alerting police when a driver is in danger. Where a taxi driver accidentally activated the car's distress light, the police officer reasonably believed that the taxi was in distress. Thus, the officer had justification to stop the cab and direct defendant to step out of the cab. The officer had the right to conduct a search of defendant when he noticed a bulge in defendant's pocket. Thus, in a prosecution for weapons possession, a motion to suppress the gun evidence was denied. People v. Rennie, 2003 WL 145541 (Sup.Ct. Kings Co.).

Rules of the City of New York

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35 RCNY 1-19

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-19 Electrical Dual Message Taxi Reminder Voice. [Repealed]

HISTORICAL NOTE

Section repealed City Record Apr. 8, 2003 §1, eff. May 8, 2003. [See Note 1]

Section amended City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §3-03 Note 4]

Section added City Record Mar. 29, 1996 §2, eff. Apr. 30, 1996. [See T35 §3-03 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 8, 2003:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which authorizes the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the City; under §2303(b)(2) of such Charter, which authorizes TLC to establish standards of safety, design and comfort for vehicles licensed by the TLC; §2303(b)(11) of such Charter, which authorizes the TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under §19-503 of the Administrative Code of the City of New York, which authorizes the Commission to promulgate rules to further the objectives of the Charter and the Administrative Code.

This promulgation repeals the requirement contained in TLC Rules and the Taxicab Specifications that each

taxicab be equipped with an electronic dual message taxi reminder voice.

Since 1997, the Rules of the TLC have required that each taxicab be equipped with an electronic dual message taxi reminder voice. After the taximeter is engaged, the electronic message reminds passengers to fasten their seat belts. At the conclusion of the trip, passengers are reminded through the electronic voice to take their receipt and personal property before leaving the taxicab. The purpose of this rule was to encourage passengers to wear seat belts while riding in taxicabs, as well as to take their receipt and remember their property.

According to surveys of passengers conducted both by the TLC and by other entities, most passengers in taxicabs do not wear seat belts despite the electronic taxi reminder message. A recent TLC survey of passengers also indicates that most passengers do not find the electronic message to be helping in reminding them to fasten their seat belts, remember their receipt or take their property. Furthermore, according to this survey, most passengers found the messages to be annoying.

The Rules of the Commission require that each taxicab be equipped with seat belts that are accessible, visible and in good working order. The Commission believes that the message to advise passengers of the benefits of wearing seat belts can be better achieved through improved signage in taxicabs, and through training drivers on the importance of communicating the importance of wearing seat belts to their passengers. TLC rules require that a driver provide the passenger a receipt at the conclusion of the trip, even if the passenger does not request a receipt. Therefore, the electronic reminder to take a receipt is not necessary.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-20 Taximeters.

(a) An owner shall equip the taxicab with a taximeter subject to the following conditions:

(1) it shall be of a make and type acceptable to the Commission;

(2) Reserved.

(3) it shall be affixed to the vehicle's dashboard so as to be clearly readable and visible to all passengers in the vehicle;

(4) its serial number shall be the same as that shown on the rate card assigned to the taxicab; or entered on the rate card by an authorized meter shop; and

(5) tire size shall be the same as that for which the taximeter is calibrated, as indicated by the rate card.

(b) A taxicab shall be equipped with a taximeter which shall be in good working condition and shall accurately compute the rate of fare currently established by the commission. Penalties for violation are as follows:

(1) The penalty is $50, if the meter is found to be at least 52.8 feet (one percent) inaccurate, but less than 264 feet (five percent) inaccurate in computing distance, or more than one percent but less than five percent inaccurate in computing time.

(2) The penalty is $200, if the meter is found to be at least 264 feet (five percent) inaccurate, but less than 528 feet

(ten percent) inaccurate in computing distance, or more than five percent but less than ten percent inaccurate in computing time.

(3) The penalty is $300, if the meter is found to be at least 528 feet (ten percent) inaccurate in computing distance or ten percent inaccurate in computing time, for a first violation.

The penalty is $600, if the meter is found to be at least 528 feet (ten percent) inaccurate in computing distance or ten percent inaccurate in commuting time, for a second and subsequent violation within thirty-six months.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 effl May 30, 1992.

Section amended City Record Aug. 4, 1995 §1, eff. Sept. 6, 1995. [See Note 1]

Subd. (a) amended City Record Dec. 29, 1995 §6, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 4, 1995:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The purpose of the amendment is to protect the riding public from overcharges due to inaccurate meters and tampered meters. The amendment increases the penalty for owners whose meters are found to be fast or in any way tampered or altered when tested by the TLC.

Upon consideration of public comments, the increases in the penalties were changed.

First, the thresholds for violation were raised. The thresholds for higher penalties were established for meters that are five percent fast and ten percent fast, rather than at the original proposed thresholds of three and five percent fast. This change was made to make the penalties relate more closely to perceivable variations in the meter's rate of advance.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-21 Taximeter Installation.

(a) All taximeter seals shall be installed by a licensed taximeter repair shop or agent of the Commission.

(b) The pinion gear shall be sealed with a cap seal or such other seal as approved by the Chairman or his designee, in such manner that the pinion gear can not be removed or changed without breaking or otherwise damaging the seal.

(c) The wiring harness leading from the taximeter to the speed sensor shall be of one piece construction with no intervening connectors, splices, "Y" connections, or direct or indirect interruptions or connections of any kind whatsoever.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record Dec. 29, 1995 §7, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) amended City Record Dec. 29, 1995 §7, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (d) repealed City Record Aug. 4, 1995 §3, eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Medallion owner, who leased medallion through agent leasing broker to drivers held liable for meter

acceleration device found in taxicab during inspection pursuant to section 1-23(a) of owner's rules, which imposes strict liability upon medallion owners even where, as here, the owner claims he was unaware of the violation. **Taxi and Limousine Comm'n v. Hom,** OATH Index Nos. 433 & 435/99 (Oct. 28, 1998).

¶ 2. Medallion owner, who actively managed the medallion from its garage, was strictly liable under section 1-23(a) where unauthorized meter acceleration device had been installed in the taxi. Forced divestiture of one medallion and a $5,000 fine is imposed for the corporate owner. **Taxi and Limousine Comm'n v. Mohammad,** OATH Index Nos. 173-75/99 (Oct. 6, 1998).

Rules of the City of New York

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35 RCNY 1-22

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-22 Defective Taximeter or Taximeter Installation.

(a) A taxicab shall not be in service for hire with a defective taximeter or taximeter installation. Whenever a taximeter or its installation is defective or whenever a taximeter computes an inaccurate rate of fare, the owner shall have it repaired, tested and certified at a licensed taximeter business or replaced by such taximeter business with an approved taximeter which has been inspected, tested and sealed and the taximeter/vehicle assembly shall be tested and certified in accordance with Commission regulations.

(b) No adjusted, repaired or recalibrated taximeter or appurtenance of a taximeter shall be installed in a taxicab unless the adjustment, repair or recalibration was done at a licensed taximeter repair shop or other authorized facility; the owner is responsible for any installation which violates this rule.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-23

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-23 Tampering Prohibited.

(a) Unless authorized by the Commission no person shall tamper with, alter, repair or attempt to repair the taximeter or the taxicab technology system, or any seal affixed to the taxicab by a licensed taximeter repair shop or other authorized facility, cable connection or electrical wiring thereof or make any change in the vehicle's mechanism or its tires which would affect the operation of the taximeter or the taxicab technology system; the owner is responsible for any tampering, alteration or any unauthorized repair or attempt to repair.

(b) It shall be an affirmative defense to a violation of section 1-23(a) that the owner: (1) did not know of or participate in the alleged taximeter or taxicab technology system tampering; and (2) exercised due diligence to ensure that taximeter-tampering or tampering with the taxicab technology system does not occur. Examples of an owner's due diligence shall include, but are not limited to: (A) giving drivers a clear warning that violations of the taximeter or taxicab technology system tampering rules will result in the immediate termination of any lease agreement, the reporting to the Commission of driver tampering and the Commission's probable revocation of the driver's taxicab driver's license; (B) including on any written lease agreement provisions containing the warnings against violation of meter and taxicab technology system tampering rules; (C) stamping warnings regarding the illegality of meter and taxicab technology system tampering on the trip records issued, if applicable, to all drivers of an owner's taxicabs; (D) requiring management personnel or mechanics to periodically check for proper odometer and meter mileage comparisons in order to determine if there are inappropriate disparities between the two sets of figures; (E) conducting periodic random inspections of the taxicab meter and wiring and of the taxicab technology system for all such owner's taxicabs to detect any evidence of violation of meter or taxicab technology system tampering rules; and (F) having all of such owner's taxicabs inspected by a licensed meter shop once every inspection cycle.

HISTORICAL NOTE

Section amended City Record June 12, 2007 §3, eff. July 12, 2007. [See T35 §1-01 Note 3]

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record Aug. 4, 1995 §5, eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

Subd. (b) added City Record Jan. 31, 2000 §1, eff. Mar. 1, 2000. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 31, 2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which authorizes the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under §2303(b) of such Charter, which authorizes the TLC to promulgate rules and regulations reasonably necessary to exercise the authority conferred upon it by the Charter; under §19-503 of the Administrative Code of the City of New York, which authorizes the Commission to promulgate rules to further the objectives of the Charter and the Administrative Code; under §19-506 of said Code, authorizing it to impose reasonable penalties for violations of its rules; and under §§19-507.1(g) and (h) of said Code, enumerating certain affirmative defenses to the charge of taximeter tampering.

These rule amendments set forth certain affirmative defenses that may be raised in defense of a charge of taximeter tampering against a taxicab owner or driver, and create an affirmative obligation to report evidence of taximeter tampering to the Commission.

Local Law No. 20 of 1999 amended the Administrative Code of the City of New York to add certain enumerated affirmative defenses that may be asserted in defense of a charge of taximeter tampering. These defenses are set forth in the Code, and permit a respondent to assert as an affirmative defense that: (a) he or she did not know of or participate in the taximeter tampering; and (b) he or she exercised due diligence to ensure that taximeter tampering does not occur. With respect to allegations of taximeter tampering against owners, the Code enumerates examples of the exercise of due diligence.

This rule amendments conform the language of the Commission rules with respect to taximeter tampering with the Administrative Code by including the affirmative defenses in the appropriate rule relating to taximeter tampering. The language in the proposed rule is substantially identical to the language with respect to affirmative defenses set forth in the Code.

The amendments also impose upon Taxicab Owners and Drivers an affirmative obligation to report evidence of taximeter tampering to the Commission. Under the existing rules of the Commission, licensed taximeter businesses are required to notify the Commission whenever evidence of tampering is discovered with respect to a taximeter and/or its wiring. The proposed penalty for a violation of this rule is identical to the penalty provided for similar misconduct in the Taximeter Business Regulations.

This reporting requirement will enable the Commission to protect the public through enhanced enforcement of its rules prohibiting taximeter tampering.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of this section, as well as §§1-60(b), 1-67(a), 2-26(d), 2-30(a), 2-31(a),

2-61(a) and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

¶ 2. A taxicab owner is strictly liable for meter tampering pursuant to this section, even if the owner had no knowledge of that tampering. Taxi and Limousine Commission v. Mayfield Cab Corp., OATH Index No. 1378/95 (Aug. 2, 1996).

¶ 3. Medallion owner, who leased medallion through agent leasing broker to drivers held liable for meter acceleration device found in taxicab during inspection pursuant to section 1-23(a) of owner's rules, which imposes strict liability upon medallion owners even where, as here, the owner claims he was unaware of the violation. **Taxi and Limousine Comm'n v. Hom,** OATH Index Nos. 433 & 435/99 (Oct. 28, 1998).

¶ 4. Medallion owner, who actively managed the medallion from its garage, was strictly liable under section 1-23(a) where unauthorized meter acceleration device had been installed in the taxi. Forced divestiture of one medallion and a $5,000 fine is imposed for the corporate owner. **Taxi and Limousine Comm'n v. Mohammad,** OATH Index Nos. 173-75/99 (Oct. 6, 1998).

¶ 5. Although no zapper was found in respondent's taxicab, the meter pulse wires had been tampered with. Administrative law judge found that notwithstanding the absence of evidence as to the presence of a zapper, under the TLC rules, the wire configuration and tape on the meter connections were sufficient to sustain the charges, where respondent was the sole owner/driver of the medallion. **Taxi and Limousine Comm'n v. Singh**, OATH Index No. 1174/99 (July 13, 1999).

¶ 6. Where indicia of tampering was found, meter wiring pulse divider was missing its seal and exposed pulse wires were lying flat against metal bracket attached to meter, respondent was found in violation of paragraph (a) of this section. As an owner, respondent is held strictly liable for meter tampering. **Taxi and Limousine Comm'n v. Boodhram**, OATH Index No. 761/99 (Jan. 29, 1999), **modified on penalty**, Comm'n Dec. (Mar. 25, 1999).

¶ 7. **But see**, Administrative Code section 19-507.1 (added by Local Law 20/1999), which provides that it shall be an affirmative defense for a taxi owner or driver charged with meter tampering that the owner or driver did not know of or participate in the meter tampering and exercised due diligence to ensure that meter tampering does not occur.

¶ 8. Where a zapper device, used to accelerate taximeters, was concealed inside the driver's side door of a taxicab and where the inspector observed that a portion of the pulse wire was bare, three drivers were found to have violated this section. The visibly exposed pulse wire gave the three drivers, one of whom was the medallion owner, "reason to know that the taxicab's equipment had been tampered with by another driver." Revocation of three drivers' licenses and forced sale of the medallion imposed. **Taxi and Limousine Comm'n v. Singh**, OATH Index Nos. 828-30/99 (Apr. 15, 1999), **modified on penalty**, Comm'n Decision (May 20, 1999).

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-24 Operation of the Rooflight.

(a) While a taxicab is in operation for hire, the "Off Duty" sign may not be illuminated in any way other than by a manually operated switch on the taxicab dashboard.

(b) The taxicab roof light shall be automatically controlled by the operation of the taximeter so that it is lighted only when the taximeter is in an off position and unlighted when the taximeter is in a recording position. An owner shall not tamper with the operation of the taxicab's rooflight.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (b) amended City Record Dec. 29, 1995 §8, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (c) repealed City Record Dec. 29, 1995 §8, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

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35 RCNY 1-25

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-25 Taximeter Inspection.

(a) A taxicab's taximeter shall be tested by personnel authorized by the commission for accuracy over a measured mile course and its installation shall be tested by such personnel for compliance with the rules of the Commission. The results of such test shall be indicated on the rate card:

(1) within one year of the date of the last test;

(2) whenever a taximeter is installed in a vehicle;

(3) when the transmission, pinion gear or differential is altered, repaired or replaced; (4) when a change is made in any other part of the taxicab that may affect the meter reading; and

(5) at any other time required by the Commission.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Section amended City Record Dec. 29, 1995 §9, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. A taxicab owner has a non-delegable duty to ensure compliance with the taximeter inspection requirements of

this section, and is strictly liable for violations of that duty, even if the owner has no knowledge of such violations. Taxi and Limousine Commission v. Mayfield Cab Corp., OATH Index No. 1378/95 (Aug. 2, 1996).

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35 RCNY 1-26

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-26 Taxicab Identification Braille and Raised Lettering Plaques.

(a) As of October 1, 1997, an owner shall equip all taxicabs with a Taxicab Identification Braille Plaque and a Taxicab Identification Raised Lettering Plaque, in conformance with the following specifications:

(1) The Taxicab Identification Braille Plaque shall be made of .040 gauge aluminum with a matte finish and measure three and a quarter inches in length by one and three quarter inches in height, with radius corners. The plaque shall state, in Raster Braille grade two, the medallion number centered on the first line, the word "COMPLAINTS" centered on the second line, and the telephone number "212 NYC TAXI" centered on the third line. The plaque shall be permanently affixed on the door armrest of the horizontal plane of the right rear door, or another location approved by the Chairperson.

(2) The Taxicab Identification Raised Lettering Plaque shall be made of one eighth of an inch thick black acrylic plastic and measure eleven inches in length and five inches in height, with radius corners and four holes (one in each corner) for attachment with screws. The plaque shall state, in one inch high white Helvetica lettering that is permanently affixed, the medallion number centered on the first line, the word "COMPLAINTS" centered on the second line, and the telephone number "212 NYC TAXI" centered on the third line with appropriate spacing between the three words. The plaque shall be permanently affixed on the rear of the front right passenger seat or partition, not more than six inches below the lexan or polycarbonate portion of the partition.

HISTORICAL NOTE

Section added City Record July 8, 1997 eff. Aug. 11, 1997. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 8, 1997:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The rule requires taxicabs to be equipped with two Taxicab Identification Braille and Raised Lettering Plaques. The plaques will aid passengers who are blind and visually impaired to identify the taxicab they are riding in.

The purpose of this rule is to provide blind and visually impaired passengers with an opportunity to file complaints with the TLC if they are dissatisfied with their ride, and to report lost property.

Based on public comment, the rule was amended to provide for two separate plaques, one in Braille and one in raised lettering, for easier reading. The rule was further amended to provide that an offense of a missing plaque would not result in a fine if corrected within forty-eight hours.

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CHAPTER 1 TAXICAB OWNERS RULES

§1-27 [Reserved]

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CHAPTER 1 TAXICAB OWNERS RULES

§1-28 [Reserved]

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CHAPTER 1 TAXICAB OWNERS RULES

§1-29 [Reserved]

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-30 [Reserved]

HISTORICAL NOTE

Section repealed City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-31

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-31 Attaching, Removing or Transferring a Medallion.

(a) An owner may not affix, remove or transfer a medallion to a new or replacement vehicle, without prior authorization of the commission, except that an owner may affix additional bolts to a medallion in order to further secure it.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-32

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-32 Unauthorized Rate Card Entries.

(a) An owner shall not make an unauthorized entry on a taxicab's rate card, or change, deface, conceal or obliterate any entry thereon, or allow a rate card to be displayed that contains erroneous information.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-33

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-33 Medallion and Rate Card to be Surrendered.

(a) An owner, who has been notified that his license has been suspended or revoked, shall surrender to the Commission his medallion and rate card within forty-eight (48) hours of such notice.

(b) An owner shall surrender his medallion and rate card for storage prior to the sale of his taxicab or its removal from service for a period of thirty (30) consecutive days or more.

(c) An owner shall immediately surrender to the Commission for replacement an unreadable rate card or a damaged medallion.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (c) amended City Record Dec. 29, 1995 §10, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

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CHAPTER 1 TAXICAB OWNERS RULES

§1-34 [Reserved]

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35 RCNY 1-35

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-35 Markings and Advertising.

(a) An owner of a taxicab shall apply taxicab markings approved by the Commission, specifically, two taxicab logo decals, two rate of fare decals, two medallion number decals and two checkerboard stripe decals, to such taxicab at the locations described in section 1-36 of this chapter. An owner of a taxicab shall obtain the approved taxicab markings from a person or entity authorized by the Commission to print and distribute such decals. A depiction of the decals described herein and a list of persons authorized to print and distribute such decals shall be available on the Commission's website and/or through other means determined by the Commission and announced on its website. Authorized stand-by vehicles shall display SBV number decals in lieu of the medallion number decals.

(b) An owner shall not display any lettering, emblem, or advertising of any kind on the exterior of a taxicab, its windows or an exterior accessory, by means of paint, stencil, decal, sticker, or otherwise, unless authorized by the Commission, except:

(1) the taxicab markings specified in subdivision (a) of this section;

(2) such inscriptions as are permitted or required by these rules or the Commission's Marking Specifications for Taxicabs;

(3) such advertising as may be authorized by the Commission on the vehicle's rate card;

(4) Reserved.

(5) for an accessible taxicab, insignia, the designs of which shall be provided by the Commission on its website or through other means it deems appropriate as set forth on its website, that identify the vehicle as an accessible taxicab. Such insignia shall be located on the exterior of the C-pillars of a sedan or an SUV or on the exterior of the D-pillars of a minivan, on both sides of such taxicab, and shall be visible to passengers entering the accessible taxicab and shall also be located on the middle of the hood of such taxicab so as to be visible to passengers hailing or approaching such taxicab; and

(6) for a clean air taxicab, insignia, the design of which shall be provided by the Commission on its website or through other means it deems appropriate as set forth on its website, that identify the vehicle as a clean air vehicle. Such insignia shall be located on the exterior of the C-pillars of a sedan or an SUV or on the exterior of the D-pillars of a minivan, on both sides of such taxicab, and shall be visible to passengers entering the clean air taxicab.

Such inscriptions and advertising shall be maintained in good condition.

(c) An owner shall not display inside a taxicab any advertising or other notice not specifically authorized by these rules or the Commission's Marking Specifications for Taxicabs unless approved by the Commission, except:

(1) industry signage/logos of all credit/debit cards accepted by the taxicab technology system, all of equal size, shown in the information content on the passenger information monitor screen; and

(2) advertising in the information content on the passenger information monitor screen as set forth in section 1-36 of this chapter and in section 3-07 of this title.

(d) An owner shall not display emblems on his vehicle's exterior, other than an emblem identifying the owner, an association of owners, a taxicab drivers' union, or the taxicab manufacturer. Such emblems shall conform to the Marking Specifications for Taxicabs and shall be subject to the approval of the Commission. No more than two of the same emblem may be displayed on a taxicab, unless otherwise authorized by the Commission.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record June 20, 2007 §1, eff. July 20, 2007. [See Note 2]

Subd. (a) amended City Record July 15, 1992 eff. Aug. 14, 1992.

Subd. (b) amended City Record June 20, 2007 §1, eff. July 20, 2007. [See Note 2]

Subd. (b) amended City Record Dec. 29, 1995 §11, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) par (2) amended (as par (3)) City Record May 23, 2007 §2, eff. June 22, 2007. [See Note 1]

Subd. (b) par (3) amended (as par (4)) City Record May 23, 2007 §2, eff. June 22, 2007. [See Note 1]

Subd. (b) par (5) amended City Record Sept. 16, 2008 §1, eff. Oct. 16, 2008. [See Note 3]

Subd. (b) par (5) added City Record May 23, 2007 §2, eff. June 22, 2007. [See Note 1]

Subd. (b) par (6) added City Record May 23, 2007 §2, eff. June 22, 2007. [See Note 1]

Subd. (c) amended City Record June 12, 2007 §4, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (d) amended City Record Dec. 29, 1995 §11, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (e) repealed City Record Dec. 29, 1995 §11, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (f) repealed City Record Dec. 29, 1995 §11, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May 23, 2007:

These rules implement Local Laws 54 and 55 for the Year 2006, which added §§19-514(h) and (i) and 19-536 of the Administrative Code of the City of New York, requiring that each Taxi and Limousine Commission-licensed accessible or clean air vehicle be marked with two insignia identifying it as an accessible or clean air vehicle. The rules incorporate the statutory definition of a clean air vehicle, which apply to taxicabs and for-hire vehicles. The rules retain the existing definition of an accessible taxicab (§3-03.2 of the Commission's rules) and add a definition of an accessible for-hire vehicle.

The rules provide that a clean air vehicle insignia design and an accessible vehicle insignia design will be made available on the Commission's website or by other means the Commission deems appropriate as set forth on its website. The insignia will be posted on the exterior of the C-pillars of a sedan or an SUV or on the exterior of the D-pillars of a minivan, on both sides of the accessible vehicle visible to passengers entering the vehicle.

In addition, pursuant to the Administrative Code provisions, the rules require that the owner of a clean air taxicab dislay in the rear passenger compartment, visible to all passengers in the back seat, passenger information to be provided by the Commission. That information shall include identification of the clean air taxicab as a clean air vehicle, the Commission's Web page address, and, to the extent practicable, the estimated air quality benefits associated with the use of such vehicle and the type of fuel used to power such vehicle.

2. Statement of Basis and Purpose in City Record June 20, 2007: The rules promulgated herein enhance the visibility of medallion taxicabs, making them more identifiable to the riding public and making the exterior posted rates of fare and medallion number decals more easily visible to the passengers entering the taxicabs. The rules promulgated herein require that taxicab logo decals be placed on the front doors of medallion taxicabs, rather than on the rear doors, and rate of are decals be placed on the rear doors of taxicabs, rather than on the front doors, permitting the rate of fare to be observed by the passengers entering through rear doors. The rules promulgated herein also require that checkerboard stripe logo decals to be placed horizontally on the rear quarter panels of the vehicle, just below the window, increasing the visibility of medallion taxicabs. The medallion number decals shall be placed forward of and aligned with the checkerboard stripe decals so that the two decals appear to be one stripe. The decals shall be of the non-detachable type only.

3. Statement of Basis and Purpose in City Record Sept. 16, 2008: Pursuant to Local Law 55 of 2006 (Administrative Code §19-514, subd. h), existing Taxi and Limousine Commission ("Commission") rules require markings on wheelchair accessible taxicabs, specifically on the C-pillars of a sedan or an SUV or D-pillars of a minivan. Feedback from taxicab passengers who use wheelchairs indicates that these markings may not always be sufficiently visible to passengers attempting to hail wheelchair accessible taxicabs. Therefore, this promulgated rule requires an additional marking to be placed in the middle of the hood of the taxicab. As with the previous markings, the new marking will be designed by the Commission. The Commission intends to use a larger marking for the hood than is used for the pillars, in order to enhance the visibility of wheelchair accessible taxicabs for street hails.

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-36 Marking Specifications for Taxicabs Inscription Location Size.

Inscription	Location	Size
(a) Rate of fare decals (required). (Non-detachable type only.)	Both rear doors centered left to right and located in the upper half of the flat surface between the bottom edge of the door and the door handle.The base line of the rate of fare and taxicab logo decals shall be parallel and the same distance to the bottom door edge.	The size of the approved rate of fare decals shall be determined by the Commission.
(b) Taxicab logo decals (required)(Non-detachable type only.)	Both front doors centered left to right and located in the upper half of the flat surface between the bottom edge of the door and the door handle.The base line of the rate of fare and taxicab logo decals shall be parallel and the same distance to the bottom door edge.	The size of the taxicab logo decals shall be determined by the Commission.
(c) Medallion number (required)	Front and rear of roof light.	23/4" to 3" high letters 1/2" thick.
(d) "OFF DUTY" (required)	Each end of roof light.	11/4" high letters 1/4" thick.
(e) "Owner-Driver" (optional)(Detachable signs suspended from door frames are not permitted.)	Rear of taxi.	3" maximum height.
(f) EMBLEMS (Optional)	On rear baggage compartment in lower right corner of deck	2" high letters 1/4" thick.

(1) Fleet Owner (2) Owner Association (3) Taxicab Drivers' Union insignia (4) Taxicab manufacturer	lid. Consult the Commission if contour of lid requires another location on the lid.	Avoid overcrowding.
(g) Medallion number, interior. (required) Maybe a one-piece decal or astencil. The numbermust be of a colorcontrasting with theseat, to provide for easylegibility.	On the back of the front seat. The top of the number shall be located not more than two inches below the top of the front seat.	Numbers and letter shall be 3" minimum in height.
(h) Passenger Information Sign. (required) Shall contain the information required by the Chairman or his designee.	On the back of the front seat or on a safety partition, displayed in a manner which is clearly visible to the passengers in the back seat. If the taxi is equipped witha safety partition, the passenger information sign may be placed on the partition behind the driver's head, but no higher than a headrest would be.	Approximately 12" wide by 6" high.
(i) "Drivers Wanted" sign. May include the telephone number of the owner. (Optional)	Rear of taxi.	No more than 24" wide by 3" high.
(j) "If this taxi is parked for over 24 hours, please call owner at (telephone number)..." (Optional)	Rear of taxi or horizontal on dashboard.	No more than 24" wide by 3" high.
(k) Rate for cellular connections to telephone network, plus a statement that telephone network charges would be additional. (required for taxicabs equipped with cellular telephones)	Interior of passenger compartment.	To be approved by the Commission.
(l) Telephone available, or similar language or symbol (optional)	Exterior, on a door or a side window.	4" by 6" or smaller.
(m) Brand name of passenger information monitor manufacturer or taxicab technology service provider	On the bezel of the frame of the passenger information monitor	Not to exceed 11/4" in height and 4" in length
(n)* This[See Footnote 1] vehicle is equipped with camera security. YOU WILL BE PHOTOGRAPHED." (Decal; non-detachable type only.)	On each rear passenger window	Letters shall be at least one-half inch high.
(n)* Medallion number decals (required). (Non-detachable decals only.)	Immediately before the checkerboard stripe decal so that the two decals appear to be one stripe. The decals shall be applied to both rear quarter panels, just be-	The size of the medallion number decals shall be determined by the Commission.

	low the rear windows or following the line created by the bottom edge of the windows, such that the number and checkerboard are aligned and appear to be one stripe.On some vehicles, such as minivans, the medallion number may be placed at the rear of the sliding door, but must still align with the checkerboard stripe.	
(o) Checkerboard stripe decals (required). (Non-detachable decals only.)	Immediately behind the medallion number decal so that the two decals appear to be one stripe. The decals shall be applied to both rear quarter panels, just below the rear windows or following the line created by the bottom edge of the windows, such that the number and checkerboard are aligned and appear to be one stripe.The tailing end of the checkerboard may be shortened, if necessary, on vehicles with short quarter panels.	The size of the checkerboard stripe decals shall be determined by the Commission.
(p) Drivers are not allowed to use cell phones or handheld electronics. Decal or sticker shall be issued by the Commission.	Interior of passenger compartment, plainly visible to passengers.	As issued by the Commission.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record June 20, 2007 §2, eff. July 20, 2007. [See T35 §1-35 Note 2]

Subd. (a) amended City Record Oct. 31, 2006 §3, eff. Nov. 30, 2006. [See T35 §1-69 Note 4]

Subd. (a) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See T35 §1-11 Note 1]

Subd. (b) amended City Record June 20, 2007 §2, eff. July 20, 2007. [See T35 §1-35 Note 2]

Subd. (e) amended City Record June 20, 2007 §2, eff. July 20, 2007. [See T35 §1-35 Note 2]

Subd. (f) amended City Record June 20, 2007 §2, eff. July 20, 2007. [See T35 §1-35 Note 2]

Subd. (f) amended City Record Dec. 29, 1995 §12, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (g) amended City Record Dec. 29, 1995 §12, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (h) amended City Record Dec. 29, 1995 §12, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subds. (k), (l) added City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Subd. (m) added City Record June 12, 2007 §5, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (n) (laid out first) added City Record Apr. 23, 2007 §2, eff. May 23, 2007. [See T35 §1-17 Note 4]

Subd. (n) (laid out second) added City Record June 20, 2007 §2, eff. July 20, 2007. [See T35 §1-35

Note 2]

Subd. (o) added City Record June 20, 2007 §2, eff. July 20, 2007. [See T35 §1-35 Note 2]

Subd. (p) added City Record Dec. 30, 2009 §1, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

FOOTNOTES

1

[Footnote 1]: * There are two subdivision (n)s.

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§1-37 E-Z Pass Required.

(a) An owner shall participate in the E-Z Pass New York Program. An owner shall maintain a current account with the Metropolitan Transportation Authority, Triborough Bridge and Tunnel Authority ("MTA Bridges and Tunnels") E-Z Pass New York Program with a sufficient balance as required by said program. An owner shall have available at least one E-Z Pass tag for each medallion.

(b) An owner shall equip all taxicabs with an E-Z Pass tag provided by the MTA Bridges and Tunnels, which shall be attached as required by MTA Bridges and Tunnels, unless a driver has elected to use his own E-Z Pass tag as permitted pursuant to Rule 2-27(d).

(c) An owner shall be reimbursed by a driver for any discount toll amount incurred during the driver's shift through use of the E-Z Pass at the conclusion of the shift or lease period, or if not so reimbursed, may deduct said amount from any replenishment account established pursuant to Rule 1-83. However, an owner may not require the driver to reimburse more than the E-Z Pass discount toll amount.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §1, eff. Dec. 31, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 1, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which authorizes the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under §2303(b) of such Charter, which authorizes the TLC to promulgate rules and regulations reasonably necessary to exercise the authority conferred upon it by the Charter; under §19-503 of the Administrative Code of the City of New York, which authorizes the Commission to promulgate rules to further the objectives of the Charter and the Administrative Code; and under §19-506 of said Code, which authorizes the Commission to impose reasonable penalties for violations of its rules.

These rule amendments require that all medallion taxicab owners equip their vehicles with an E-Z Pass tag and maintain a current account with the Metropolitan Transportation Authority, Triborough Bridge and Tunnel Authority ("MTA Bridges and Tunnels") E-Z Pass Program. All taxicab drivers operating for hire shall be required to use E-Z Pass when crossing New York City toll bridges and tunnels and to not charge passengers a toll amount in excess of the discounted E-Z Pass rate. The E-Z Pass tag must be attached to the inside of the windshield, behind the rearview mirror of the taxicab, or as otherwise required by the MTA Bridges and Tunnels E-Z Pass Program.

Drivers are required to ensure that a taxicab is equipped with E-Z Pass and would be required to use the E-Z Pass. Passengers could not be charged an amount in excess of the E-Z Pass charge. A driver using E-Z Pass and charging a passenger the full toll fare is committing an act in violation of the Taxicab Drivers' Rules which prohibit charging a passenger a fare in excess of the approved rate of fare. Drivers are also required to record tolls incurred on their trip sheets to assist the E-Z Pass tag holders in maintaining records of charges incurred.

Participation in the E-Z Pass program will benefit New York City in several ways. First and foremost, customer satisfaction would be improved. The electronic toll collection system has proven to be a faster and more convenient method of crossing bridges and tunnels. The use of E-Z Pass and express lanes help to alleviate delays at tollbooths. In addition, using E-Z Pass is a less expensive method for the passenger due to the discounted toll charge. Furthermore, E-Z Pass users will be reducing auto emissions attributable to idling in line at tollbooths, thereby improving the City's air quality.

Original rule proposals were published in the City Record on August 23, 1999. Additional amendments were published on September 27, 1999.

In response to public comments received by the Commission at its August 23, 1999 [meeting], the Commission published additional amendments that authorize the establishment of a replenishment account that could be used by owners for reimbursement of toll charges incurred by the driver but not paid to the owner. The rules permit an E-Z Pass tag holder to require drivers to establish an E-Z Pass replenishment account of up to $10 per shift (not to exceed a total of $100) from a driver. An E-Z Pass tag holder may also seek restitution from a driver for tolls that were collected by him but not reimbursed to the tag holder. A driver may also seek restitution from an owner who fails to return any excess amount in the replenishment accounts to the driver.

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§1-38 [Reserved]

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§1-39 [Reserved]

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§1-40 Insurance Coverage.

(a) An owner shall comply with the New York State Vehicle and Traffic Law and the New York State Insurance Law regarding coverage by bond or policy of liability insurance and all other forms of insurance required by law.

(b) An owner shall notify the Commission, in connection with an application for renewal of a taxicab license each year, of the name and address of the carrier and the number of the policy for each taxicab owned by him, and submit proof of such coverage. The provision of such insurance information shall be a condition for license renewal.

(c)(1) An owner shall immediately report to his/her insurance carrier, in writing all accidents involving his/her taxicab which are required to be reported to the insurance carrier.

(2) An owner shall immediately report to the Commission, in writing, all accidents involving his or her taxicab which are required to be reported to the Department of Motor Vehicles pursuant to §605 of the Vehicle and Traffic Law. A copy of any report furnished to the Department of Motor Vehicles pursuant to law shall be furnished to the Commission within ten (10) days of the date by which the owner is required to file such report with the Commission of Motor Vehicles.

(d) Notwithstanding any inconsistent provision of subdivision a of this rule, each owner shall, for each taxicab owned by him, maintain for purposes of insurance or other financial security, coverage in an amount not less than $200,000 per person, payable for those expenses specified in paragraphs 1, 2 and 3 of subdivision a of §5102 of the New York State Insurance Law, and coverage in an amount of not less than $100,000 minimum liability and of not less than $300,000 maximum liability for bodily injury or death, as said terms are described and defined in §370(1) of the

Vehicle and Traffic Law.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (c) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 1]

Subd. (d) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (d) relettered (former subd. (e)) City Record July 12, 1993 eff. Aug. 11, 1993.

Subd. (d) repealed City Record July 12, 1993 eff. Aug. 11, 1993.

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1998:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under sections 2303(b)(2) and (7) of such Charter, authorizing TLC to regulate insurance and standards of service; under section 2303(b)(13) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred uon it by the Charter.

The regulations require owners of medallion taxicabs and for-hire vehicles to furnish the Commission with copies of reports of accidents involving their vehicles which are presently required to be filed with the Department of Motor Vehicles. The purpose of the regulation is to ensure public safety by enabling the Commission to maintain accurate and complete records of accidents involving medallion taxicabs and for-hire vehicles, and to enable the Commission to identify and take appropriate action against licensees who engage in unsafe driving practices which cause accidents.

The Department of Motor Vehicles receives required reports from motorists involved in accidents. That agency compiles accident data and makes it available to the Commission. The Commission does not have access to the most recent accident data involving taxicabs since the Department of Motor Vehicles is approximately two years late in compiling statistical reports on accident data involving Commission licensees.

The regulation enacted by the TLC does not create an additional reporting requirement upon medallion taxicab and for-hire vehicle owners. This regulation mandates that a copy of the report required to be filed with the Department of Motor Vehicles also be filed with the Commission. This will enable the TLC to obtain current, up-to-date, accurate information concerning accidents involving its licensees.

Furthermore, the For-Hire Vehicle Rules would be amended to conform to the existing requirement in the Taxicab Owners Rules that vehicle owners immediately report, in writing, all accidents involving said vehicle that are required to be reported to the insurance carrier. A rule requiring medallion owners to report accidents to their insurance carriers is already in effect. A similar rule covering owners of for-hire vehicles is necessary to assure that individuals involved in accidents are not denied coverage because no accident report was filed, a situation which could result in a failure to cooperate with the insurance carrier.

2. Statement of Basis and Purpose in City Record June 26, 1998: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b)(7) of such Charter, authorizing TLC to establish insurance and

financial responsibility requirements for vehicles under its jurisdiction; under section 2303(b)(13) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The regulations require owners of both medallion taxicabs and for-hire vehicles to obtain and maintain higher levels of liability insurance than presently required by TLC rules and New York State Law. This insurance would be available to passengers and drivers injured in an accident resulting from the use or operation of the insured vehicle. The purpose of the regulation is to protect the public by assuring that medallion and for-hire vehicle owners maintain reasonable levels of insurance reasonably sufficient to satisfy claims of those injured as a result of accidents involving their vehicles. The levels presently mandated by New York State Law and TLC regulations are substantially lower than those levels required by many other cities, and are inadequate to satisfy the claims of many accident victims. A study conducted by the Commission revealed that the mandatory levels of insurance which are required by the TLC for taxicabs and for-hire vehicles are substantially lower than those required by other major cities, such as Chicago, Los Angeles, and San Francisco. Many victims of accidents involving taxicabs or for-hire vehicles are not adequately compensated for their injuries. Most larger cities, as well as smaller cities within New York State, require licensed taxicabs to maintain levels of insurance which are higher than the State statutory minimums. The Commission has raised both the level of required no-fault insurance and liability insurance. The increase in no-fault insurance will not provie a remedy to pedestrians who are injured since supplemental no-fault coverage is not available to them, pursuant to New York State insurance regulations. The higher levels of insurance mandated herein are comparable to the levels of coverage many motorists in the State voluntarily purchase; this level is still below the levels commonly purchased by private commercial common carriers such as trucking and bus companies. The Commission has considered the cost of additional insurance coverage to owners of vehicles, and notes that although there is an increased cost, this increase may be offset by general reductions in the cost of insurance which would occur as the quality of the driver pool is improved, through other initiatives such as mandatory defensive driving courses, probationary licenses, and stricter penalties for traffic offenses.

CASE NOTES

¶ 1. The constitutionality of Sec. 1.40(d), which relates to insurance requirements, has been upheld. United Car & Limousine Foundation, Inc. v. New York City Taxi and Limousine Comm., 178 Misc.2d 734, 680 N.Y.S.2d 815 (Sup.Ct. New York Co. 1998).

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§1-41 Double Shift Insurance Coverage.

(a) An independent taxicab owner operating the taxicab for more than one shift daily, and a taxicab fleet or mini fleet shall continuously maintain double shift insurance coverage.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-42

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§1-42 Cancellation or Change of Insurance.

(a) An owner within seventy-two (72) hours of receipt of notice shall notify the Commission in writing of the cancellation of the required liability insurance or change of insurance carrier or policy number of his insurance.

(b) An owner who has received notice that his liability insurance is to be terminated shall surrender his rate card and medallion to the Commission on or before the termination date of the insurance, unless he submits proof of new insurance effective on the date of termination of the old policy.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-43

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§1-43 Workers' Compensation Coverage.

(a) An owner shall comply with all workers' compensation laws.

(b) An owner shall maintain on file with the Commission a current Certificate of Workers' Compensation Coverage, or a current, valid exemption from the requirement of workers' compensation coverage.

(c) An owner shall designate the Commission as a certificate holder to receive all notices concerning the workers' Compensation policy.

(d) Upon filing with the Workers' Compensation Board to end the disembursement of benefits for a driver due to recovery from a disabling work-related injury and readiness to work, an owner shall provide the driver with documentation that benefits have ceased in order for the Commission to return such driver's license.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (d) added City Record Sept. 13, 1993 eff. Oct. 13, 1993.

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35 RCNY 1-44

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CHAPTER 1 TAXICAB OWNERS RULES

§1-44 Dispatch of Taxicab.

(a) An owner shall not dispatch a taxicab from a public street or other public area if such dispatch will prevent the flow of pedestrians and/or vehicular traffic, or cause inconvenience or annoyance to the public.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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§1-45 Maintaining a Business Premise.

(a) Any agent, any owner who leases or otherwise dispatches one or more taxicabs for return at the end of a shift, and any business entity in which a principal holds in the aggregate a substantial interest in taxicab medallions, shall maintain a business premise in a location zoned for the operation of a business, with:

(1) Sufficient off-street space at or near its business premise to store the lesser of 25 vehicles or the following: fifty percent of the taxicabs leased or otherwise dispatched on a daily or a shift basis, plus five percent of the taxicabs leased for longer than one day;

(2) Sufficient office space to conduct business, where all records required by the Commission, including trip sheets and driver records, are kept;

(3) Regular business hours, including the hours of 9:00 a.m. through 5:00 p.m. for every weekday; and

(4) A business address and telephone number on file with the Commission.

(b) For purposes of this section, a "principal" shall mean a person who holds an equity interest in an entity or who is an officer of a corporation; and "substantial interest in taxicab medallions" shall mean either

(1) ownership of 25 percent or more of the stock in one or more corporations which own medallions, or a partnership interest in one or more partnerships which own medallions, or any other form of full or partial ownership, such that the number of medallions in which the principal has a direct or indirect equity interest exceeds three, or

(2) a position or positions as an officer of one or more corporations which in the aggregate have a direct or indirect equity interest in more than three medallions.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record Oct. 30, 1995 §5, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

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35 RCNY 1-46

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CHAPTER 1 TAXICAB OWNERS RULES

§1-46 Authorized Taxi Drivers.

(a) No taxicab shall be operated for hire unless the driver has in his or her possession a current valid taxicab driver's license.

(b) An owner may permit a person who does not possess a taxicab driver's license to drive the vehicle only under the following limited circumstances:

(1) The vehicle is being driven to or from the Commission's centralized taxicab inspection facility or a repair facility;

(2) The off-duty light is illuminated; a current written trip record signed by the owner is in the taxicab or print out of an electronic trip record indicating "Off-Duty" and the reason; and the rear doors are locked;

(3) The person driving the vehicle is licensed to drive a motor vehicle; and

(4) The person driving the vehicle is not a person whose taxicab driver's license is suspended or revoked.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record May 11, 2005 §18, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (b) amended City Record Dec. 29, 1995 §13, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) par (2) amended City Record May 11, 2005 §18, eff. June 10, 2005. [See T35 §3-03 Note 10]

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CHAPTER 1 TAXICAB OWNERS RULES

§1-47 Driver of Record.

(a) An owner shall not authorize or allow a driver to operate a taxicab unless either:

(1) the driver's name has been entered on the rate card by the Commission and a lease driver is not operating beyond the lease expiration date entered on the rate card, or

(2) "Unspecified Drivers," has been entered on the rate card by the Commission.

(b) An owner shall not authorize or allow a lessee of a taxicab to sublease the taxicab to another party.

(c) An owner shall keep accurate records of the driver for each shift.

(d) An owner shall maintain on file with the Commission a current driver authorization statement indicating whether the taxicab will be:

(1) operated by named drivers of record, including, when applicable, the owner or officers of the owner corporation, or

(2) operated by "unspecified drivers."

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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§1-48 Named Driver.

(a) If an owner elects to lease to named drivers, the owner shall file a driver authorization statement for each lessee, prior to the lessee's taking possession of the taxicab. The owner must file the driver authorization statement with the Commission in person or by power of attorney. The driver authorization statement shall be signed by both parties and shall include but not be limited to:

(1) the date of execution of the lease;

(2) the names and addresses of the lessor and lessee and their social security or federal tax identification numbers;

(3) the medallion and license plate numbers of the leased taxicab; its vehicle identification number and titled owner;

(4) the term of the lease;

(5) the name and address of the auto liability and workers' compensation insurance carriers, the policy numbers and expiration dates;

(6) the name, address and telephone number of the owner's agent, if such agent arranged or manages the lease; and

(7) the charges to lessee.

(b) If a lease or its renewal, the disclosure of which is required pursuant to subsection (a) herein, is terminated for

any reason, the lessor shall notify the Commission in writing within forty-eight hours of such termination, unless exempted by the Commission.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-49

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§1-49 Unspecified Drivers.

(a) If an owner elects to operate with unspecified drivers, the owner shall file with the Commission, with the driver authorization statement, a copy of a master lease, employment agreement and/or union contract, together with evidence that the owner has unnamed driver insurance for the vehicle.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-50

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§1-50 Leasing a Taxicab.

(a) The Commission will enter on the rate card the owner's choices pursuant to §1-47(d), including, when applicable, the named drivers of record and the expiration dates of applicable leases.

(b) An owner may lease a taxicab to a licensed taxicab driver, or to licensed drivers working different shifts or days, if the owner is in compliance with the provisions of this rule. Regardless of the terms of the lease, the owner is responsible for complying with all laws, rules and regulations governing owners.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-51

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CHAPTER 1 TAXICAB OWNERS RULES

§1-51 Driver's Workshift.

(a) An owner shall not require a driver to operate one or more taxicabs for more than twelve (12) consecutive hours.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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§1-52 Required to be Present in the Taxicab.

(a) The following shall be present in the taxicab while it is in operation for hire:

(1) the driver's written trip record, also known as a "trip sheet" until the taxicab is required to be equipped with the taxicab technology system and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider, as set forth in section 1-11(e) of this chapter;

(2) the taxicab driver's license;

(3) the rate card in the frame alongside the frame for the taxicab driver's license.

(4) an insurance card or photostat thereof, unless the owner is self insured and has noted this fact on the rate card along with any other information required by the commission; and

(5) all notices required to be posted in the taxicab, including, but not limited to information provided by the Commission to the owner of a clean air taxicab which shall be displayed in the rear passenger compartment of such taxicab, visible to all rear seat passengers, by printed notice prior to the date when a personal information monitor (PIM) is required to be installed in taxicabs and thereafter in content displayed on the PIM, and which (i) identifies such taxicab as a clean air vehicle, (ii) includes the address of the Commission web page(s) and (iii) includes, to the extent practicable, estimated air quality benefits associated with the use of such vehicle and the type of fuel used to power such vehicle.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) par (1) amended City Record June 12, 2007 §6, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) par (1) amended City Record May 11, 2005 §19, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (a) par (5) amended City Record May 23, 2007 §3, eff. June 22, 2007. [See T35 §1-35 Note 1]

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§1-53 Trip Records. [Repealed]

HISTORICAL NOTE

Section repealed and reserved City Record Dec. 29, 1995 §14, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-54

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§1-54 Completion of the Workshift. [Repealed]

HISTORICAL NOTE

Section repealed and reserved City Record Dec. 29, 1995 §15, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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§1-55 Reporting Requirements.

(a) **Passenger lost property.** (1) Passenger lost property found in a taxicab shall be taken without delay to the police precinct in which the garage is located unless it can be returned to its rightful owner within a reasonable time.

(2) The owner shall promptly inform the Commission of any property which has been taken to a police precinct pursuant to §1-55(a).

(b) **Address and Telephone Number.**

(1) Each owner shall maintain a mailing address as defined in Section 1-01. In addition, each owner shall maintain such owner's personal address and a telephone number where such owner can be reached directly, on file with the Commission. This requirement of a personal address may not be satisfied by filing the address and telephone number of an agent or any other indirect means of reaching the owner. The Commission is not required to send any communication to the owner's personal address, except as provided in Section 1-77(b)(5). It is otherwise in the Commission's sole discretion as to when, and if, any communications will be sent to the owner's personal address.

(2) An owner shall appear at the Commission, in person with the rate card of every vehicle which he or she owns, to report a change of office of record or mailing address, within seventy-two (72) hours of such change, exclusive of weekends and holidays. Any notice from the Commission shall be deemed sufficient if sent to the mailing address furnished by the owner.

(3) An owner shall maintain on file with the Commission a current telephone number (which must be connected to

an answering machine or recording device), pager number, answering service telephone number or similar means of telephone contact, so that the owner may be reached by the Commission on a twenty-four hour basis.

(4) An owner must respond to any telephone or pager contact from the Commission within forty-eight hours, seven days a week.

(c) **Conviction of a felony or misdemeanor.** An owner, including a member of a partnership or any officer or shareholder of a corporation, shall immediately notify the Commission of his conviction of a felony or misdemeanor. Such notification shall be in writing and must be accompanied by a certified copy of the certificate of disposition issued by the Clerk of the Court.

(d) **Lost license plates.** An owner shall report to the Commission the replacement of any lost or stolen New York State license plates within forty-eight (48) hours, exclusive of weekends and holidays, after obtaining such plates.

(e) **Lost medallion or rate card.** An owner shall notify the Commission and the police department, within forty-eight (48) hours exclusive of weekends and holidays, of the theft, loss or destruction of any medallion or rate card, and furnish such affidavit or information as may be required including the police receipt number; a substitute medallion and rate card will be issued by the Commission.

(f) **Found medallion or rate card.** An owner shall notify the Commission and the police department within twenty-four (24) hours exclusive of weekends and holidays, when any medallion or rate card that was reported as stolen or lost is located or returned, and shall furnish such affidavit or information as may be required.

(g) **Lost taximeter. If** a taximeter is lost, stolen or damaged beyond repair, the owner shall notify the Commission and the police department, within forty-eight (48) hours exclusive of weekends and holidays, of the loss, theft or destruction, and shall furnish such affidavit or information as the Commission may require.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (b) amended City Record June 26, 1998 eff. July 26, 1998.

Subd. (b) par (1) amended City Record Oct. 30, 1995 §2, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

Subd. (b) par (2) amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Subd. (b) par (3) added City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (b) par (4) amended City Record Jan. 31, 2000 §1, eff. Mar. 1, 2000. [See Note 1]

Subd. (b) par (4) added City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (c) amended City Record Dec. 29, 1995 §16, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 31, 2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the City; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations relating to standards and conditions of service which

are reasonably designed to carry out its purposes; §2303(c) of such Charter, establishing certain procedures regarding the conduct of the Commission's adjudications tribunal; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-506 of such Code, authorizing the Commission to adopt regulations governing the transportation of passengers for hire; and under §19-507.3 of such Code, which sets forth mandatory response times for owners who receive messages from the Commission.

The regulations require the owner of each For-Hire Vehicle, Paratransit Service Vehicle and Commuter Van, as well as the owner of each base licensed by the Commission to maintain a telephone or pager number with the Commission and to respond to any telephone or pager message received from the Commission within forty-eight (48) hours. Current rules impose this requirement upon taxicab medallion owners and require that such communication be responded to within twenty-four (24) hours.

The present rule with respect to medallion owners was adopted as part of the regulatory reforms of the Commission approved on May 28, 1998 and effective July 26, 1998. The purpose of the rule is to ensure that the Commission can make prompt contact with a taxicab owner for a regulatory purpose requiring an immediate response. Local Law No. 20 of 1999, signed into law on May 26, 1999, added a new §19-507.3 to the Administrative Code that changed the mandatory response time for owners from twenty-four (24) to forty-eight (48) hours. The rule change proposed herein conforms the Commission Rules to the Administrative Code with respect to medallion owners.

This rule adds an identical requirement upon other vehicle and base licensees of the Commission. The purpose of this change is to provide for uniformity in the rules governing Commission licensees and to ensure that all vehicle owners and bases licensed by the Commission may be reached quickly whenever there is a need for immediate response.

2. Statement of Basis and Purpose in City Record June 26, 1998: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under Section 2303(b)(2) of such Charter, authorizing the TLC to promulgate rules and regulations relating to standards and conditions of service which are reasonably designed to carry out its purposes; and under Section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter. The regulation promulgated herein requires that medallion owners: (1) keep a current telephone number together with answering machine, pager number or answering service telephone number on file with the Commission, so that the Commission may contact any medallion owner in an emergency or for any other important purpose; and (2) respond to any Commission telephone call within twenty-four (24) hours of receipt of the message for the purpose of resolving the exigent situation in a timely manner. This regulation enables the Commission to communicate with medallion owners quickly whenever an emergency situation arises. It is not the intent of the Commission to use telephone communication entailed by this rule where mail correspondence would be sufficient. Emergency situations may include information that the owner's taxicab was involved in an accident or crime, that property was lost, or where immediate contact with the owner is essential to complete a Police or other investigation. The cost to individual owners in complying with this regulation is minimal since owners are already required to provide the Commission with a telephone number.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The Commission is entitled to presume that an address filed by a medallion owner pursuant to subparagraph (b)(1) of this section is an address at which the owner can be reached. A medallion owner's failure to respond to a Commission notice sent to the address filed by the medallion owner is not excusable on the ground that the address actually belonged to the medallion owner's fleet manager, who failed to forward the notice. Taxi and Limousine Commission v. Borko, OATH Index No. 1117/94 (Aug. 8, 1994).

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35 RCNY 1-56

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-56 Records.

(a) A fleet or mini-fleet owner shall maintain for a period of three years a written record of every shift setting forth the following information for each taxicab: the driver's name, the taxicab driver's license number, the state license plate number, the medallion number, the time of leaving garage, and the exact time of return.

(b) An owner shall maintain for a period of three (3) years, the following additional records:

(1) drivers' electronic or written trip records;

(2) receipts and disbursements from the taxicab operations;

(3) payments to drivers;

(4) mileage record of each vehicle;

(5) Workers' compensation insurance coverage, if any;

(6) liability insurance coverage; and

(7) such other information as the Commission may require.

(c) An owner shall make available to a driver any records which the owner is required to maintain, or photocopies thereof, which the driver may be required to present to the Commission or any other governmental agency.

(d) (1) An owner shall not knowingly transmit false information to the electronic trip data record keeper for entry on the electronic trip record nor make erasures or obliterations on a written trip record, or other record which he or she is required to maintain. If a wrong entry is made on any such electronic or written record, the driver or owner shall correct it on the electronic record or written record and record the date, time, and reason for the change so long as a record of the manually changed entry exists.

(2) Trip records shall not be changed, either in whole or in part, unless authorized by the Commission.

(e) An owner shall take possession of the written trip records from the driver on a weekly basis, until the taxicab is required to be equipped with the taxicab technology system and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider, as set forth in section 1-11(e) of this chapter.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record Dec. 29, 1995 §17, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) amended City Record May 11, 2005 §20, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (b) amended City Record Dec. 29, 1995 §17, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (d) amended City Record May 11, 2005 §20, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (d) amended City Record Dec. 29, 1995 §17, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (e) amended City Record June 12, 2007 §7, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (e) amended City Record May 11, 2005 §20, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (e) added City Record Dec. 29, 1995 §17, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

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CHAPTER 1 TAXICAB OWNERS RULES

§1-57 Driver as Agent for Service of Notices.

(a) An owner shall designate each and every driver who operates his taxicab as his agent for accepting service by commission personnel of notices to correct defects in the taxicab. Delivery of such notice to a driver shall be deemed proper service of the notice on the vehicle's owner.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Section amended City Record Dec. 29, 1995 §18, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-58 [Reserved]

HISTORICAL NOTE

Section repealed and reserved City Record Oct. 30, 1995 §3, eff. Nov. 7, 1995. [See T35 §1-59 Note 1]

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-59

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-59 Stand-By Vehicles.

(a) Each fleet may maintain stand-by vehicles ("SBVs"), equal in number to ten percent (10%) of all currently licensed taxicabs owned or operated by the fleet. (If ten percent [10%] of the fleet does not equal a whole number, the number shall be rounded to the nearest digit.) A stand-by vehicle may be dispatched in place of a currently licensed taxicab only when the currently licensed taxicab is out of service for repairs or for required inspection. An SBV vehicle may be used to replace a vehicle that has been stolen or permanently retired from service for no more than thirty (30) days from the date of such theft or retirement. When a stand-by vehicle is dispatched, the medallion and medallion number in the roof light shall be transferred from the out-of service taxicab to the stand-by vehicle. A stand-by vehicle shall not be dispatched unless there is also present in the vehicle the SBV transfer form and SBV rate card.

(b) Reserved.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record July 15, 1992 eff. Aug. 14, 1992.

Subd. (b) repealed City Record Mar. 27, 2000 eff. Apr. 26, 2000. [See Note 1]

Subd. (b) added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 27,2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which authorizes the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the City; under §2303(b)(11) of such Charter, which authorizes TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; under §19-503 of the Administrative Code of the City of New York, which authorizes the Commission to promulgate rules to further the objectives of the Charter and the Administrative Code; and under §19-506 of said Code, which authorizes the Commission to impose penalties for the failure to comply with a Rule of the Commission.

This Rule repeals the requirement contained in TLC Rules that all stand-by vehicles be fueled by Compressed Natural Gas (CNG).

The Rules of the TLC permit fleets to maintain stand-by vehicles (SBVs) in a number equal to ten (10%) percent of the number of taxicabs licensed by the fleet. These SBVs may be dispatched in place of a licensed taxicab when the vehicle is out of service for either repairs or a required TLC inspection. On March 1, 1996, TLC Rule 1-59(b) became effective. This Rule provided that, effective December 31, 1997, all SBVs must be fueled by CNG.

On December 16, 1999, the TLC held a public hearing to review the effectiveness of the CNG vehicle program. The TLC heard testimony and received written comments from the taxicab industry (including taxicab owners and drivers), the black car and limousine industry, the livery industry, government officials, various gas and utility companies, as well as other individuals and organizations. These comments indicated that there are problems associated with the present CNG program, including the lack of a sufficient number of twenty-four (24) hour fueling sites, the lack of sites in locations near taxicab garages, the extensive amount of time needed to refuel CNG vehicles, cost and maintenance issues relating to the vehicles, and the unwillingness of taxicab drivers to lease such vehicles because of the additional time needed to fuel the vehicles. Other persons provided testimony in favor of the CNG program, noting the positive impact such a program has upon the environment.

After review of the testimony, the TLC has voted to repeal the mandatory CNG vehicle usage for SBVs, while retaining provisions in the Rules encouraging the voluntary use of CNG-powered vehicles. The TLC promulgates this change because while it encourages the use of CNG-powered vehicles as a measure to protect the environment, the Agency also recognizes the practical difficulties incurred by Owners in maintaining such vehicles at the present time.

2. Statement of Basis and Purpose in City Record Jan. 30, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The purpose of the regulations is to establish a significant number of taxicabs that are fueled by Compressed Natural Gas (CNG). Federal funding is available to equip taxicabs with CNG fueling systems. However, there has been hardly any use by taxicab owners of these available funds. An important issue is coordinating CNG fueling stations with CNG powered vehicles. It appears to be a classic situation of the cart before the horse, except that the horsepower here would be provided by CNG. Convenient fueling stations are necessary to interest taxicab owners in using CNG. The participation of taxicab owners is necessary to make investments in fueling stations worthwhile for the providers of CNG within the City, which include Brooklyn Union Gas and Con Edison. Stand-by vehicles are used by taxicab fleets as temporary replacements for vehicles out of service for repairs. At present, about 150 stand-by vehicles are in use. Present rules would permit as many as 200 stand-by vehicles. The decision to use stand-by vehicles is discretionary with fleet operators. By requiring that stand-by vehicles must be fueled by CNG, the regulations would establish between 120 and 150 CNG powered taxicabs. If those vehicles are among the first 300 taxicabs using CNG, the federal

funds to install the CNG fuel systems would be available for them. The regulations provide nearly two years before the CNG requirement for stand-by vehicles would take effect. This is intended to provide ample time for adequate CNG fueling stations to be built. The fundamental purpose of this measure is to explore means to improve the City's air quality. In response to public comments, the proposal was changed to allow for a reserve tank of gas to be used in instances where the taxi is unable to immediately refuel with compressed natural gas.

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§1-60 Compliance with Law and Proper Conduct.

(a) An owner shall comply with the Commission's taxicab specifications, the Marking Specifications for Taxicabs, all pertinent provisions of the Administrative Code and other laws, rules or regulations governing taxicab owners.

(b)(1) An owner, while performing his duties and responsibilities as a taxicab owner, shall not commit or attempt to commit, alone or in concert with another, any act of fraud, misrepresentation or larceny against a passenger, Commission representative, public servant or any other person.

(2) An owner, while performing his duties and responsibilities as a taxicab owner, shall not commit or attempt to commit, alone or in concert with another, any willful act of omission or commission which is against the best interests of the public, although not specifically prescribed in these rules.

(c) An owner shall not use or permit any other person to use his taxicab, garage or office of record for any unlawful purpose.

(d) An owner shall not conceal any evidence of crime connected with his taxicab, garage or office of record.

(e) An owner shall report immediate to the policy any attempt to use his taxicab to commit a crime or escape from the scene of a crime.

HISTORICAL NOTE

Section amended City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (b) amended City Record Aug. 10, 1998 §1, eff. Sept. 9, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 10, 1998:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under section 2303(b)(2) of such Charter, authorizing the TLC to regulate standards of service; under section 2303(b)(13) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under section 19-505 of said Administrative Code, authorizing the TLC to issue taxicab drivers licenses, for-hire vehicle drivers licenses and paratransit vehicle drivers licenses.

The rule amendments change the existing rules for taxicab and for-hire vehicle owners and drivers which prohibit fraud, misrepresentation, larceny or other actions against the best interest of the public, by dividing each rule into two subdivisions: one, prohibiting fraud, misrepresentation and larceny against either the Commission, a passenger, or another member of the public; and the other, prohibiting acts of commission or omission which are not otherwise prohibited by the rules but which are against the best interests of the public. The first subdivision, which would prohibit the most serious offenses acts of larceny or fraud against the Commission or the public, would carry a penalty which can include the possibility of a substantial fine, suspension or revocation. The second subdivision would carry a lower monetary penalty, but would also include the possibility of suspension or revocation.

The purpose of these rule changes is to protect the riding public from serious acts committed by owners and drivers of taxicabs and for-hire vehicles by enabling the Commission to impose severe penalties, up to and including license revocation, against those who commit serious acts of fraud or larceny against the Commission or the public. The rule, as presently drafted, is very broad. Its provisions apply to both egregious forms of misconduct and less serious offenses. Establishing two separate classifications of offenses, with different penalties, enables the Commission to better protect the public by ensuring that the penalties imposed under these rules are proportionate to the offense and have a significant deterrent effect.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Submission of forged workers' compensation insurance certificates by or on behalf of a medallion owner violated this section. Taxi and Limousine Commission v. Borko, OATH Index No. 1117/94 (Aug. 8, 1994).

¶ 2. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of paragraph (b) of this section, as well as §§1-23, 1-67(a), 2-26(d), 2-30(a), 2-31(a), 2-61(a) and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

¶ 3. Medallion owner, who leased medallion through agent leasing broker to drivers, held liable for meter acceleration device found in taxicab during inspection pursuant to section 1-23(a) of owner's rules, which imposes strict liability upon medallion owners even where, as here, the owner claims he was unaware of the violation. **Taxi and Limousine Comm'n v. Hom,** OATH Index Nos. 433 & 435/99 (Oct. 28, 1998).

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35 RCNY 1-61

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CHAPTER 1 TAXICAB OWNERS RULES

§1-61 Unlawful Acts.

(a) An owner shall not present a vehicle for inspection unless it is in fact the vehicle that is licensed by the Commission or use false credentials in presenting a vehicle for inspection, or avoid or seek to avoid inspection of a licensed vehicle by any other means contrary to law or regulation of the Commission.

(b) An owner shall not operate or present for inspection a vehicle in which the Vehicle Identification Number has been loosened and reattached, or switched from another vehicle or otherwise altered in a manner not in compliance with Article 17 of the New York State Vehicle and Traffic Law.

(c) An owner shall not present documents to the Commission which falsely purport to indicate that liability insurance and/or Workers' Compensation insurance requirements have been met.

(d) An owner shall not bribe or attempt to bribe nor proffer any gratuity whatsoever to any employee, representative or member of the Commission in return for favorable or preferential treatment.

(e) An owner shall not file with the Commission any statement required to be filed pursuant to Rule 1-02(g) or Rule 1-02(l) which he or she knows or reasonably should have known to be false, misleading, deceptive or materially incomplete.

HISTORICAL NOTE

Section amended City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (e) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-02 Note 1]

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35 RCNY 1-62

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CHAPTER 1 TAXICAB OWNERS RULES

§1-62 Gifts Prohibited.

(a) An owner shall not offer or give any gift or gratuity to any employee, representative or member of the Commission, any public servant or any dispatcher employed at a public transportation facility.

(b) An owner shall immediately report to the Commission and the NYC Department of Investigation any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the Commission or any public servant or any dispatcher employed at a public transportation facility or authorized group-ride taxi line.

(c) An owner, when the taxicab is in his possession, shall remove all currency from the taxicab's interior prior to its inspection by any Commission personnel.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Testimony from TLC inspector, who admitted that he accepted bribes from those who presented taxicabs to him for inspection, was found insufficient to establish charges that taxi owners had bribed the inspector, due to inconsistencies in the inspector's testimony and other problems with his credibility. **Taxi and Limousine Comm'n v. Chrisanthos, Inc.,** OATH Index Nos. 1626-32/95 (July 21, 1998).

¶ 2. TLC inspector's testimony was found to be sufficient to establish that medallion owners attempted to bribe the

inspector. **Taxi and Limousine Comm'n v. N & J Taxi, Inc.,** OATH Index Nos. 1542-53/95 (Jan. 9, 1996), **aff'd in part, remanded on other grounds sub nom. Statharos v. NYC Taxi & Limousine Comm'n,** 269 A.D.2d 280, 703 N.Y.S.2d 461 (1st Dep't 2000).

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35 RCNY 1-63

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-63 Abuse and Physical Force Prohibited.

(a) An owner, while performing his duties and responsibilities as a taxicab owner, shall not threaten, harass or abuse any governmental or commission representative, public servant or other person.

(b) An owner, while performing his duties and responsibilities as a taxicab owner, shall not use any physical force against a Commission representative, public servant or other person.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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§1-64 Solicitation Prohibited.

(a) An owner shall not, in any manner, cause any service or merchandise to be sold or advertised to any passenger, nor make any arrangement with the owner, manager or employee of any restaurant, bar, night club, cabaret, dance hall, hotel, or like places, or any premises maintained in violation of law, for which the owner agrees that she/he, his/her drivers and/or agents shall solicit or recommend patronage for such places, without prior, written, approval of the commission.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-65

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§1-65 Participation in Procession and Parades Prohibited. [Repealed]

HISTORICAL NOTE

Section repealed and reserved City Record Dec. 29, 1995 §19, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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§1-66 Commercial Use Motor Vehicle Tax Stamp.

(a) An owner shall affix to the lower right side of the taxicab windshield, so as to be plainly visible, a current New York City commercial use motor vehicle tax stamp.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

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§1-67 Cooperating with TLC.

(a) An owner shall cooperate with all law enforcement officers, authorized representatives of the Commission and the NYC Department of Investigation, and shall comply with all reasonable requests, including, but not limited to giving, upon request, his or her name and medallion number and exhibiting his or her rate card, required electronic and/or written trip records, log books, and other documents required to be maintained by the owner.

(b) An owner shall notify the Commission by telephone immediately, and in writing within twenty-four (24) hours, upon the discovery of any of the following:

(1) That any taximeter other than the taximeter approved by the Commission and indicated on the rate card, has been installed in such owner's taxicab;

(2) That any taximeter seal in such owner's taxicab has been removed or tampered with;

(3) That any unauthorized device has been connected to any taximeter, any seal, cable connection or electrical wiring, in such owner's taxicab, which may affect the operation of the taximeter;

(4) That any intervening connections, splices, "Y" connections or direct or indirect interruptions or connections of any kind whatsoever have been discovered on any wiring harness attached to the taximeter in such owner's taxicab.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (a) amended City Record May 11, 2005 §21, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (b) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §1-23 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of this section, as well as §§1-23, 1-60(b), 2-26(d), 2-30(a), 2-31(a), 2-61(a) and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

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35 RCNY 1-68

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-68 Compliance with Communications, Directives and Summonses.

(a) An owner shall promptly answer and comply with all questions, communications, directives and summonses from the commission or its representatives and the NYC Department of Investigation or its representatives.

HISTORICAL NOTE

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Medallion owner's submission of certain documentation more than 30 days after receipt of Commission directive, which instructed owner to supply the documentation within 10 days, did not constitute "prompt" compliance as required by this section. **Taxi & Limousine Comm'n v. Nitram Cab Corp.**, OATH Index No. 2809/08 (Aug. 4, 2008), **adopted**, Comm'r/Chair's dec. (Sept. 8, 2008).

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35 RCNY 1-69

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-69 Flat Rates from Kennedy Airport to Manhattan.

(a) Notwithstanding the rate of fare set forth in §1-70(a) and (b), the fare for a trip between Kennedy Airport and Manhattan shall be a flat rate of Forty-five Dollars ($45), plus any tolls; and beginning on November 1, 2009, plus the MTA Tax of fifty cents per trip.

(1) The surcharge set forth in §1-70(b) shall not be added to this flat rate.

(2) The taximeter shall reflect that this trip is a flat fare.

(b) If passengers request multiple stops on a trip from Kennedy Airport to Manhattan, the fare shall be as follows: the first stop in Manhattan is paid in accordance with subdivision (a) of this section; the meter is then turned on for a separate trip at the rate of fare as set forth in §1-70, and the total on the meter is paid at the last stop by the remaining passenger. (For example, if three passengers request stops at 42nd St., 18th St. and 4th St., then $45.50 will be collected at 42nd St. and the meter will be turned on. When the second passenger exits at 18th St., the meter remains on, and no money is paid to the driver. The passenger dropped off at 4th St. must pay the fare on the meter.)

(c) All trips between Kennedy Airport and a borough other than Manhattan shall continue to be governed by the meter rate of fare as set forth in §1-70.

(d) The Chairperson is authorized to suspend the enforcement of this provision at any time, if in the judgment of the Chairperson such a suspension is necessary to preserve adequate levels of service to and from Kennedy Airport.

HISTORICAL NOTE

Section amended City Record Oct. 31, 2006 §1, eff. Nov. 30, 2006. [See Note 4]

Section amended City Record Apr. 2, 2004 §1, eff. May 2, 2004. [See T35 §1-70 Note 2]

Section added City Record Dec. 29, 1995 §1, eff. Jan. 30, 1996. [See Note 2]

Section amended City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 3]

Subd. (a) amended City Record Sept. 25, 2009 §2, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (a) amended City Record May 31, 2001 eff. June 30, 2001. [See Note 1]

Subd. (b) amended City Record Sept. 25, 2009 §2, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (b) amended City Record May 31, 2001 eff. June 30, 2001. [See Note 1]

Subd. (d) amended City Record Apr. 29, 1996 eff. May 31, 1996.

NOTE

1. Statement of Basis and Purpose in City Record May 31, 2001:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; §2303(b) of such Charter, authorizing the TLC to enact rules and regulations relating to standards and conditions of service which are reasonably designed to carry out its purposes; §2304(b) of such Charter, authorizing the Commission to establish rates of fare for taxicabs; and §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter.

The regulations promulgated herein raise the flat fare rate for a trip from Kennedy Airport in Manhattan from the present rate of $30, to a rate of $35, exclusive of tolls. The $30 flat fare rate has been in effect since April 29, 1996.

The Commission adopted the JFK flat fare rate in 1996 to provide passengers with a consistent and uniform fare that approximated the average cost of a metered trip from Kennedy Airport to typical destinations in Manhattan, taking into account differences in traffic conditions and other variables such as the selection of a faster, but longer alternative route by drivers or passengers. The flat fare was also adopted in 1996 to prevent overcharging of passengers by drivers. The purpose of this increase in the flat fare rate by $5 per trip is to more closely approximate the average cost of a metered trip between Kennedy Airport and various locations in Manhattan, based upon average distance and time traveled. Since 1996, the Commission has conducted analyses of sample trips from Kennedy Airport to various destinations in midtown, lower and upper Manhattan. The results of these studies demonstrate that the average recorded meter charge for trips to midtown Manhattan was approximately $30. However, fares for trips to destinations in lower Manhattan averaged in excess of $35, while fares for trips to destinations in the northern end of Manhattan were approximately $35.

Lower Manhattan has developed in recent years into a primary residential and commercial area. In 1970, the Community Planning District comprising lower Manhattan (generally below the City Hall area) had a population of approximately 6,000 persons. By 1990, the population had increased in excess of 25,000, and preliminary census data for the year 2000 indicates that more than 30,000 people now live in lower Manhattan-a five-fold increase in thirty years. This demographic change has significantly impacted upon the use of taxicabs to destinations in lower Manhattan.

This rule establishes a flat fare rate that is more equitable to drivers transporting passengers traveling to destinations in upper and lower Manhattan. The existing flat fare structure does not adequately compensate drivers who are required to transport passengers to such destinations. By providing a flat fare rate that adequately compensates drivers for time and distance traveled with respect to trips to these destinations, drivers may also have a greater incentive to provide service at Kennedy Airport and seek fares to these destinations.

Accordingly, an increase in the flat fare rate is justified, consistent with the purposes of the Rule, to ensure that passengers traveling between Kennedy Airport and Manhattan are charged a fare that closely approximates the average metered fare for an average trip to destinations throughout Manhattan.

2. Statement of Basis and Purpose in City Record Dec. 29, 1995: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 2304(b) of such Charter, authorizing TLC to prescribe the rates of fare which may be charged for each type of service rendered; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The purpose of the promulgated regulations is to reduce the incidence of overcharges to visitors to this City who arrive through Kennedy Airport. It is the experience of the Commission that a small group of drivers who seek to overcharge their passengers concentrate much of their effort on Kennedy Airport. The drivers who overcharge may hope that language confusion, and the novelty of some passengers' first transactions in American currency will provide opportunities to cheat passengers. The relatively lengthy trip from Kennedy Airport to Manhattan may enhance opportunities to boost a fare by manipulating the meter. There is more time to use a meter zapper (which sends an electronic signal causing the meter to skip forward). A meter that is set fast will accrue a larger overcharge during a lengthier trip. Some drivers may seek opportunities to take passengers who are new to the City on circuitous and more costly routes. Those drivers may also hope that a passenger who is soon returning to a distant home is less likely to pursue a complaint against the driver with TLC. For all these reasons, overcharges from Kennedy Airport are persistently the most serious instances of overcharges. By setting a fixed fare, and working with the Port Authority to adequately inform the arriving visitors of the flat fares for taxis, TLC should be able to reduce the serious instances of overcharges. A meter zapper or a fast meter would be useless in the context of a flat rate of fare that is understood by the passenger. Circuitous routes would be pointless too. Those few fraudulent drivers would be less able to trick a passenger who has information about the flat fare. The promulgated flat rates are based on empirical study of metered trips made under a variety of conditions, including time of day, traffic and weather. The rate is set at an average fare. The regulation is in the form of an experimental 120-day trial period in order to ascertain whether the flat fare will improve service, or if there may be negative consequences. This reflects concern that if a flat fare is believed by drivers to be insufficient, then drivers may be less likely to await passengers at Kennedy Airport. That is not to suggest that many drivers cheat; rather, the question is whether drivers will be concerned about uncompensated time spent awaiting passengers or stuck in traffic from Kennedy Airport. An average fare may be regarded by drivers as inadequate, based on drivers' anecdotal recollections of some better fares. It is hoped that drivers will also recall the fares that were lower than the flat rate, and will continue to serve Kennedy Airport in appropriate volume. A flat fare may have competitive consequences among modes of travel, and that effect too needs to be evaluated. Subsection (b) was added to proposed rule 1-69 in order to clarify that the flat fare is not to be collected as a group ride. That is, multiple passengers are not to be charged $30 each. Once the first passenger exits in Manhattan, the flat rate should be paid, and the meter is turned on. The last remaining passenger must pay the amount shown on the meter. Amendment of Section 2-33(a) was added in order to avoid any possible dispute or confusion which may occur between the driver and the passengers at the end of the trip if the metered rate of fare is substantially different from the flat rate of fare.

3. Statement of Basis and Purpose in City Record July 1, 1996: Section 4. The Commission shall review the flat fare program as of October 1, 1996, and every six months thereafter. The Commission shall consider factors including the demand for taxis and the availability of taxis at Kennedy Airport, the wait times for drivers in airport holding areas

awaiting passengers, traffic and other factors affecting the time required for a trip to Manhattan, competitive conditions relating to alternative modes of service, and the experience of drivers and consumers. The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 2304(b) of such Charter, authorizing TLC to prescribe the rates of fare which may be charged for each type of service rendered; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The promulgated regulations establish a permanent flat fare from Kennedy Airport to Manhattan. An experiment was established beginning on January 30, 1996, and the initial results indicate that the flat fare has been successful. The experiment will "sunset" on July 31, 1996, and this rulemaking establishes a permanent program beyond that date. The purpose of the flat fare is to reduce the incidence of overcharges to visitors to this City who arrive through Kennedy Airport. It is the experience of the Commission that a small group of drivers who seek to overcharge their passengers concentrate much of their effort on Kennedy Airport. The drivers who overcharge may hope that language confusion, and the novelty of some passengers' first transactions in American currency will provide opportunities to cheat passengers. The relatively lengthy trip from Kennedy Airport to Manhattan may enhance opportunities to boost a fare by manipulating the meter. There is more time to use a meter zapper (which sends an electronic signal causing the meter to skip forward). A meter that is calibrated fast will automatically accrue a larger overcharge during a lengthier trip. Some drivers may seek opportunities to take passengers who are new to the City on circuitous and more costly routes. Those drivers may also hope that a passenger who is soon returning to a distant home is less likely to pursue a complaint against the driver with TLC. For all these reasons, overcharges from Kennedy Airport are persistently the most serious instances of overcharges. By setting a fixed fare, and working with the Port Authority to adequately inform the arriving visitors of the flat fares for taxis, TLC should be able to reduce the serious instances of overcharges. A meter zapper or a fast meter would be useless in the context of a flat rate of fare that is understood by the passenger. Circuitous routes would be pointless too. Those few fraudulent drivers would be less able to trick a passenger who has information about the flat fare. There are several changes to the regulations that were adopted as an experiment. One change is that the meter be equipped to reflect that the trip is a flat fare. Taximeters will be required to be capable of operating with either of two alternative rates of fare. This will provide the passenger with a printed receipt from a flat fare ride. This change in the meter specifications will require some taxicab operators to replace their meters and require all taxicab operators to reprogram their meters.

4. Statement of Basis and Purpose in City Record Oct. 31, 2006: The rules alter the existing rates of fare for taxicabs in two respects. First, the rules create a new flat fare for rides originating from any point in Manhattan to John F. Kennedy International (JFK) Airport. The flat fare will be $45, the same as is provided by existing rules for rides from JFK Airport to any point in Manhattan. Second, the rules adjust the metered rate of fare by changing from 20 cents to 40 cents the rate for time during which the taxicab is standing still or moving less than twelve miles per hour. The purposes of these changes are to promote taxicab service to tourists, and thereby to promote tourism, and to bring fare calculations into closer alignment with fare calculations in use in other major cities around the country. In addition, the adjustment to the rate of fare for waiting time increases the effective hourly rate for waiting time to approximate the existing effective hourly rate for time when the taxicab is moving normally. This adjustment thus enhances the equity of the fare structure, treating more equitably taxicab drivers whose fares on a particular day may happen to involve disproportionate amounts of waiting time.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-70

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-70 Metered Rate of Fare.

(a) **Metered rate of fare.** The rate of fare for taxicabs shall be as follows, regardless of the number of passengers or stops:

(1) The charge for the initial unit is $2.50.

(2) The charge for each additional unit is $.40.

(3) The unit of fare is:

(i) one-fifth of a mile, when the taxicab is travelling at 12 miles an hour or more; or

(ii) 60 seconds (at a rate of forty cents per minute), when the taxicab is travelling at less than 12 miles an hour.

(4) The taximeter shall combine fractional measures of distance and time in accruing a unit of fare. Any combination of distance or time specified in paragraph (3) above shall be computed by the taximeter in accordance with Handbook 44 of the National Institute of Standards and Technology.

(5) The fare shall include pre-assessment of the unit currently being accrued; the amount due may therefore include a full unit charge for a final, fractional unit.

(b) **Surcharge.** In addition to the rate of fare set forth in §1-70(a), all taxicabs shall charge One Dollar ($1.00) for all trips beginning after 4:00 p.m. and before 8:00 p.m., weekdays, excluding legal holidays, and fifty cents ($.50) for

all trips beginning after 8:00 p.m. and before 6:00 a.m. on all days, including weekends and holidays.

(c) In addition to the rate of fare set forth in §1-70(a) and, if applicable, the surcharge set forth in §1-70(b), all taxicabs shall charge, beginning on November 1, 2009, the MTA Tax of fifty cents per trip on any trip that originates in New York City and terminates either in New York City or in the county of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk or Westchester.

HISTORICAL NOTE

Section amended City Record Oct. 31, 2006 §2, eff. Nov. 30, 2006. [See T35 §1-69 Note 4]

Section amended City Record Apr. 2, 2004 §2, eff. May 2, 2004. [See Note 2]

Section amended City Record Jan. 30, 1996 §1, eff. Mar. 1, 1996. [See Note 1]

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (c) added City Record Sept. 25, 2009 §3, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 30, 1996:

Section 2. The amended provisions of Rule 1-70 shall take effect on March 1, 1996; provided however, that if the provisions of proposed Rule 1-78, concerning limits as to the lease prices that owners may charge to drivers, are for any reason declared invalid by a court of competent jurisdiction, then the metered rate of fare set forth above in proposed Rule 1-70 shall be void, and the metered rate of fare shall revert to that in effect prior to March 1, 1996.

The Taxi and Limousine Commission ("TLC") promulgates such regulations pursuant to the authority vested in the TLC under Charter sections 2303(a), 2303(b) and 2304; and under section 19-503 of the Administrative Code of the City of New York.

The purpose is to provide increases in earnings to taxi drivers and operators, to maintain and improve levels of service after nearly six years without an increase.

The fare increase is estimated to increase the fare for an average trip of 2.64 miles by 20%. Nearly half the increase for the average trip is concentrated in the "drop," the cost of the first unit, when the meter is first engaged. That increases from $1.50 to $2.00. The price per each subsequent one-fifth of a mile increases by five cents, from $0.25 to $0.30. A 2.64 mile trip will cost $0.70 cents more for the first mile, $0.25 more for the second mile, and $0.15 more for the final 0.64 miles. Both calculations assume 306 seconds of waiting time in the average trip, for a constant cost of $1.00. The total is an increase of $1.10 above the previous average fare of $5.50.

Waiting time is unchanged, at twenty cents per minute. However, the waiting time equal to a unit of meter operation (thirty cents) is ninety seconds, rather than seventy-five seconds as at present (when a unit of distance costs twenty-five cents). The current rate posted on taxicabs for waiting time, twenty cents per minute, remains unchanged.

In an average shift of thirty trips, the total increase in revenue would be $33.

Increases in the costs of vehicles and increases in insurance costs, related in part to part to higher levels of insurance coverage required by New York State as of January 1, 1996, are among the items necessitating a fare increase to maintain and improve levels of service.

A key purpose of the proposal is to improve taxicab service and safety by retaining experienced taxi drivers.

Higher earnings are a major component of retaining experienced drivers. TLC studies have found that experienced drivers receive substantially fewer summonses than new drivers. That is an indication of better service. In taxi operations, a better worker is more knowledgeable, more courteous, and a safer driver.

Public safety is directly related to working conditions, particularly earnings. Over the past several years, passenger complaints about the driver's operation of the vehicle have risen. In that same period, drivers' real earnings have actually declined. (Lease rates have risen while the rate of fare has remained constant and the volume of business has remained steady or declined. This has resulted in lower earnings for drivers.) The most direct relationship between earnings and driving safety is the pressure a driver may feel to go faster, and to be bolder in traffic in an effort to proceed faster than the flow of traffic, in order to carry more fares and maximize income. Steady or higher earnings would help alleviate that immediate pressure. The indirect benefit-that is, the benefit of retaining experienced drivers-may be much greater. Higher earnings should encourage drivers to remain in the business.

The accompanying proposal that would cap the lease rates charged to drivers is so central to the Commission's analysis of the industry and its needs, that the Commission has made the increase in the taxi rate of fare contingent upon the continued applicability of the cap on lease prices. If the provisions of the proposed rules concerning limits as to lease prices are for any reason declared invalid by a court of competent jurisdiction, then the rate of fare shall revert to its current level, erasing the proposed increase in the fare. In the Commission's analysis, driver quality must improve. To accomplish that, the earnings of drivers must increase enough to retain experienced drivers. In the context of a government limit on the number of taxicab licenses, the Commission is compelled to balance the market forces by capping lease prices.

2. Statement of Basis and Purpose in City Record Apr. 2, 2004: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under Section 2303(b)(1) of such Charter, authorizing the TLC to adopt rules and regulations relating to taxicab fares, and Section 2304 of said Charter, which authorizes the TLC to establish rates of fare for taxicabs. On December 19, 2003, the TLC accepted for consideration two rulemaking petitions relating to amending the rules setting forth the rate of fare that may be charged by taxicab owners. One petition, filed by the Metropolitan Taxicab Board of Trade (MTBOT), requested that taxicab fares be increased as follows: · The initial "drop" be increased from $2.00 to $2.50;

· Mileage change be increased from $.30 per 1/5 mile to $.30 per 1/6 mile;

· Waiting time be increased from $.30 per 90 seconds to $.30 per 60 seconds.

The MTBOT proposal also requested that the flat fare for trips from JFK Airport to Manhattan be increased from $35 to $49.

On the same date, the TLC accepted for consideration a rulemaking petition from the Taxi Workers' Alliance (TWA) which requested that taxicab fares be increased as follows:

· Mileage change be increased from $.30 per 1/5 mile to $.40 per 1/5 mile;

· Waiting time be increased from $.30 per 90 seconds to $.40 per 45 seconds.

The TWA made no request for an increase in the initial drop, but requested that the flat fare for trips from JFK to Manhattan be increased from $35 to $45.

Each petitioner supplied certain income, expense and other data which was used to evaluate the fare increase proposals. The TLC also reviewed other data, including, but not limited to, taxicab fares in other cities, comparable fares for other modes of public transportation, return on investment, ridership data, income and expense data, and

projections with respect to industry conditions that may occur after a fare increase is implemented. Such criteria are set forth in the New York City Charter as factors which may be considered by the Commissioners. After careful review of all of the data submitted herein, as well as the public comments received and the testimony given at the March 30, 2004 public hearing the TLC is promulgating adjustments to the rate of fare which could restore the relationship between taxicab fares with other modes of transportation; provide drivers with incomes that are comparable with similar occupations; and create relationships between the different industry segments that facilitate the delivery of the desired quality and quantity of taxicab service. The Commission reviewed the evidence submitted and determined that the evidence supports an increase in the rate of fare.

Although both petitioners have requested that the fare calculated for waiting time, or time when the vehicle is in heavy traffic, be increased, the TLC has not adjusted the rate of fare for waiting time. Rather, the TLC has promulgated a $1.00 per trip surcharge for the evening rush hours, from 4:00 p.m. to 8:00 p.m. During these hours, there is often an imbalance between supply and demand. The imposition of a surcharge during these hours seeks to reestablish a balance between supply and demand by providing an incentive for drivers to work during these hours. Although the TLC initially proposed that the fifty-cent night surcharge, in effect from 8:00 p.m. until 6:00 a.m. be eliminated, the Commissioners retained this surcharge as an incentive for drivers to work during these evening and nightime hours after receiving public comment and testimony in support.

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***** Current through December 2009 ****

35 RCNY 1-71

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-71 Group Rides.

(a) [Reserved]

(b) **Group ride fare from York Avenue.** Notwithstanding the rate of fare set forth in §1-70(a) and (b), the fare for trips made pursuant to a group riding plan from York Avenue to the Financial District shall be as follows for each passenger: $6.00. In addition, there may be such fee for dispatch services as the Commission may determine.

(c) **Experimental Group Ride Programs.**

(1) The Chairperson shall have the authority to recommend, subject to Commission approval, additional experimental group riding plan pickup locations on a temporary basis as pilot programs to determine the effectiveness of each such group riding plan. The Chairperson shall also have the authority to recommend, subject to Commission approval additional group riding plans on a temporary basis for a limited period of time to respond to demand created by special events or unique circumstances. Such pickup locations shall be established for the transportation of more than one passenger from a common location to destinations within a specified common geographic area. Notwithstanding the rate of fare set forth in §1-70(a) and (b), the fare charged each passenger shall be set by the Commission and shall be less than the average metered rate of fare for such trip.

(2) Any group ride plan established by the Commission pursuant to this subdivision shall terminate one year after the date such plan was established, unless: (i) final rulemaking has been enacted establishing the group riding plan location and rate of fare; or (ii) the Commission has determined that it is in the best interest of the Commission to extend the group riding plan pilot program for an additional definite period of time not to exceed one year. The

Commission may discontinue any group riding plan that has not been the subject of final rulemaking upon a determination, in its sole discretion, that continuation of such plan is not in the best interest of the public.

(d) **MTA Tax.** The fare for any passenger paying the MTA Tax for any group ride trip will be reduced by the amount of the MTA Tax paid. Therefore, all passengers in a particular group ride plan will pay the same total amount. (Example: If three passengers are taking a group ride for which the fare is $6.00 per person, the fare will be adjusted so that the total fare for all three passengers equals $17.50 plus the $0.50 MTA Tax.)

HISTORICAL NOTE

Section added City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Subd. (a) repealed City Record Dec. 30, 2009 §1, eff. Jan. 29, 2010. [See Note 2]

Subd. (b) amended City Record Sept. 25, 2009 §4, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (c) added City Record Apr. 14, 2004 §1, eff. May 14, 2004. [See Note 1]

Subd. (d) added City Record Sept. 25, 2009 §4, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 14, 2004:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under §2303(b)(1) of such Charter, authorizing the TLC to adopt rules and regulations relating to taxicab fares, and §2303(b)(9) of said Charter, authorizing the TLC to develop a broad transportation policy through the experimentation with respect to modes of service and manners of operation which may, for a limited period of time, depart from the requirements of the Charter, Administrative Code, or rules of the Commission.

The Commission has established rates of fare for passengers in licensed taxicabs. Such rates are typically established on a per trip basis; the driver is not permitted to collect separate fares from each passenger. The TLC has, through rulemaking, established fare structures that depart from the metered rate of fare. One such fare structure is the flat fare rate for trips from Kennedy Airport to Manhattan. The TLC has also promulgated rules authorizing the establishment of group riding locations, where passengers traveling to an essentially common destination may share a taxicab and be charged a flat rate which is below the average metered rate of fare. Such group riding locations have been permitted for trips between LaGuardia Airport and Manhattan, as well as for trips between York Avenue, on the upper East side of Manhattan, and the Financial District in lower Manhattan. The York Avenue group riding plan is heavily used in the morning rush hours, while the LaGuardia plan is not active.

The TLC intends to expand group riding plans to include other locations throughout the City. Group ride locations may serve to complement existing transportation modes to accommodate passengers travelling between a common origin and a common destination in areas where there is a lack of existing mass transit, similar to the existing group ride location established to transport passengers between York Avenue on the Upper East Side and the Financial District during the morning rush hour period. Other factors may be relevant in determining the success and effectiveness of a group ride program. Accordingly, the TLC hereby authorizes the Chairperson to propose group riding locations to the Commission, which will then review such recommendations and, if adopted, set fares, on an experimental basis for a limited period of time. In addition, the Commission is hereby authorized to establish temporary group ride locations to respond to unique temporary circumstances, such as special events. The establishment of these pilot programs will enable the Commission to monitor demand for service as well as the willingness of the industry to provide service at

these locations prior to commencing rulemaking to permanently establish these group riding plan locations and fares. The regulation will require that within one year of the establishment and operation of such a location, the Commission must either permanently establish the plan and fare through rulemaking, or terminate the plan. The rule also authorizes the Commission to extend the pilot program for an additional period of time if it is necessary to further evaluate the effectiveness of the location.

2. Statement of Basis and Purpose in City Record Dec. 30, 2009: Since 1993, Taxi and Limousine Commission rules have permitted three different group ride fares from LaGuardia Airport to specified areas in Manhattan. However, these group rides are no longer used. The LaGuardia group rides were put in place at a time when there was a shortage of taxicabs at LaGuardia, which is no longer the case. Therefore, the TLC and the Port Authority agree there is no longer a need for this group ride rate. The TLC is interested in studying, by means of a pilot program, whether a different group ride structure might attract more passenger interest. For instance, it may be that there are shortages of taxicabs at the airport at certain times of day, or at certain locations such as the Marine Air Terminal, where many commuters arrive on shuttle flights. Also, it may be that business travelers who are heading to similar destinations in the Manhattan Business District may be interested in a group ride program. The repeal of the existing unused group ride structure is necessary to facilitate such future pilot programs.

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***** Current through December 2009 ****

35 RCNY 1-72

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-72 Tolls.

(a) On all trips within the City of New York, any bridge and tunnel tolls to the destination shall be reimbursed by the passenger, who shall be so informed before the start of the trip. The amount of the reimbursement shall not exceed the E-Z Pass toll amount. Said reimbursement shall be remitted to the E-Z Pass tag holder by the driver.

(b) On all trips within the City of New York, there shall be no reimbursement for return tolls except for trips over the Cross Bay Veterans, and Marine Parkway-Gil Hodges Memorial Bridges. The amount of the reimbursement shall not exceed the E-Z Pass toll amount. Said reimbursement shall be remitted to the E-Z Pass tag holder by the driver.

(c) On trips beyond the City of New York, all necessary tolls to and from the destination shall be paid by the passenger. If E-Z Pass is used on tolls on trips beyond the City of New York, the amount of the reimbursement shall not exceed the E-Z Pass toll amount. Said reimbursement shall be remitted to the E-Z Pass tag holder by the driver.

(d) A driver who charges a passenger an amount in excess of the E-Z Pass toll amount shall be guilty of an overcharge as prohibited by §2-34(a). A driver who fails to reimburse an E-Z Pass tag holder for all toll charges incurred, including toll charges for which there is no passenger reimbursement, shall be subject to the provisions of §2-25(i). In addition to any other penalty permitted, the Commission may order restitution to a passenger or the E-Z Pass tag holder.

HISTORICAL NOTE

Section amended City Record Dec. 1, 1999 §2, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

Section added City Record Feb. 22, 1993 eff. Mar. 20, 1993.

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***** Current through December 2009 ****

35 RCNY 1-73

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-73 Trips Beyond the City.

(a) For a trip beyond the limits of the City of New York, except for the Counties of Westchester or Nassau, or the facilities of the Port Authority of New York and New Jersey at Newark Airport, the fare shall be a flat rate. (A flat rate is a definite amount fixed between the driver and the passenger at the start of the trip. For example, "$20" is a flat rate. "Double the meter" is not a flat rate and is not the proper fare.) Beginning on November 1, 2009, the MTA Tax of fifty cents per trip shall be added to the total fare on any trip that originates in New York City and terminates either in New York City or in the county of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk or Westchester.

(b) For a trip to the Counties of Westchester or Nassau the fare shall be:

(1) the amount shown on the taximeter for that portion of the trip that is inside the City limits, plus twice the amount shown on the meter for that portion of the trip that is outside the City limits;

(2) all necessary tolls to and from the destination shall be paid by the passenger; and

(3) beginning on November 1, 2009, the MTA Tax of fifty cents per trip shall be added to the total fare.

(c) For a trip to Newark Airport the fare shall be:

(1) the amount shown on the taximeter plus a surcharge of $15.00; and

(2) all necessary tolls to and from the destination shall be paid by the passenger.

(d) Any continuous trip where the point of origin and the destination are both within the limits of the City of New York shall not be considered a trip beyond the City limits, even though the shortest and most direct route requires traveling outside such limits but within continuous counties. For such a trip the meter must be kept in the recording position throughout.

HISTORICAL NOTE

Section added City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Subd. (a) amended City Record Sept. 25, 2009 §5, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (b) amended City Record Sept. 25, 2009 §5, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (c) amended City Record Apr. 2, 2004 §3, eff. May 2, 2004. [See T35 §1-70 Note 2]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Because Belmont Park lies mostly within Nassau County, it was proper pursuant to subparagraph (b)(1) of this rule for a taxicab driver to charge a passenger a fare equal to the amount shown on the meter for the portion of the trip inside city limits plus twice the amount shown on the meter for the portion of the trip outside the city limits. Taxi and Limousine Commission v. Panic, OATH Index No. 1875/96 (Aug. 28, 1996), modified as to penalty, Comm'n Decision (Nov. 7, 1996).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-74

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-74 Luggage; Mobility Aids.

(a) There shall be no charge for handling steamer trunks or other luggage or belongings, wheelchairs, crutches, three-wheeled motorized scooters and other mobility aids transported in the interior of the taxicab, or for use of the taxicab's trunk.

HISTORICAL NOTE

Section amended City Record July 8, 1997 eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Section added City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-75

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-75 Owner's Direct Operational Responsibility.

(a) Except as otherwise provided in §1-76 of these rules, an owner shall operate a taxicab through personal observation of the vehicle, personal oversight of compliance with inspection, insurance and all other regulatory requirements, and personal communication with drivers. An owner may, however, utilize employees or a licensed agent to perform any or all such functions. The use of an employee or agent shall not relieve an owner of any obligation under these rules. An owner remains fully accountable for any violations of commission rules, committed by any employee or agent in the operation of such owner's medallion.

HISTORICAL NOTE

Section added City Record Oct. 30, 1995 §6, eff. Nov. 27, 1995. [See Note 1]

Subd. (a) amended City Record Mar. 29, 1996 §3, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 30, 1995:

Section 9. This proposal shall take effect thirty days after its promulgation, except that the requirements limiting the use of an agent who does not have the requisite business premises shall take effect on February 1, 1996. Furthermore, the requirement of Section 1-76(c), shall take effect as to each owner only upon the expiration of any management contract that is outstanding as of December 1, 1995, but shall take effect in no case later than February 1,

1996.

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The amendments require that taxi owners either operate their taxicabs themselves, through direct participation in operation of the vehicle, selection of drivers and compliance with regulatory requirements, or else operate through a designated agent. Designation of an agent would not relieve an owner of the responsibilities of a licensee. An owner would be limited to having only one agent for a taxicab. Under certain circumstances, the Commission could direct owners not to use an agent who has been involved in serious misconduct.

The purpose of the amendments is to establish controls concerning the use of agents who manage taxicabs on an owner's behalf. The most common form of agency is the use of lease managers, who "lease" the medallion from the taxicab licensee. That "lease" is similar to a management contract. The lease manager then leases the medallion to taxi drivers.

Lease managers have become a major element of the taxi industry, operating a substantial percentage of the taxicabs in service. A Commission study in May 1994 found that 2,730 cabs were operated by management companies whose insurance policies permit any licensed driver to drive the cabs. There were 29 such management companies running at least 25 cabs, and 37 other companies that operated between 5 and 24 taxis. In addition, 2,370 taxis were leased to named drivers for periods of weeks or months. A significant portion of those longer term leases are also handled by lease management companies.

Taxi fleets operated 2,620 cabs out of 28 fleet garages, in May 1994. A portion of those fleet cabs are not owned by the fleet, but instead are managed by the fleet operator as the agent of the medallion owners.

These figures suggest that roughly half of the 11,787 taxis in service are now operated by agents for the owners.

Although the question of agency is usually discussed within the taxi industry in terms of "lease managers," these proposed rules would also apply to any fleet, broker, or other entity which operates medallions that the entity does not own.

The growth of agency relationships in the taxi industry has, in practice, diffused owner responsibility for the operation of taxicabs. To provide continued standards of responsibility for public safety, the Commission has adhered to the fundamental policy of Rule 1-58(a), "The designation of an agent shall not relieve the owner of any obligations under these rules." That provision is preserved in Rule 1-75(a). In the Commission's view, a medallion owner is the holder of a public license to operate a taxicab, and cannot escape the responsibilities of a licensee by using an agent. The Commission holds the licensee strictly accountable for the operation of a taxicab. The Commission considers the operation of a taxicab to include all aspects of service, including compliance with insurance and other regulatory requirements. The Commission's answer to the diffusion of responsibility, is that the licensee remains fully responsible. The Commission has followed that principle in a recent series of cases concerning vehicle-switching and insurance fraud.

The Commission needs an additional measure, to maintain standards of responsibility. In the recent cases involving vehicle-switching and insurance fraud, the Commission held absentee owners of taxicabs responsible for the actions of their agents, and punished the owners with substantial fines or ordered them to divest their medallions. Meanwhile, their agents have continued to operate those owners' taxis and many others, because the Commission has lacked rules requiring owners to refrain from making use of particular agents. In the Commission's view, this is a serious gap in its

ability to regulate the provision of transportation for hire in New York City.

The Regulations enable the Commission to determine when, on the basis of an agent's misconduct, owners may not enter into or continue in any business relationship with that agent. The proposal provides for an opportunity for the agent to be heard as to the circumstances of the violation, prior to the issuance of such a direction to owners, except in cases requiring immediate action to protect the public health, safety or welfare. The direction not to use an agent may include a directive not to use certain principals in the agent. The purpose of that provision is to prevent the use of multiple enterprises to mask the continuing role of persons involved in misconduct in taxicab operations.

The promulgated regulations permit an owner to designate only one agent for the owner's taxicabs. Furthermore, the owner's designation of an agent cannot be delegated by the agent to another party. In the recent series of cases, a substantial portion of the taxi owners had contracted with one company to manage their medallions, but another company was actually operating them. In the Commission's view, these multiple relationships contributed to the diffusion of responsibility for the safe operation of taxicabs.

The minifleet, a corporation which owns only a few medallions, is a common form of ownership in the taxicab industry. Persons who hold beneficial interests in numerous medallions typically establish several minifleet corporations, each of which is the owner of a few medallions. Under the proposal, each taxicab minifleet could have only one agent to operate the taxicabs owned by the minifleet. The purpose is to simplify accountability. However, a person who owns more than one minifleet could use different agents for each minifleet, because each minifleet is a separate owner.

Based on public comments, several changes were made to the proposed regulations.

- The term "agent" has been further clarified. An agent acts ". . . to operate or provide for the operation of a licensed vehicle . . .". The term is not intended to cover such persons as a bookkeeper or auto mechanic who may work for a variety of owners in the limited capacity of their trade. - Certain draft provisions concerning persons who own less than 10% of the stock in an ownership corporation have been deleted. Those provisions were considered confusing and unnecessary. - The effective date for the requirement that an owner cannot use more than one agent has been extended for certain owners who already have outstanding contractual arrangements with their agents. Such owners are given until February 1, 1996 to comply with this requirement. This is approximately a ninety day period, which will provide time to alter present business arrangements. - The requirement that owners may only designate agents who maintain specified business premises has likewise been given an effective date of February 1, 1996, approximately three months from promulgation of the rule. - The requirement in Section 1-77(a)(3), that owners may only designate agents who provide certain information to the Commission, has been clarified to include specifically information as to the identity of principals of the agent. - The penalty for non-compliance of Rule 1-77(c) has been deleted. No penalty is necessary to accomplish its purpose.

The proposal does not appear in a regulatory agenda for the agency. The preparation of an agenda for this fiscal year was postponed, until after the appointment of a new Chairman. The new Chairman has established this proposal as an immediate priority.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-76

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-76 Owners Who Use Agents.

(a) An owner may designate an agent to act on the owner's behalf to operate a licensed vehicle and perform all functions incident thereto. Such agent shall be licensed by the Commission in accordance with §19-530 of the Administrative Code. Such designation shall be in effect until revoked by the owner and the Commission is notified, or until such agent's license is suspended or revoked by the Commission.

(b) An owner who uses an agent shall file a designation of the agent with the Commission, prior to use of such agent.

(c) An owner shall not designate or use more than one agent for such owner's taxicabs. Minifleet taxicabs may be split, each to a different agent, to comply with the terms of a management contract in effect prior to February 1, 1996, but in no case may such taxicabs be split among agents after December 31, 1996. Upon the expiration of such a contract, the minifleet taxicabs must be managed by no more than one agent. At all times, an owner shall comply with the requirement that no more than one agent shall be designated for a taxicab.

HISTORICAL NOTE

Section amended City Record Mar. 29, 1996 §4, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Section added City Record Oct. 30, 1995 §6, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-77

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-77 Limitations on an Owner's Use of an Agent.

(a) An owner may designate or use an agent, only if the agent:

(1) shall operate the taxicab through personal observation of the vehicle, personal oversight of compliance with inspection, insurance and all other regulatory requirements, and personal communications with drivers. An agent may, however, utilize employees to assist in fulfilling such functions, to the extent consistent with the terms of the owner's designation of the agent. The owner's designation of an agent shall be ineffective if delegated by the agent to another party; and

(2) shall maintain a business premises which meets the requirements of §1-45(a) and §12-05 of these rules.

(b) An owner may not designate or continue to use an agent, if the Commission has notified the owner that the specified agent's license is suspended or revoked.

(c) The Commission shall direct owners not to continue to use a specified agent, by mailing to the owner's personal address, if such owner is currently using such specified agent. The Commission shall further maintain on file a list of all agents with respect to whom such directives have been issued and are currently in effect, and shall make such list available for inspection by any person. Any owner who, notwithstanding the availability of such list, seeks to designate an agent who has been the subject of a directive not to designate shall be notified of such directive by the Commission at the time the designation is filed.

(d) No contract or other agreement entered into by an owner with an agent shall include a provision which purports

to supersede or impair the effectiveness, in whole or in part, of the provisions of this rule.

HISTORICAL NOTE

Section amended City Record Mar. 29, 1996 §5, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Section added City Record Oct. 30, 1995 §6, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-78

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-78 Limitations on Standard Lease Rates Charged to Drivers.

(a) **Standard Lease Cap.** An owner of a taxicab may charge a lease rate to a driver that is not greater than the Standard Lease Cap.

(1) The Standard Lease Cap for a medallion and vehicle for one twelve-hour shift shall not exceed:

(i) $105, for all day shifts;

(ii) $115, for the night shift on Sunday, Monday and Tuesday;

(iii) $120, for the night shift on Wednesday;

(iv) $129, for the night shifts on Thursday, Friday and Saturday.

(2) The Standard Lease Cap for a medallion and vehicle for one shift for a week or longer shall not exceed $666 weekly.

(3) **Cost adjustments.** The Standard Lease Caps set forth in paragraphs one and two of this subdivision shall be adjusted as follows:

(i) For a vehicle that is hacked up pursuant to section 3-03.1 of this title, including a vehicle that is authorized by section 3-03(c)(10) of this title, the Standard Lease Cap shall be adjusted upward by $3 per shift ($21 per week).

(ii) For a vehicle that is hacked up pursuant to section 3-03 of this title, excluding section 3-03(c)(10) of this title, the Standard Lease Cap shall be adjusted downward by $4 per shift ($28 per week) beginning on May 1, 2009, by $8 per shift ($56 per week) beginning on May 1, 2010, and by $12 per shift ($84 per week) beginning on May 1, 2011.

(4) Limits on Additional Charges. No owner, including any employee or agent of an owner, may charge to or accept from a driver any payment of any kind, such as a tax, surcharge, pass-along, tip or fee of any kind, for the lease of a medallion or of a medallion and a vehicle, other than a lease amount no greater than the applicable Standard Lease Caps set forth in paragraphs one and two of this subdivision, plus

(i) a credit card pass-along no greater than permitted by section 1-85(b) of this chapter;

(ii) a security deposit no greater than permitted by section 1-79(c) of this chapter, less any deductions permitted by section 1-79(a) of this chapter;

(iii) the discount toll amount for use of the EZ-Pass as permitted by sections 1-37 and 1-83 of this chapter;

(iv) a late charge not to exceed $25 for any shift; and

(v) a reasonable cancellation charge, subject to the provisions of section 1-79.1(b)(6) of this chapter; and

(vi) parking tickets and red light violations permitted to be deducted from the security deposit pursuant to section 1-79(a)(3) and (4) of this chapter provided that the lessor and agent of the lessor permits the driver to challenge such tickets and violations.

(vii) If the owner or agent is a Taxpayer who is liable for the MTA Tax, the owner or agent may collect the MTA Tax due from the driver by, first, deducting the MTA Tax due from credit card reimbursements due to the driver pursuant to §1-78(d); second, deducting any additional MTA Tax due from the driver's security deposit pursuant to §1-79(a)(5); and third, charging the driver for any remaining MTA Tax due.

(viii) The lease of a medallion and vehicle under paragraphs one and two of this subdivision includes service and maintenance. Service and maintenance of the vehicle is the responsibility of the lessor of the medallion and vehicle and the lessor and an agent of lessor may not charge the lessee for service and maintenance costs for the vehicle.

(5) (i) The Standard Lease Cap for a medallion only, covering the entire time during a week or longer, shall not exceed $800 weekly.

(ii) **Cost adjustment.** The Standard Lease Cap set forth in subparagraph (i) of this paragraph shall be adjusted as follows:

For a vehicle that is hacked up pursuant to section 3-03.1 of this title, including a vehicle that is authorized by section 3-03(c)(10) of this title, the Standard Lease Cap shall be adjusted upward by $42 per week.

(iii) **Maintenance.** The lease of a medallion under this paragraph does not include, and does not require a medallion owner or its agent to provide, service and maintenance of the vehicle. A medallion owner or an agent of the medallion owner must not require the lessee to obtain service and maintenance from any particular provider, including, but not limited to the medallion owner or an agent of the medallion owner.

(c) The provisions of this rule do not apply to owners and lease drivers whose business relationship is governed by the terms of a collective bargaining agreement which regulates the subject of lease prices.

(d) **Credit Card Charges.** (1) An owner or the owner's agent must pay a driver daily in cash the driver's receipts that are charged to a credit card on that day, less only a credit card pass-along no greater than permitted by section 1-85(b) of this chapter for any lease under paragraphs one or two of subdivision (a) of this section. For all other leases,

an owner or an owner's agent must pay the driver in cash no less often than weekly the driver's receipts that are charged to a credit card, less only a credit card pass-along no greater than permitted by section 1-85(b) of this chapter.

(2) If any owner or owner's agent is a Taxpayer, then the owner or owner's agent may deduct from the driver's credit card receipts payable under this subdivision (d) the amount due for the MTA Tax as a result of the trips driven by the driver.

HISTORICAL NOTE

Section amended City Record Apr. 1, 2009 §1, eff. May 1, 2009. [See Note 4]

Section repealed and added City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See Note 1]

Section added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See Note 2]

Subd. (a) amended City Record Apr. 2, 2004 §1, eff. May 2, 2004. [See Note 3] (Note internal renumbering by Law Department per Charter §1045(b))

Subd. (a) par (4) subpar (vii) added City Record Sept. 25, 2009 §6, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (a) par (4) subpar (viii) renumbered (former subpar (vii)) City Record Sept. 25, 2009 §6, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (b) repealed City Record Apr. 2, 2004 §1, eff. May 2, 2004. [See Note 3]

Subd. (d) amended City Record Sept. 25, 2009 §6, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 2, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgated regulatons are intended to resolve certain issues which a group of taxi lease managers had raised in two lawsuits and before the City Council.

The promulgated regulations provide a more flexible cap on lease prices, which allows greater flexibility in business practices in the taxi industry. The regulations extend the period of operation for some taxicabs before their mandatory retirement dates. The regulations also provide enhanced incentives for taxi operators using compressed natural gas for fuel.

The upper limit on taxi lease rates.

The promulgated regulations establish Standard Lease Caps, at fixed prices, which could be used by any taxi operator. This provision supplements the current rule, which fixes a Baseline Lease Cap for each medallion. The

Standard Lease Cap is within the range of lease rates permissible for numerous medallions pursuant to their Baseline Lease Cap. It does not raise, therefore, the cap on prices available in the taxi leasing market. It does permit operators whose prior lease rates were below average to raise their lease rates to match the higher end operators. This reflects the higher operating requirements established in 1996 by Commission regulations. The higher end lease prices were obtained by taxi operators who could offer a new car to drivers. The taxi operators who offered used cars at lower rates must be able to reach the lease rate level of those operators providing newer cars, now that they must also provide newer cars.

The current TLC regulations forbid operators to change the terms of the current leases in effect for each medallion. The consequence is a freeze on each medallion's manner of operation. Such a freeze was necessary in the first phase of a lease cap, to assure that hidden charges or reduced services did not subvert the limitation on lease rates. In that regard, the freeze was successful. However, a continued freeze on each medallion's manner of operation is not in the public interest, as it inhibits change in the taxi industry.

Under the promulgated rule, an operator could change the manner of operation, for example, from daily shift operation to long-term leasing. The operator must, however, set the lease price within the limitation of the Standard Lease Cap.

The Standard Lease Cap for one shift was modified, based on written comment. Current lease prices for the night shifts on Thursday, Friday and Saturday are higher than $103. The Standard Lease Cap was modified to reflect what is currently charged pursuant to the Baseline Lease Cap. The rule was also modified to state that only operators of taxicabs of model year 1994 or newer taxicabs are permitted to use the Standard Lease Cap rather than the Baseline Lease Cap. In the Commission's view, the higher prices that may be permitted under the Standard Lease Cap should only be available when an operator has a new car. The 1994 model was still among the new cars as of the Baseline Period ending in September 1995. Those owners who operated new cars immediately prior to the new car requirement are thereby eligible for the Standard Lease Cap.

Deleted from the final rule is a provision which would have provided a 17% baseline lease cap to the operators of the oldest vehicles, upon hacking up new vehicles. The provision stirred misapprehension that the lease cap was being raised across the board to 17%. That was not the case. The provision applied only to a small group of operators. They may still utilize the Baseline Lease Cap, and when they field a new vehicle they may utilize the Standard Lease Cap.

The Baseline Lease Cap remains as an alternative for those operators who under current regulations would be permitted rates higher than the new Standard Lease Cap. Consequently, no operator's lease cap is reduced by the proposal.

The promulgated regulations provide that the Commission shall not lower lease rate caps unless there is substantial evidence in the record that costs for affected taxi operators have decreased. The rule establishes periodic review of operating expenses in the taxi industry. The first such review shall be held no later than March 1998, and thereafter at least once every two years. This provision does not limit the rights of taxi owners pursuant to the City Charter to petition for rule changes at any time.

The promulgated rule, in this connection, deletes a requirement for a certain report due in March 1997. An extended period of litigation and negotiations, with continued consideration of operating methods and expenses, and retaining experienced drivers, has led to these proposed changes in TLC rules. That review process obviates the need for any further report by March 1997.

Vehicle Retirement Schedule

The Commission has found that the new car requirement has led to rapid and significant improvements in the age and quality of taxicab rolling stock. The Commission believes that even with the promulgated changes in the mandatory vehicle retirement schedule, the pace of improvements will remain rapid. By no longer permitting the hack-up of used

police cars, the Commission has quickly established a higher proportion of new cars. The new cars are much superior to used vehicles in vehicle emission rates, especially during the first two years of operation as taxis. Commission data shows that a vehicle that is just a few years old emits four times as much pollution as a car in its first year of operation.

The Commission has focused on the role of the so-called "Driver Owned Vehicles" or "DOV", and has concluded that the DOV terminology fails to describe actual operating practices. In many cases the DOV is not owned by the driver, who is simply leasing the vehicle under a separate contract which contains an option to purchase the vehicle. In the promulgated regulations the operative term replacing "driver owned vehicle" is simply "Long-Term Driver". The retirement schedule recognizes that a vehicle driven regularly by a Long-Term river is more likely to be well maintained than is a vehicle operated by many different drivers. A Long-Term Driver is defined as a steady driver who drives at the rate of at least 160 hours a month, who is named on the rate card as a regular driver, and who is either a medallion owner or the holder of a lease with a term of at least five months. The number of hours of driving required was raised, based on comments, from 128 hours to 160 hours a month. This better reflects a full-time operator. Similarly, the rule was clarified to state that a person can be a long-term driver for only one taxicab.

A vehicle hacked-up on or after March 1, 1996 which is driven by at least one Long-Term Driver must be retired five years after hack-up. All other vehicles must be retired within three years of hack-up.

There is a transitional provision, which allows those operators who hacked-up new cars since March 1, 1996 to begin using a Long-Term Driver no later than March 1, 1997 and still receive the five year retirement schedule. Those vehicles may be operated without Long-Term Drivers until March 1, 1997. After that date, a new car must always be driven by at least one Long-Term Driver in order to qualify for the five year retirement schedule. A period without a Long-Term Driver is one in which care and maintenance are not appropriate for the longer retirement schedule.

The additional years of operation for a vehicle driven by a Long-Term Driver also serves as a powerful incentive to operate with such drivers. This should enhance the market value of steady drivers, improving their earnings and working conditions. The Commission has found that experienced, steady drivers receive the fewest summonses, a strong indicator that they are the best, safest drivers. Emphasis on the role of long-term drivers therefore enhances public safety.

The promulgated regulations provide a simpler and slower schedule for the retirement of vehicles that were already in service as taxicabs prior to March 1, 1996. The promulgated regulations use one schedule for all such vehicles of the same model year. This eliminates the difficult task of determining retirement dates for vehicles based on prior use, as the current regulations require. The retirement schedule is also extended somewhat. The first retirement period was to have begun on November 1, 1996. That period is postponed until the period beginning April 1, 1997. Similar extensions for newer models extend their permitted usage by six to twelve months. This provides more time for owners to form capital to meet the new car requirement.

The Commission expects that this extension would not significantly slow the transition to new cars.

Incentives for Compressed Natural Gas

The promulgated regulations provide enhanced incentives for vehicles using Compressed Natural Gas. The incentive is two additional years of operation before mandatory retirement. The incentive is offered for new vehicles. It is also offered for vehicles of model year 1995 and 1996 that convert to CNG use before April 1, 1997. The purpose of these incentives is to promote the use of a fuel which emits substantially less pollution. This improvement in emissions meets a key objective of a mandatory vehicle retirement schedule.

This provision was modified, based on TLC staff comment, to offer the incentive for vehicles which are converted to CNG within six months of hack-up. This change is based on experience that conversions to CNG are being made after solicitations of the owners of newly hacked-up cars. Owners are not converting to CNG prior to hack-up.

Conclusion

The promulgated regulations satisfy the most serious concerns within the taxi industry about the 1996 taxi reforms. The promulgated regulations preserve the essential features of these reforms and consolidate their achievements.

The regulations were not included in a regulatory agenda. They are a consequence of review pursuant to negotiations of matters in litigation.

2. Statement of Basis and Purpose in City Record Jan. 30, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The adopted regulations cap the lease rates that owners could charge to drivers for the use of a licensed taxicab. The cap applicable to each owner is based on that owner's highest lease charges for that medallion during 1995, through September 30, 1995. The cap limits any increases in the lease price to no more than fourteen percent above the medallion's previous lease rate. The fourteen percent figure is intended to provide roughly a 60-40 split between driver and owner of the fare increase. The fare increase, which is provided in a separate rule proposal, is estimated to increase taxi revenue by $33 per shift. That estimate is based upon a $1.10 increase in the fare for an average trip, and an average of thirty trips per shift. The purpose of the adopted regulations is to improve taxicab service and safety by retaining experienced taxi drivers. Higher earnings are a key component of retaining experienced drivers. TLC studies have found that experienced drivers receive substantially fewer summonses than new drivers. That is an indication of better service. In taxi operations, a better worker is more knowledgeable, more courteous, and a safer driver. Public safety is directly related to working conditions, particularly earnings. Over the past several years, passenger complaints about the driver's operation of the vehicle have risen. In that same period, drivers' real earnings have actually declined. (Lease rates have risen while the rate of fare has remained constant and the volume of business has remained steady or declined. This has resulted in lower earnings for drivers.) The most direct relationship between earnings and driving safety is the pressure a driver may feel to go faster, and to be bolder in traffic in an effort to proceed faster than the flow of traffic, in order to carry more fares and maximize income. Steady or higher earnings would help alleviate that immediate pressure. The indirect benefit-that is, the benefit of retaining experienced drivers-may be much greater. Higher earnings should encourage drivers to remain in the business. The cap on lease rates will affect the taxi labor market in conjunction with other TLC initiatives. The Commission has recently taken over the testing of applicants for taxi driver licenses. Previously, the tests were administered by the taxi schools which the TLC requires applicants to attend to qualify for a license. Perhaps the schools had a competitive incentive to pass their students in order to attract more applicants into their respective schools. Perhaps TLC then did not express a high enough standard to the schools. For whatever reason, only two percent (2%) of applicants failed the tests given by the schools. Over the years, passengers continued to complain that drivers did not adequately know the City or even conversational English. The test that TLC administers is now failing over thirty percent (30%) of applicants. This has reduced the influx of new drivers. Applications for licenses have also declined. The influx of new, inexperienced drivers has previously tended to keep the price of labor low in the taxi industry. Experienced drivers could not continue the stressful job of taxi driving for sustained periods in the face of the downward pressure on earnings (the upward pressure on lease rates) from a continually arriving pool of further applicants. The labor market for taxi drivers has long been unbalanced to the disadvantage of drivers, with serious consequences for taxi service and public safety. The supply of jobs-opportunities to drive a taxicab for a shift-has remained fixed, due to the limit on the number of medallions. There has been no limit on the number of new drivers seeking work. Experienced drivers have been pushed out of the industry by low wages resulting from the government created imbalance of supply and demand. These TLC initiatives-stricter standards for new applicants, and higher earnings for qualified drivers, are intended to retain experienced drivers, providing better and safer taxi service. This new regulation capping the lease rates is so central to the Commission's analysis of the industry and its needs, that the Commission has made the increase in the taxi rate of fare contingent upon the continued applicability of this cap on

lease prices. If the provisions of this new regulation concerning limits as to lease prices are for any reason declared invalid by a court of competent jurisdiction, then the rate of fare shall revert to its current level, erasing the proposed increase in the fare. That provision appears in the companion proposal concerning the taxicab rate of fare. In the Commission's analysis, driver quality must improve. To accomplish that, the earnings of drivers must increase enough to retain experienced drivers. In the context of a government limit on the number of licenses, the Commission is compelled to balance the market forces by capping lease prices. The cap on lease prices is only an upper limit. Market forces, related to a declining rate of influx of new taxi drivers, may create competitive conditions which cause owners to attract drivers by raising their lease prices by less than the permitted amount. These regulations require the Chairman to study the effects of the cap during its first year in effect, and to report to the Commission no later than March 15, 1997. That report will evaluate the extent to which the Commission's policy objective of improving taxi service and public safety by retaining more experienced drivers has been met. Several changes were made to the proposal in response to public comments. The proposal was amended by limiting any increases over baseline leases to no more than fourteen percent, rather than limiting increases to no more than $13 per shift. The reason for the change is that there are too many varying leases, such as medallion leasing with and without a vehicle, to fix specific dollar amounts by regulation. For similar reasons, the language explaining the term equivalent lease was added. In addition, the baseline period was changed from December 15, 1995 to September 30, 1995 in order to counteract any lease prices which were deliberately increased in anticipation of the proposed regulations being adopted. These regulations do not override any collective bargaining agreement in effect between taxi owners and lease drivers. The only such agreement now in effect is between the fleet owners in Metropolitan Taxicab Board of Trade and the members of Local 3036, Taxi Drivers and Allied Workers Union, SEIU, AFL-CIO.

3. Statement of Basis and Purpose in City Record Apr. 2, 2004: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, and by §19-503 of the Administrative Code, which authorizes the TLC to promulgate regulations to implement provisions of the Charter. In 1996, the TLC first promulgated regulations establishing maximum lease rates that may be charged drivers who lease taxicabs by the shift, or for longer periods. Section 1-78(e) of the Taxicab Drivers' Rules permit the TLC to raise or lower this lease cap upon a demonstration of substantial evidence of increased or reduced operating expenses of the affected medallion owners. If the TLC proposes to increase the maximum lease rates, a review shall also include, but not limited to, the effects on driver earnings and the retention of experienced drivers. The TLC received two rulemaking petitions, each of which have requested adjustments to the maximum lease rates charged by taxicab owners. One petition, filed by the Metropolitan Taxicab Board of Trade ("MTBOT"), has requested that maximum lease rates be increased for all shifts; the other petition, filed by the Taxi Workers' Alliance ("TWA"), has requested maximum lease rate reductions. The TLC has considered the two petitions, and it has reviewed the data submitted by the petitioners. Lease rates have remained constant since 1996, despite increases in many of the expenses incurred by taxicab owners. The data submitted by the owners' groups filing a petition has indicated that an increase in maximum lease rates would be needed to compensate owners for these increases in expenses such as vehicle replacement, insurance and maintenance. However, a substantial increase in lease rates would have an adverse impact upon a driver's income. The TLC initially proposed lowering the maximum lease rate for two shifts during which it appeared that drivers earn a lower income, in order to encourage drivers to provide service to the public during these periods. The TLC also initially proposed raising the lease cap during certain other shifts, resulting in an overall increase in maximum lease rates of approximately 3.4%. The TLC also proposed an increase in weekly lease rates that is proportionate to the increase in daily rates. After reviewing the public comments received and testimony given at the public hearing held on March 30th, the Commissioners voted to make some adjustments to the proposed maximum lease rates to ensure that taxicab owners would be adequately compensated for the additional expenses they had incurred since maximum lease rates were established in 1996. To this end, the Commission approved an overall increase in maximum lease rates of approximately eight percent (8%). The TLC further notes that taxicab owners and drivers are free to agree upon lease rates that are below the maximum set by regulation. Many garages have reported to the TLC that the actual lease rates charged are lower than the maximum set by TLC rules for a majority of shifts.

4. Statement of Basis and Purpose in City Record Apr. 1, 2009: These rules modify existing Taxi and Limousine Commission rules governing taxicab leasing in several respects. In light of the determination in **Metropolitan Taxicab Board of Trade v. City of New York**, 08 Civ. 7837 (PAC) (Oct. 31, 2008), these rules rescind the existing rules mandating that taxicabs hacked up beginning on October 1, 2008, must be city-rated at or above 25 miles per gallon, and that taxicabs hacked up beginning on October 1, 2009, must be city-rated at or above 30 miles per gallon. In the place of that rescinded requirement, the new rules alter the maximum lease rates in such a way as to create incentives for taxicab owners to buy cleaner vehicles. Specifically, the proposed rules permit owners of medallions used for hybrid electric taxicabs and "clean diesel" taxicabs to charge $3.00 per shift more than the maximum lease rate that would otherwise be allowed. Similarly, owners of less clean taxicabs will, after a phase-in period, be permitted to charge $12.00 per shift less than the maximum lease rate that would otherwise be allowed. Lease rates for wheelchair accessible taxicabs will remain unchanged. Under existing rules, a taxicab owner who purchases a vehicle that is costly to run does not bear the gasoline costs incurred in the operation of that vehicle. Instead, gasoline costs are borne by the drivers, who may have no voice in the owner's choice of vehicles. These newly promulgated rules are intended to place gasoline costs on the owner who chooses the vehicle. An owner who chooses a vehicle which is also a fuel efficient vehicle will be able to realize greater lease income than an owner who chooses a less efficient vehicle, while the expenses of leasing drivers will be roughly equal regardless of the taxicab owner's vehicle choice. The newly promulgated rules also specify that owners and agents may not add costs to the lease, other than charges specifically provided for by Commission rules. Therefore, under the new rules, the maximum lease rates cap the total of all charges, other than the credit card pass-along and the security deposit, a late charge and a reasonable cancellation charge (subject to certain required contract provisions) that an owner or agent may charge to a leasing driver. In addition, the new rules specify that owners and agents must settle credit card charges with drivers, in cash, on a daily or weekly basis. The newly promulgated rules formalize the leasing relationship in several respects. A lease, including any amendment to a lease, is required to be in writing and signed by the leasing driver; to contain an itemization of all charges; and to clearly state a lease term; and, if a cancellation charge is permitted, to contain certain provisions regarding cancellation. Similarly, the rules require that owners and agents provide leasing drivers with receipts for all payments made leasing drivers. The rules further expressly prohibit retaliation by an owner against a driver for filing a complaint alleging in good faith an owner's violation of the TLC's lease rules. In view of TLC's experience that drivers are extremely reluctant to file such complaints for fear of such retaliation, the proposed penalty for retaliation is $1,000. Finally, the new rules make two procedural changes in the Commission's existing rules. While owners and drivers could continue to petition for changes to lease caps, the Commission, on its own initiative, would be able to modify lease caps, by rulemaking, on the basis of its assessment of appropriate policy considerations. The rules also eliminate the requirement that a complaint for a violation of a lease cap provision can be made only by the driver subject to the lease. Drivers may be reluctant to report lease cap violations due to concerns about retribution and blacklisting. Effective enforcement of lease caps requires that complaints of violations be investigated actively, regardless of the source of the information.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-78.1

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-78.1 Changes to Lease Caps.

(a) During March of each even-numbered year, the Commission shall hold a public hearing and solicit written comment as to operating expenses, driver earnings, the retention of experienced drivers in the taxi industry, and other matters relevant to the setting of lease caps, for purposes of considering changes to the Standard Lease Caps set forth in section 1-78 of this chapter.

(b) Notwithstanding the provisions of subdivision (a) of this section, the Commission may initiate lease cap changes at any time, based on the Commission's assessment of appropriate policy considerations.

HISTORICAL NOTE

Section added City Record Apr. 1, 2009 §2, eff. May 1, 2009. [See T35 §1-78 Note 4]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-79

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-79 Limitations on Security Deposits Required of Drivers.

(a) An owner may include in a lease a provision for a security deposit from the driver, in addition to lease payments, subject to the limitations of this paragraph. At the termination or expiration of a lease an owner may be reimbursed from the security deposit for:

(1) any unpaid but owing lease charges;

(2) damage to the vehicle, if the lease clearly and prominently states that the driver is responsible for damage;

(3) any parking tickets issued during the lease;

(4) any red light violations issued to the owner during the lease, pursuant to the N.Y.C. Dept. of Transportation's camera surveillance system; and

(5) if the owner or agent is a Taxpayer liable for the MTA Tax, any MTA Tax remaining due from the driver after deductions from credit card reimbursements due to the driver.

(b) An owner shall not withhold or deduct from a security deposit any reimbursement additional to those specified in subdivision (a). An owner shall not require a driver to pay any summons that is written to the owner as respondent, other than those specified in subdivision (a).

(c) An owner shall not require a driver to post any security deposit that is greater in amount than the rate for one lease term. However, if the lease term is for more than one week, an owner shall not require a driver to pay a security

deposit in an amount greater than the lease rate for one week. Examples:

(1) An owner who leases a taxicab for one shift at the rate of $80 per shift may require up to an $80 security deposit.

(2) An owner who leases a taxicab or medallion for one week at the rate of $500 a week may require up to a $500 security deposit.

(3) An owner who leases a taxicab for six months at the rate of $2,000 a month may require up to a $500 security deposit.

(d) An owner shall provide written receipts for any security deposits made by a driver. An owner shall provide a driver with a written itemization of any items withheld or deducted from a security deposit. An owner shall return a security deposit either by check or by cash exchanged for a written receipt from the driver. An owner shall return a security deposit no later than thirty days after the end of the lease term.

(e) An owner who requires a security deposit shall deposit same in an interest-bearing account in a bank or credit union within the City of New York, which account is devoted to security deposits and not commingled with funds of the owner. The owner shall indicate in writing provided to the driver the name and address of such bank or credit union and the applicable account number. Interest on such security deposit shall accrue to the benefit of the driver furnishing the security, except, however, that the owner may retain one percentage point of any interest, as compensation for bookkeeping expenses.

(f) The provisions of this section do not apply to owners and lease drivers whose business relationship is governed by the terms of a collective bargaining agreement which regulates the subject of security deposits.

HISTORICAL NOTE

Section added City Record Dec. 29, 1995 §1, eff. Jan. 30, 1996. [See Note 1]

Subd. (a) pars (3), (4) amended City Record Sept. 25, 2009 §7, eff. Oct. 25, 2009. [See T35 §15-15

Note 1]

Subd. (a) par (5) added City Record Sept. 25, 2009 §7, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 29, 1995:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The regulations limit the amounts of security deposits that owners may require of drivers. Such deposits may be no larger than the lease rate for one lease term. However, if the lease term is longer than one week, the deposit may be no larger than the rate for one week. The regulations also limit the items which may be deducted by an owner from security deposits.

The promulgated regulations are intended to reduce the incidence of abuses of security deposits. TLC staff have

been conducting informal mediation of numerous complaints by drivers of security deposit abuses. In some instances, the driver complaints have been unfounded. In other instances, drivers have not been returned their money as properly due. Abuses, real or apparent, may cause drivers to leave the taxi industry.

A common practice, which the Commission wishes to prevent, is for the owner to require the driver to pay any summonses that are written to the owner as respondent during the driver's lease term. In the Commission's view, a summons written to a taxicab owner reflects the owner's responsibility for the operation of the taxicab. The Commission's summonses of an owner are intended to reflect violations that are the owner's responsibility.

The promulgated regulations prevent an owner from assessing a driver for most summonses written to the owner. However, an owner could require a driver to pay parking summonses. Those summonses are written to the vehicle's registered owner, the medallion owner, although the parking violation was committed by the driver. The rules also permit an owner to assess a driver for any red light violations issued to the owner during the lease, pursuant to the N.Y.C. Dept. of Transportation's camera surveillance system. Those summonses are issued to the vehicle's registered owner, the medallion owner, as identified by the license plate shown in photographs. The driving violation, however, was committed by the driver.

The promulgated rules permit an owner to assess a driver for damage if the lease clearly and prominently states that the driver is responsible for damage.

The regulations require that security deposit transactions be made in writing, to improve accountability and clarify the transactions in some cases. It requires that the security deposit be returned within thirty days of the end of the lease term.

The regulations require that security deposits be kept in interest-bearing accounts, and that the interest be paid to drivers, although the owner is permitted to retain one percentage point of the interest to compensate the owner for bookkeeping expenses.

The regulations provide penalties for violations of the requirements and provides for restitution to the driver for prohibited charges. Penalties are necessary to enforce the cap on lease prices and the limits on security deposits.

The new regulations do not override any collective bargaining agreement in effect between taxi owners and lease drivers. The only such agreement now in effect is between the fleet owners in Metropolitan Taxicab Board of Trade and the members of Local 3036, Taxi Drivers and Allied Workers Union, SEIU, AFL-CIO.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-79.1

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-79.1 Lease Terms and Form of Lease.

(a) Every lease entered into pursuant to section 1-78 of this chapter, including any amendment to such lease, must be in writing, and must be signed by the owner or a person duly authorized to act on behalf of the owner, and by the leasing driver or drivers. A copy of the fully executed lease must be provided to the leasing driver or drivers.

(b) Every such lease must contain the following terms:

(1) **The length of the lease.** The lease must state the beginning date and time of the lease and the ending date and time of the lease. A weekly lease must run for seven consecutive calendar days. A shift must run for 12 consecutive hours.

(2) **Itemization of the costs covered by the lease.** The lease must state the total lease amount, and an itemization of that total cost. The itemization must separately state the amount of the lease that applies to the medallion and the amount if any that applies to the vehicle.

(3) **Other costs.** The lease must state the amounts if any of the security deposit, the percentage credit card pass-along and any other costs that the driver will be charged.

(4) **Notices.** For each cost itemized pursuant to paragraphs two and three of this subdivision, the lease must include a reference to the Commission rule authorizing the imposition of such cost on the driver. The lease must either recite the complete text of each such rule or state the address of the Commission's Web page on which the rule is published.

(5) **Overcharges.** Every lease must contain clearly legible notice that overcharges are prohibited by the Commission's rules, and that complaints of overcharges may be made in writing to the Commission or by telephone call to 311.

(6) **Cancellation charges.** Any cancellation charge contained in the lease must be reasonable, and will not be permitted unless the lease also provides that

(i) no cancellation charge may be charged to driver if the medallion owner or its agent demands the return of the medallion and the driver is not late in making lease payments at the time of such demand;

(ii) if an agent demands the return of a medallion upon the request of an owner, the driver has the right to request that the agent supply a replacement medallion and, if a medallion is provided through the agent, the driver will not be responsible for the costs of hacking up a replacement vehicle; and

(iii) when a cancellation payment is made, the driver's obligation to make lease payments terminates upon such payment.

(7) Deposit information. Each lease must include the information regarding deposits required by section 1-79(e) of this chapter.

HISTORICAL NOTE

Section added City Record Apr. 1, 2009 §3, eff. May 1, 2009. [See T35 §1-78 Note 4]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-79.2

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-79.2 Receipts.

A driver shall be given a written receipt for every payment made to or deduction taken by the owner, or any person acting on behalf of the owner. The receipt must include the name of the driver and the number of the medallion subject to the lease. The receipt shall clearly state the date of the payment or deduction, the name of the person who accepted the payment or the deduction, the amount of the payment or deduction, the purpose of the payment or the deduction, and the number of the section of this chapter that authorizes the payment or deduction.

HISTORICAL NOTE

Section added City Record Apr. 1, 2009 §3, eff. May 1, 2009. [See T35 §1-78 Note 4]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-79.3

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-79.3 Retaliation.

An owner may not act in retaliation against any driver for making a good faith complaint against any owner for violation of sections 1-78 through section 1-79.3 of this chapter. "Retaliation" shall be broadly construed, and shall include imposing any adverse condition or consequence on the driver or withholding or withdrawing any beneficial condition or consequence from the driver.

HISTORICAL NOTE

Section added City Record Apr. 1, 2009 §3, eff. May 1, 2009. [See T35 §1-78 Note 4]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-80

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-80 General Provisions Concerning Medallion Transfers.

(a) Transfer of a taxicab license may be accomplished by purchase, gift, bequest, operation of law, acquisition of the stock or assets of a corporation, or acquisition of membership interests in or assets of a limited liability company and only with the written approval of the Chairperson as to the transferee. Any transfer of any interest in a taxicab license, whether in whole or in part, and whether directly or indirectly, is subject to the provisions of this section. Any proposed transferee of any direct or indirect interest in a taxicab license must apply for a taxicab license and must comply with the provisions of this chapter and meet the qualifications and requirements for ownership and operation of a medallion taxicab as set forth in this chapter, including those contained in §§1-02 and 1-03 of this chapter, the tort claim provisions contained in §1-81 of this chapter, and the medallion transfer provisions in this section and §§1-80.1 and 1-80.2.

(b) No person or entity shall attempt to transfer or participate in the transfer of any taxicab medallion without fulfilling the requirements of subdivisions (c) and (d) of this section, as applicable to such person, and obtaining the written approval of the Chairperson for such transfer. Submission to the Chairperson of an application to transfer a taxicab medallion shall not be a violation of this subdivision.

(c) An applicant for a taxicab license which is a transferee, or an applicant which is an executor, administrator, conservator or guardian seeking to operate a taxicab under the provisions of §1-82 (c) of this chapter, in order to complete the transfer of such license to applicant pursuant to this section, must appear in person as directed by the Chairperson, except that an applicant (or as to any shareholder, partner or member of an applicant who is required to appear by the following sentence) who (i) holds an existing, continuing license from the Commission, and (ii) has an electronic fingerprint record made no earlier than one year prior to the date of the transfer on file with the Commission,

may appear by power of attorney. If the applicant is a corporation, partnership or limited liability company, applicant must be represented in such appearance by all individual shareholders, general partners, or members, except those to whom the exception in the preceding sentence is applicable.

(d) A transfer of the interest in the taxicab license shall be complete and effective upon the Chairperson's approval of the applicant's application, the appearance of the transferee as required in subdivision (c) of this §1-80, payment of any New York City taxicab license transfer tax due as required in subdivision (h) of this §1-80 and in subdivision (m) of §1-80.1 of this chapter, the transferor's and the transferee's fulfillment of the requirements as to tort liabilities set forth §1-81 of this chapter and the fulfillment by the parties of the applicable medallion clearance requirements of §1-80.2 of this chapter.

(e) Each transferee of a taxicab medallion must place the medallion into service with a vehicle eligible for use as a taxicab under chapter 3 of this title and which has been hacked up as that term is used in §3-01(a) of this title within seven (7) days of the effectiveness of the transfer of the taxicab. Each applicant which is an executor, administrator, conservator or guardian seeking to operate a taxicab under the provisions of §1-82 (c) of this chapter must place the medallion into service with a vehicle eligible for use as a taxicab under chapter 3 of this title and which has been hacked up within seven (7) days of approval of the application.

(f) No voluntary transfer or sale of a taxicab license may be made if a judgment has been filed within the City of New York against the holder of a license and remains unsatisfied and notice of said judgment has been filed with the Chairperson, except that a transfer may be permitted if an appeal is pending from an unsatisfied judgment and a bond is filed in an amount sufficient to satisfy the judgment but not to exceed the fair market value of the medallion or medallions being transferred. A transfer may also be permitted without filing a bond provided that all the judgment creditors of unsatisfied judgments file written permission for such a transfer with the Chairperson or provided that the proceeds of sale are paid into court or held in escrow, on terms and conditions approved by the Chairperson.

(g) An owner's interest in such a taxicab license may be transferred involuntarily and disposed of by public or private sale in the same manner as personal property. However, upon such involuntary transfer, the owner's license shall immediately be cancelled. A new license shall be issued to the purchaser or his or her vendee when the transfer is effective as provided in subdivision (d) of this section, provided that (i) such purchaser or vendee has qualified as a transferee under and met the requirements as provided in this §§1-80 through 1-80.2 of this chapter and (ii) the tort liability requirements of §1-81(e) of this chapter have been met or are met at the time of such transfer; except that if the involuntary transfer is by reason of a tort judgment against an involuntary transferor, no bond need be provided with respect to the same judgment.

(h) A transferee of a taxicab license must satisfy his or her transfer tax liability as determined by the Department of Finance pursuant to Title 11 of the Administrative Code, prior to or at the time of transfer.

(i) A transfer of the taxicab license of an independent taxicab owner shall be made only to a transferee that will be an independent taxicab owner; similarly, the transfer of the license of a fleet or minifleet taxicab owner shall be made only to transferee that will be a minifleet or fleet owner.

(j) An independent taxicab owner may not have a financial interest in any other taxicab; a taxicab fleet or minifleet, including any officer, director, partner, and/or member of an owner thereof, may not have a financial interest in an independently owned taxicab. For purposes of this subdivision, "financial interest" shall mean any direct or indirect ownership interest or any interest given or received as a pledge or security or subject to a security agreement to secure any financing or obligation.

(k) **Conditional sales agreements.** (1) No transfer of an interest in a taxicab medallion through a conditional sales agreement shall be effective until the requirements of §§1-02, 1-03, 1-80, 1-80.1, 1-80.2 and 1-81 of this chapter have been fulfilled and the vendee has qualified as a transferee under this §1-80. Any fines or penalties imposed against the

taxicab license for violations occurring during the term of any conditional sales agreement shall remain the responsibility of the seller until the transfer is effective under subdivision (d) of this §1-80.

(2) Parties to a conditional sales agreement are subject to the "lease cap" provisions of §1-78 of this chapter.

(3) Parties to a conditional sales agreement shall provide the Chairperson with a disclosure statement indicating the terms of agreement.

(4) The vendor party to a conditional sales agreement shall notify the Chairperson in writing of any repossession by the vendor of the taxicab within seventy-two (72) hours exclusive of weekends and holidays.

(5) For purposes of this subdivision, "conditional sales agreement" shall mean an agreement for the transfer of a taxicab medallion for which the effectiveness as between the parties is contingent upon the completion and/or satisfaction of certain conditions, including, but not limited to, the completion of payment of financial consideration.

(l) **Applicability.** (1) Any person seeking to become a transferee of an interest in a taxicab license, including a person acquiring a taxicab license from or through a secured lender as a result of a foreclosure, repossession, or other realization upon security, must comply with the provisions of this section, must meet the standards and criteria for ownership of a taxicab medallion as set forth in §§1-02 and 1-03 of this chapter, must provide the documentation required in §§1-80.1 and 1-81 of this chapter, except if such person seeks to become a transferee of a medallion acquired pursuant to an auction of taxicab medallions under chapter 13 of this title, such person need not comply with §§1-80.1(m)-(n), 1-80.1(p)-(r) and 1-81 of this chapter, although any subsequent proposed transferee therefrom must so comply.

(2) Any seller or transferor of an interest in a taxicab medallion (other than a secured lender foreclosing upon or repossessing its security) must comply with the provisions of §§1-80.2 and 1-81 of this chapter.

(3) Any secured lender foreclosing upon, repossessing, or otherwise realizing upon its security in a taxicab license and not seeking to be a transferee is not required to comply with these provisions or with §§1-80.1, 1-80.2 and 1-81 of this chapter except to the extent required in §§1-80.1(n), 1-80.2(c) and 1-81 (e) of this chapter, although any proposed transferee acquiring an interest from or through such lender must so comply.

(4) Any administrator, executor, conservator or guardian seeking authority to operate a taxicab medallion must comply with the provisions of §1-82 of this chapter as must any distributee from an estate or trust as permitted by this chapter.

HISTORICAL NOTE

Section repealed and added City Record Dec. 24, 2008 §§7, 8, eff. Jan. 23, 2009. [See Note 1]

DERIVATION

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

NOTE

1. Statement of Basis and Purpose in City Record Dec. 24, 2008:

These rules amend the provisions of chapter 1 of Title 35 of the Rules of the City of New York (the "Taxicab Owner's Rules") to revise and clarify procedures regarding the medallion transfer process. The rules specify the documents to be submitted in order to obtain approval of the transfer and enumerate the requirements a proposed transferee of an interest in a taxicab medallion must fulfill in order to qualify to own a taxicab medallion. In addition, the rules provide procedures to be followed in the event the owner of an interest in a taxicab medallion dies or is

declared incompetent, and set forth the circumstances under which the taxicab may be operated by the estate or guardian and what must happen before a successor may be qualified to operate the taxicab and hold the taxicab license. Finally, the rules set forth procedures by which possible claims against a transferring medallion interest owner or that owner's taxicab may be addressed consistent with the provisions of §19-512 of the Administrative Code. These rules provide that transferring owners must establish an escrow account to satisfy tort claims, in excess of insurance amounts, that have been asserted against them. In most cases, the amount placed into the escrow account will not exceed the transferor's "equity" in the medallion (that is, the value of the transfer minus pre-existing secured debt). Transferors objecting to the amounts of claims asserted against them may have these amounts determined (for purposes of establishing the appropriate escrow amount) in an administrative proceeding before OATH upon giving proper notice to the claimants. These rules are intended to be consistent with the requirements of §7-201 of the New York General Obligations Law and the provisions of the New York Uniform Commercial Code. These rules, as designed, replace the previous transfer rules which appeared at §1-80 through §1-82 of the Taxicab Owner's Rules. In addition, the rules amend provisions of the Taxicab Agents' rules appearing at Chapter 12 of Title 35 of the Rules of the City of New York to provide that taxicab agents have a duty to notify the Commission of the death or incompetency of an owner of an interest in a taxicab medallion.

These rules were proposed to codify, and in some cases to streamline, Taxi and Limousine Commission processes with respect to the transfers of taxicab medallions and, in particular, to make clear in the Taxicab Owners Rules, the documents and processes required to complete a transfer. In addition, the rules are intended to create a procedure by which the amount of possible tort claims outstanding in excess of insurance proceeds in respect of a medallion being transferred are evaluated and provided for, in a manner consistent with the requirements of law, and actual conditions existing within the taxicab industry.

Rules of the City of New York

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35 RCNY 1-80.1

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-80.1 Documentation and other Requirements for Qualification as a Transferee.

An applicant for a taxicab license, in order to qualify for ownership of a medallion taxicab as a transferee under §1-80 of this chapter, shall include the following with his, her or its application for a taxicab license:

(a) a completed application in form prescribed by the Chairperson;

(b) payment of the fees in the amount of

(i) fifty dollars, in accordance with §19-504(h) of the Administrative Code of the City of New York, for the transfer of a medallion or license from one vehicle to another, where applicable; and

(ii) one hundred sixty dollars, in accordance with §19-512(d) of the Administrative Code of the City of New York, which must be paid upon submission of the application provided for in subdivision (a) of this section for the transfer of (a) the owner's interest in a taxicab license, or (b) stock in a corporation or membership interests in a limited liability company which is an owner of a taxicab license or an interest therein.

(c) payment of the license and inspection fees required pursuant to §§1-04 and 1-05 of this chapter;

(d) proof of identity in the form prescribed in §1-02(b) of this chapter, including the identity of all partners of a partnership, officers and shareholders of a corporation, and members and managing members of a limited liability company and disclosure of any trade name or entity name under which the owner intends to operate;

(e) if the applicant is acquiring an interest in a medallion from an independent taxicab owner, a current, valid

number of a taxicab driver's license issued by the Commission to the person who will fulfill the service requirements of §1-09(b) of this chapter;

(f) proof of purchase in the form of a bill of sale of vehicle eligible to be used as a taxicab under chapter 3 of this title or an affidavit from the applicant specifying that the applicant will have a vehicle eligible to be used as a taxicab under chapter 3 of this title within seven days following the effectiveness of the transaction, pursuant to §1-80(d) of this chapter;

(g) proof of payment of any outstanding fines or fees owed to the Commission, the Parking Violations Bureau, or the successors thereto by the applicant, or any officers, shareholders, partners or members thereof;

(h) documentation in form satisfactory to the Chairperson detailing the sources of the applicant's funds used in the transaction including

(i) copies of bank account passbooks or bank statements;

(ii) affidavit explaining cash sums and deposits over $10,000 paid to or by the applicant within six months prior to the date of submission of documentation required in this section;

(iii) affidavits from donors of any gifts;

(iv) statements from secured and/or unsecured lenders detailing amounts lent, security if any, and terms of payment; and

(v) copies of IRS Form 8300 filed by any broker in respect of funds received in the context of the transaction.

(i) if the applicant is a corporation,

(i) in the case of a corporation that is a newly formed corporation, the filing receipt of the certificate of incorporation and a copy of the certificate of incorporation;

(ii) in the case of a corporation that is not a newly formed corporation, either the filing receipt of the certificate of incorporation together with a copy of the certificate of incorporation or, alternatively a certified copy of the certificate of incorporation;

(iii) a copy of the resolution of or action by the incorporators, shareholders or directors electing officers of the corporation; and

(iv) a list of stockholders, including number of shares owned.

(j) if the applicant is a partnership,

(i) a copy of the applicant's certificate of partnership; and

(ii) a list of the partners, including the percentages owned.

(k) if the applicant is a limited liability company,

(i) a copy of the applicant's articles of organization;

(ii) a copy of the applicant's operating agreement; and

(iii) a list of the members, including the percentages owned.

(l) if the applicant is a partnership, corporation or limited liability company not organized under the laws of the State of New York, in addition to the foregoing, proof of authorization of such entity to operate in New York State.

(m)(i) payment of the New York City taxicab license transfer tax due in connection with the transfer and/or

(ii) if the transfer is by a gift or is for less than market value, a New York City Department of Finance Waiver letter, together with any documentation referred to therein.

(n) if the transfer is the result of a foreclosure or similar action by a creditor,

(i) a hypothecation agreement, stock pledge or stock pledge agreement if the transfer is occurring by transfer of, or foreclosure upon, stock;

(ii) a UCC Article 9 Foreclosure "Affidavit of Disbursements" showing that all claims have been satisfied or will be satisfied or acceptable documentation regarding any claims not satisfied;

(iii) copies of UCC-1 filings (including file stamp or file number) filed against the owner or owner's interest in the medallion;

(iv) copies of all security agreements involved in the transfer in respect of the lenders' interests in the medallion;

(v) bill of sale, if any, or proof of other transfer in respect of any security agreement;

(vi)(A) proof of advertisement of the auction together with the attendance sheet or

(B) a copy of the Notice of Sale;

(o) an affidavit or affirmation under penalty of perjury from the applicant in a form approved by the Chairperson that the applicant does not rely upon the actions or determination of the Commission with respect to the medallion. In addition, if circumstances warrant, the applicant will provide an affidavit or affirmation in a form approved by the Chairperson as to other matters pertaining to documentation.

(p) copies of a New York State UCC lien search, together with a lawsuit and judgment search for all counties in which the transferor has been domiciled for the shorter of either five (5) years prior to the transfer or while owning an interest in the medallion(s) being transferred, which searches shall also provide copies of all active records, together with an affidavit or affirmation under penalty of perjury executed by the transferor and the applicant that they have reviewed all such searches and are familiar with the contents thereof, and warranting that all disclosed liens and judgments will be satisfied prior to or from the proceeds of the transfer, included in the escrow amount, or assumed by the applicant, together with a copy of the results of such lien search.

(q) tort letters from the transferor's insurer covering the shorter of (i) six years prior to the date of the proposed effective date of transfer, as set forth in §1-80 (d) of this chapter or (ii) the transferor's period of ownership of the taxicab medallion, down to and including the date that the medallion is placed into storage as required by §1-80.2 of this chapter, or if not placed into storage, the date prior to the proposed effective date of transfer, together with such documentation as may be required in respect of potential excess claims as may be disclosed thereby, together with any information held by the applicant or transferor regarding any potential excess claims or as may be necessary to determine the escrow amount for the purposes of §1-81 of this chapter. If tort letters are not available, or such letters as are available indicate a lapse in coverage during such six year period, or a secured lender is transferring an interest in a taxicab medallion as a result of foreclosure, repossession, or other realization upon its security and has not obtained tort letters, the provisions of §1-81(e) of this chapter regarding the establishment of the escrow amount in the absence of tort letters, shall apply.

(r) if the applicant seeks to purchase an interest in a corporation, partnership, or limited liability company that

owns a taxicab medallion or medallions, such applicant must also furnish with respect to such entity the documents required in subdivisions (i), (j), (k), and (l) of this section;

(s)(i) the transferor must provide proof of notice of the transfer to the taxicab technology service provider that holds the contract for the taxicab technology system for such medallion pursuant to §1-11(g) of this title. The notice must be mailed to the taxicab technology service provider at the address specified in the contract at least thirty days prior to the date of the proposed transfer by certified mail, return receipt requested. Proof of notice shall consist of a copy of the notice, a copy of the certified mail receipt and an affidavit or affirmation under penalty of perjury verifying the mailing;

(ii) the transferor must also provide, on a form prescribed by the Chairperson, a statement of intent regarding the contract for the taxicab technology system, stating the transferor's intention to (A) either cancel the contract or assign the contract to the transferee, and (B) either return the taxicab technology system to the taxicab technology service provider if the transferor does not own that equipment, or, if the transferor does own that equipment, retain the taxicab technology system or transfer the equipment to the transferee;

(iii) the transferee must also provide, on a form prescribed by the Chairperson, a statement that either (A) states the transferee's intent to assume the transferor's contract for the taxicab technology system or (B) identifies the approved taxicab technology service provider with which the transferee intends to enter into a contract for the taxicab technology system.

(t) such other documentation as may be required by the Chairperson in order to assist in the determination whether the proposed transferee meets the criteria for licensing and ownership of a taxicab medallion, including as set forth in §§1-02, 1-03, 1-80, 1-80.1, 1-80.2 or 1-82 of this chapter.

HISTORICAL NOTE

Section added City Record Dec. 24, 2008 §8, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

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***** Current through December 2009 ****

35 RCNY 1-80.2

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-80.2 Medallion Clearance.

Pursuant to the transfer of any interest in a taxicab license and before the transfer can be effective, the transferor of the interest in the taxicab license must, or must cause the owner of the taxicab license to:

(a) place the medallion in storage with the Chairperson for at least seven (7) days not counting the day it is put in storage or the day the clearance is given; except that a medallion owned by a corporation, or limited liability company need not be placed in storage if the transfer is to be effected by a transfer of stock or membership interests therein; and

(b) clear all open items (including response to all summons issued by the Commission, payment of all outstanding fines and penalties due to the Commission, the Parking Violations Bureau, or the successors thereto, and completion of all uncompleted renewal requirements) against the medallion or the owner of the medallion or the officers, shareholders, partners or members of the owner, as well as any fines and penalties against the owner's taxicab drivers license (including those of any officer, shareholder, partner or member of the owner).

(c) Any secured lender which is foreclosing upon, repossessing or otherwise realizing upon its security in respect of any taxicab license must, upon obtaining possession of the medallion, place the medallion in storage with the Chairperson.

HISTORICAL NOTE

Section added City Record Dec. 24, 2008 §8, eff. Jan. 23, 2008. [See T35 §1-80 Note 1]

DERIVATION

Former §1-81 repealed City Record Dec. 24, 2008 §7; added City Record Apr. 30, 1992.

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***** Current through December 2009 ****

35 RCNY 1-81

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-81 Tort Claims and Medallion Transfers.

(a) An applicant for a taxicab license, in order to be qualified as a transferee, shall supply proof to the Chairperson that the applicant or the transferor has filed a bond with the Chairperson to cover all outstanding tort liabilities of the vendor or transferor; however this requirement shall not apply to an applicant who is a legatee or distributee of a decedent's estate owning a taxicab license.

(b) In lieu of filing a bond as provided in subdivision (a) of this section, the applicant or his or her transferor may establish an escrow account in the amount of the escrow amount, not to exceed the maximum escrow amount, to satisfy excess claims. No transfer of the taxicab medallion(s) may occur until the bond is posted, or the escrow account is established, and the escrow agent has given an undertaking to the Chairperson to establish the escrow account and hold it on the terms required by this section, with confirmation of the establishment to occur in writing within five (5) days of such establishment, or it is determined by the Chairperson that none of the foregoing is required as provided in this section.

(c) Establishing the claim amount.

(i) The transferor must first attempt to establish the amount of each claim that is a potential excess claim for purposes of determining the escrow amount by the following process:

(A) The transferor must request copies of claim letters held in the Commission's medallion file.

(B) The transferor must notify the holder of each potential excess claim that may be indicated by either a valid

claim letter, a prior claim letter, a tort letter, or the lien, judgment and lawsuit searches required to be obtained in §1-80.1(p) of this chapter of the escrow amount transferor proposes to establish in respect of such claim. The transferor must provide adequate mail notice to such claimant by certified mail, return receipt requested, with a copy by regular mail and with a copy mailed to the Commission, to the attention of the legal department, transfer division. The transferor must provide to the Chairperson proof of mailing of all such notices in the form of copies of the mailing receipts together with an affidavit or affirmation under penalty of perjury verifying the mailing.

(C) The transferor's notice shall be of a form approved by the Chairperson:

(1) The notice to each potential claim holder must state whether such holder's claim is believed by the transferor to be a potential excess claim or not and must state a specific dollar amount (including $0) proposed to be established as the escrow amount for such claim.

(2) Such notice must further state that the claimant has thirty days from the date of the notice to object thereto, by notice to the transferor, with a copy of such notice to be provided to the Commission, to the attention of the legal department, transfer division.

(3) Such notice must further state that failure of the Commission to receive the claimant's objection within such thirty day period shall be deemed acceptance of the transferor's proposal regarding the escrow amount to be established for such claim.

(4) Such notice must further state that the claimant's acceptance of, or failure to object to, the transferor's proposed escrow amount for such claim shall not prejudice any rights, claims, or remedies the claimant may have against the transferor.

(5) Failure of the claimant to object to the transferor's proposed escrow amount within thirty (30) days of the transferor's notice provided pursuant to this paragraph (c)(i) (and the Commission's non-receipt of an objection shall be deemed a failure to object) shall be deemed acceptance of the proposed escrow amount in respect of such claim. Claimant's objection to the transferor's proposed escrow amount must state the basis for such objection.

(ii) If claimant objects to the transferor's proposed escrow amount as to such claim, the Chairperson shall refer the matter to the New York City Office of Administrative Trials and Hearings (OATH) to determine the amount of the claimant's claim to be included in the escrow amount.

(A) In any proceeding before OATH to determine the amount of the claim to be included in the escrow amount, OATH's rules of practice shall govern. In determining the amount of the claim to be included in the escrow amount, OATH shall apply principles of tort law.

(B) For the purposes of such proceeding, the transferor shall be the respondent and the transferor's notice containing the proposed escrow amount as provided in paragraph (c)(i) of this subdivision shall be the answer and the claimant shall be the petitioner and the claimant's objection required by this paragraph (c)(ii) shall be the petition. In the proceeding, the petitioner shall have the burden of proof that the claim is an excess claim. The administrative law judge assigned by OATH to decide the matter shall issue a determination which shall be a final determination.

(iii) At any time, the transferor and the claimant may agree as between themselves as to the amount of the claim for purposes of establishing the escrow amount in respect of such claim. Such agreement must be executed by both parties and a copy of such agreement must be provided to the Chairperson.

(d) The Chairperson shall determine the required escrow amount following completion of the steps set forth in subdivision (c) of this section as to each claim, except for those claims for which a determination was made by an administrative law judge at OATH. This determination shall be based upon the transferor's proposed amount in the event that the claimant agrees, or does not object, to such proposed amount as provided in paragraph (i) of subdivision

(c) of this section or the parties' agreement as to the proposed amount as provided in paragraph (iii) of subdivision (c) of this section. If an administrative law judge at OATH has made a determination as to any claim, as provided in paragraph (ii) of subdivision (c) of this section, the escrow amount for such claim shall be the amount as set forth in such determination. The determination shall be a final agency determination as to the amount of the claim to be used in determining the escrow amount, although nothing contained in these rules or in any such determination is intended to be, and shall not be, determinative as to the actual merits of the claim.

(e) If tort letters cannot be obtained for all or any part of the period for which they are required to be provided in §1-80.1(q) of this chapter, or if a secured lender seeking to transfer an interest in a taxicab medallion pursuant to a foreclosure, repossession or other realization upon its security has not obtained such tort letters, no transfer may occur unless an escrow account is established as provided in subdivision (f) of this section in the maximum escrow amount. Notwithstanding the provisions of subdivision (f) of this section, such escrow account must be maintained for not less than the shorter of six (6) years following the date of the transfer, or until such date that tort letters can be obtained and the transferor has validated the appropriate escrow amount to be established for any possible excess claims disclosed as required in this section and the Chairperson has determined the escrow amount for each such claim as provided in subdivision (d) of this section (with any such resulting escrow amounts to be held as required by subdivision (f) of this section).

(f) Once the escrow amount has been determined, an escrow account in the amount of the escrow amount shall be established from the proceeds of the transfer or other resources of the transferor, provided that no transfer may be effective as provided in §1-80 (d) of this chapter until either such escrow account is established or the holder of the escrow account has given to the Chairperson an undertaking to establish the escrow account, to hold it on the terms required by this section, with written confirmation of the establishment to occur in writing within five (5) days of such establishment. The account established may be held by any of counsel for the claimant, the transferor, or otherwise as the claimant and transferor agree, although the parties must advise the Chairperson as to the holder of such account, and such account will be maintained until all the claims represented therein are satisfied or released, although amounts in the escrow account allocable to specific claims may be released upon satisfaction of, or in satisfaction of, such specific claims. Any person or entity seeking a release of escrowed funds from the escrow account shall provide proof of release, satisfaction or dismissal of the underlying claim or agreement of the parties as to resolution of such claim, or a judgment of a court directing payment of all or part of the escrow amount to a party, and if the evidence is an order of a court, such order must constitute a final order, which must be fully executed and, if appropriate filed or entered. No funds shall be released from the escrow account without the prior written approval of the Chairperson.

HISTORICAL NOTE

Section repealed and added City Record Dec. 24, 2008 §§7, 8, eff. Jan. 23, 2009. [See T35 §1-80

Note 1]

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35 RCNY 1-82

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-82 Special Provisions Regarding Estates and Incompetency.

(a) When a medallion or stock or membership interests in a corporation or limited liability company owning a medallion is distributed from an estate to a legatee or distributee, the recipient of such interest must qualify as a transferee under §1-80 and must fulfill the requirements of §§1-02, 1-03, 1-80, 1-80.1 and 1-80.2 of this chapter and the following additional documents shall be submitted to the Commission:

(1) a certified copy of the death certificate of the former owner listed with the Commission;

(2) a certified copy of letters testamentary or letters of administration, and, if the estate is not a New York estate, a certified copy of ancillary letters testamentary or letters of administration covering the estate's New York property; and all such letters must have been issued no earlier than six months prior to the date of submission and must be either (i) unqualified as to the amount of estate assets which the executor or administrator is authorized to administer and distribute or transfer or (ii) if qualified as to amount, such amount must be in excess of the value of the medallion(s) to be operated or transferred, as the case may be; and

(3) a copy of the will, if any, certified by the appropriate surrogate or probate court.

(b) Upon the death of an owner of an interest in a taxicab medallion, or upon a declaration of incompetence or the appointment of a guardian for such owner by a court of competent jurisdiction, the medallion may continue to be operated by the estate or executor or administrator of such owner's estate or conservator, guardian, or such other representative, as the case may be for a period of up to one hundred twenty (120) days following the death or date of declaration of incompetence of the owner, provided that such medallion is operated pursuant to an agreement with an

agent licensed by the Commission. If, during such 120 day period, an executor, administrator, conservator, guardian or other representative is appointed, such representative shall have sixty (60) days from the date of appointment to be approved to operate the medallion as provided in subdivision (c) of this section. If the decedent, or the incompetent owner, was an independent taxicab owner, the service requirements of §1-09(b) of this chapter are waived during the 120 day period, and, if a representative is appointed within such period, during the 60 day period following the appointment thereof. Thereafter, neither the estate nor such representative may continue to operate the medallion and the medallion must be placed in storage until either an executor, an administrator, conservator, guardian or new owner has qualified to operate the medallion as provided in subdivision (c) of this section. If no representative qualifies to operate the medallion as provided in subdivision (c) of this section within one hundred eighty (180) days of the death of the previous owner or the declaration of incompetence or disability of the owner, the interest of such owner must be transferred to a transferee who has received the approval of the Chairperson following submission of an application to own a taxicab license and compliance with the provisions of §§1-02, 1-03, 1-80, 1-80.1, 1-80.2 and 1-81 of this chapter. Notice of the death or incompetence of a medallion owner must be given to the Chairperson promptly upon such occurrence.

(c) Except as provided in subdivision (b) of this section, an executor, administrator, conservator, or guardian may continue the operation of a taxicab beyond the one hundred twenty-day period provided for in such subdivision only with approval of the Chairperson as to his or her qualifications. The executor, administrator, conservator or guardian must apply for such approval by submitting an application for a taxicab license and complying with the applicable provisions of §§1-02, 1-03, 1-80 and 1-80.1 of this chapter and must submit in addition the documentation set forth in subdivision (a) of this section if the applicant is an executor or administrator, or a copy of an order of a court of competent jurisdiction if applicant is a conservator or guardian. Notwithstanding anything else contained within this section, if neither an executor, administrator, conservator, guardian or a new owner has qualified to operate the taxicab within one hundred eighty days following the death of the previous owner, or the date of a judicial declaration of incompetence or disability of the owner, the taxicab may not be operated and the medallion must be placed into storage until a representative or transferee has qualified to operate the taxicab. A representative for an independent taxicab owner which qualifies to operate the taxicab must also meet the service requirements set forth in §1-09(b) of this chapter.

(d) A distribution of an ownership interest in a taxicab medallion may be made from an estate to a trust only if the distribution is of stock of a corporation or membership interests in a limited liability company distributed to a trust for the benefit of a minor. The interest in the taxicab medallion must be distributed out of the trust within 60 days following the date on which the beneficiary reaches the age for ownership of a taxicab medallion required by this chapter, and at the time of such distribution, such beneficiary must qualify as a transferee and be approved as an owner under, and fulfill the requirements of, §§1-02, 1-03 1-80, 1-80.1, 1-80.2 and 1-81 of this chapter if such beneficiary is to retain an interest upon its distribution. Notice must be given to the Chairperson promptly upon the beneficiary reaching the age for ownership of a taxicab medallion.

HISTORICAL NOTE

Section repealed and added City Record Dec. 24, 2008 §§7, 8, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

DERIVATION

Former §1-82 added City Record Apr. 30, 1992 eff. May 30, 1992.

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35 RCNY 1-83

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-83 E-Z Pass Replenishment Account.

An owner or agent dispatching a vehicle equipped with an E-Z Pass for one or more shifts may require a driver, in addition to any other payment or account authorized herein, to maintain an E-Z Pass replenishment account with the E-Z Pass tag holder. The amount permitted to be maintained in this account shall not exceed ten ($10) dollars per twelve (12) hour shift included within a lease period, to a maximum of one hundred ($100) dollars for any driver. An owner or agent shall collect from this account any tolls paid by said owner or agent through the driver's use of the E-Z Pass tag assigned to a taxicab operated by the driver, which have not been otherwise reimbursed to the owner or agent. The owner or agent shall return any funds held in the replenishment account not used to reimburse the owner or agent as authorized by this Section, to a driver, upon demand, within thirty (30) days after the termination of the driver's lease with the owner or agent.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

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35 RCNY 1-84

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-84 Special Procedures Relating to the Transfer of Taxicab Medallions While Revocation Proceedings are Pending.

Where the Commission has commenced a revocation proceeding against a medallion owner, the owner may not transfer his taxicab license during the course of the proceedings without the written permission of the Chairperson. The Chairperson may require that such a sale may not be made to a relative of the medallion owner, nor to any other person or entity affiliated with the owner. The Chairperson may require that, as a condition of granting such permission, an ascrow be held in an amount to be determined by the Chairperson after an approved closing in order to satisfy any fines subsequently levied against the owner.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §1, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

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35 RCNY 1-85

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-85 Limitations on Credit and Debit Card Transaction Fees.

(a) A merchant shall not charge a mark-up to any passenger for credit/debit card transactions.

(b) A merchant who is an owner may charge a mark-up to a driver licensed by the Commission of not more than five percent (5%) of the total credit/debit charges incurred during the driver's shift.

HISTORICAL NOTE

Section added City Record June 12, 2007 §8, eff. July 12, 2007. [See T35

§1-01 Note 3]

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35 RCNY 1-85

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-85 Procedures in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Subd. (c) amended City Record Mar. 29, 1996 §7, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Subd. (c) amended City Record Oct. 30, 1995 §8, eff. Nov. 27, 1995. [See T35 §1-75 Note 1]

Subd. (e) amended City Record May 15, 1995 §1, eff. June 19, 1995. [See Note 1]

Subd. (h) amended City Record Mar. 17, 1993 eff. Apr. 16, 1993.

NOTE

1. Statement of Basis and Purpose in City Record May 15, 1995:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The purpose of the amendments is to limit the period of time within which a motion to vacate a default judgment will be accepted by the TLC hearings tribunal, except in instances where a question of jurisdiction exists. This amendment will permit the closure of many matters which otherwise would remain open indefinitely, pending a potential motion to vacate a decision made at inquest upon the default of respondent. Further technical amendments to the rules governing default judgments are being made to preserve consistency.

CASE NOTES

¶ 1. Where respondent was found guilty of knowingly submitting fraudulent receipts, the Taxi and Limousine Commission can requiring respondent to divest itself of all remaining medallions. Since the respondent had a history of violations, and the fraud impacted directly on public safety, the penalty of divestiture was not so grossly disproportionate to the offense as to be shocking to one's sense of fairness. King Victor Taxi Corp. v. New York City Taxi & Limousine Commission, 654 N.Y.S.2d 358 (App.Div. 1st Dept. 1997).

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Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-86 Penalties for Violation of Rules Governing Owners of Medallion Taxicabs.

Rule No.	PenaltyAll fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	PersonalAppearance-Required
§1-04(c)	$50-350 and/or suspension up to 30 days	Yes
§1-07(a)	$50-350 and/or suspension up to 30 days	Yes
§1-07(b)	$50-350 and/or suspension up to 30 days	Yes
§1-07(c)	$100-$350 and/or suspension up to 30 days; summary suspension until compliance pursuant to §8-17(b) of this title.	Yes
§1-09(a)	$75	No
§1-09(b)	$100-350 and/or suspension up to 30 days	Yes
§1-10(a)	$100 and seizure of the vehicle.	No
§1-10(b)	$100 and summary suspension until compliance pursuant to §8-17(b) of this title. If the failure to inspect extends 31 days after the scheduled inspection date or the date of an order to inspect or reinspect on other than the tri-annual schedule, $100-250 and summary suspension until compliance pursuant to §8-17(b) of this title. If the failure to inspect extends 61 days after the scheduled inspection date or the date of an order to inspect or re-inspect on other than the tri-annual schedule, $250-500 and summary suspension until	YesRate card must be brought.

	compliance pursuant to §8-17(b) of this title. If the failure to inspect extends 121 or more days after the scheduled inspection date or the date of an order to inspect or re-inspect on other than the tri-annual schedule, $500 and/or revocation. For failure to have the vehicle inspected on a tri-annually scheduled date, (or for failure to re-inspect after failing such inspection) an owner could be found in violation of this rule up to four times in the course of 121 days: for failure to inspect within 30 days, within 61-120 days, and for more than 120 days. In addition, the owner could also and concurrently be found in violation of any order(s) to have the vehicle inspected that may be issued in the course of street enforcement, without limit as to number.	
§1-10(c)	$50 and suspension after the hearing until the defective condition is corrected.	No
§1-10(d)	$100-350 and/or suspension up to 30 days; summary suspension until compliance pursuant to §8-17(b) of this title.	Yes
§1-11(a)	$100	No
§1-11(b)	$25	No
§1-11(c)	$50	No
§1-11(d)	$75	No
§1-11(e)(i)	$250 and suspension until compliance.	Yes
§1-11(e)(ii)	$250 and suspension until compliance	Yes
§1-11(f)	$1,000 and suspension until compliance.	Yes
§1-11(g)	$250 and suspension until compliance.	Yes
§1-11(h)	$250	No
§1-12(a)(1)	$25	No
§1-12(a)(2)	Notice to correct within 10 Days failure to comply with such notice shall be a violation of §l-68(a).)	N/A
§1-12(a)(3)	Notice to correct within 10 Days (failure to comply with such notice shall be a violation of §l-68(a).)	N/A
§1-12(b)	$50-350 and/or suspension up to 30 days	Yes
§1-13(a)	$100-350 and/or permanent removal of radio	Yes
§1-13(b)(1)	$100-350 and/or permanent removal of telephone	Yes
§1-13(b)(2)	$100-350 and/or permanent removal of telephone	Yes
§1-13(b)(3)	$100-350 and/or permanent removal of telephone	Yes
§1-13(b)(4)	$100	No
§1-14(a)	The penalty for failure to comply with this rule shall be $50 per day, except that where the system is installed and malfunctioning, a notice to correct within ten days shall be issued.	No
§1-15(a)(1)	$100-250	Yes
§1-15(a)(2)	$100-250	Yes
§1-16(a)	$100	No
§1-17(a)	$300 and suspension until the condition is corrected	Yes
§1-17(c)	$300 and suspension until the condition is corrected.	Yes
§1-17(d)	$50	No
§1-17(e)	$50	No
§1-17(f)	$50	No
§1-18(a)	$100 and suspension until the condition is corrected	Yes
§1-19(a)	$100 if no device. Notice to correct within 10 days if device is non-functioning. (Failure to comply with such notice shall be a violation	No

	of Rule 1-68(a)).	
§1-20(a)(1)	$50	No
§1-20(a)(3)	$50	No
§1-20(a)(4)	$500	No
§1-20(a)(5)	$50	No
§1-20(b)(1)	$50	No
§1-20(b)(2)	$200	No
§1-20(b)(3)	$300 for a first violation. $600 for a second and subsequent violation within 36 months.	Yes
§1-21(a)	$500	Yes
§1-21(b)	$500	Yes
§1-21(c)	$500	Yes
§1-22(a)	$100	No
§1-22(b)	$75	No
§1-23(a)	$250-1,500 and/or suspension up to 30 days. Summary suspension until compliance pursuant to §8-17(b) of this title.	Yes
§1-24(a)	$75	No
§1-24(b)	$50-350 and/or suspension up to 30 days	Yes
§1-25(a)(1)	$100	No
§1-25(a)(2)	$100	No
§1-25(a)(3)	$50	No
§1-25(a)(4)	$50	No
§1-25(a)(5)	$100	No
§1-26(a)	$100No penalty for missing plaque, if condition is corrected within forty-eight hours.	No
§1-30(a-e)	N/A	
§1-31(a)	$100-350 and/or suspension up to 30 days	Yes
§1-32(a)	$100	No
§1-33(a)	$100	Yes
§1-33(b)	$100	No
§1-33(c)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of §1-68(a).)	N/A
§1-35(a)	$75	No
§1-35(b)(1), (2), (3) and (4)	$25	No
§1-35(b)(5) and (6)	$75	No
§1-35(c)	$50	No
§1-35(d)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of §1-68(a).)	N/A
§1-36	N/A	
§1-37(a)	$100 and suspension until compliance	Yes
§1-37(b)	$100 and suspension until compliance	Yes
§1-37(c)	$250	No
§1-40(a)	$150-350 and/or suspension up to 30 days	Yes
§1-40(b)	$100	Yes
§1-40(c)(1)	$500-1,000	Yes
§1-40(c)(2)	$150 and $25 for each day of violation thereafter and suspension until compliance	Yes
§1-40(d)	$350 and suspension until compliance	Yes
§1-41(a)	$50-350 and/or suspension up to 30 days	Yes

§1-42(a)	$100	No
§1-42(b)	$50	No
§1-43(a)	$25 for each day in violation	Yes
§1-43(b)	$200	No
§1-43(c)	$200	No
§1-43(d)	$100-250	Yes
§1-44(a)	$100	No
§1-45(a)(1)	suspension until condition is corrected	Yes
§1-45(a)(2)	suspension until condition is corrected	Yes
§1-45(a)(3)	$100	No
§1-45(a)(4)	$100	No
§1-45(b)	N/A	
§1-46(a)	$100-350 and/or suspension up to 30 days	Yes
§1-46(b)	$100-350 and/or suspension up to 30 days	Yes
§1-47(a)	suspension until compliance, and $75-150 for first violation $150-300 for second violation $300-500 for third violation within 24 months	Yes
§1-47(b)	suspension until compliance, and $75-150 for first violation $150-300 for second violation $300-500 for third violation within 24 months	Yes
§1-47(c)	$250	No
§1-47(d)	$250-500 and suspension until compliance	Yes
§1-48(a)	$250-500 and suspension until compliance	No
§1-48(b)	$100	Yes
§1-48(c)	$250-500 and suspension until compliance	Yes
§1-50	N/A	
§1-51(a)	$50	No
§1-52(a)	$25 for violation of each subdivision hereof.	No
(1-4)	No fine for violation of this rule shall exceed $75.	
§1-52(a)(5)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of §1-68(a).)	N/A**
§1-54(a)(1)	$25-250	Yes
§1-54(a)(2)	$25	No
§1-54(b)(1)	$100	No
§1-54(b)(2)	$100	No
§1-54(c)	$50-250	Yes
§1-54(d)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of §1-68(a).)	N/A**
§1-55(b)(3)	$100	No
§1-55(b)(4)	$500	No
§1-55(e)	$200	No
§1-55(f)	$200 for the first violation. $350-500 for the second or subsequent violation within 36 months.	No
§1-55(g)	$100	No
§1-56(a)	$25	No
§1-56(b)(1-7)	$50 for violation of each subdivision hereof.	No
§1-56(c)	$50	No
§1-56(d)(1)	$50	No
§1-56(d)(2)	$100-350 and/or suspension up to 30 days	No
§1-56(e)	$25	No

§1-57(a)	N/A	
§1-59(a)	$50-350 and/or suspension up to 30 days	Yes
§1-60(a)	$50	No
§1-60(b)(1)	$350-1,000 and/or suspension up to 60 days or revocation	Yes
§1-60(b)(2)	$150-350 and/or suspension up to 30 days or revocation	Yes
§1-60(c)	$350-1,000 and/or suspension up to 30 days or revocation	Yes
§1-60(d)	$350-1,000 and/or suspension up to 30 days or revocation	Yes
§1-60(e)	$100-350 and/or suspension up to 30 days	Yes
§1-61(a)	Mandatory divestiture of any and all taxicab licenses held by the owner, and any held by a director, officer or stockholder of the owner, plus a fine of up to $10,000 per medallion implicated in the violation.	Yes
§1-61(b)	Mandatory divestiture of any and all taxicab licenses held by the owner, and any held by a director, officer or stockholder of the owner, plus a fine of up to $10,000 per medallion implicated in the violation.	Yes
§1-61(c)	Mandatory divestiture of any and all taxicab licenses held by the owner, and any held by a director, officer or stockholder of the owner, plus a fine of up to $10,000 per medallion implicated in the violation.	Yes
§1-61(d)	Mandatory divestiture of any and all taxicab licenses held by the owner, and any held by a director, officer or stockholder of the owner, plus a fine of up to $10,000 per medallion implicated in the violation.	Yes
§1-61(e)	A fine of up to $10,000 per medallion implicated in the violation and/or mandatory divestiture of any and all interests in any taxicab licenses held by the owner, shareholder, officer, director or partner in violation.	Yes
§1-62(a)	Revocation and $10,000	Yes
§1-62(b)	$100	No
§1-62(c)	$50	No
§1-63(a)	$350-1,000 and/or suspension up to 30 days or revocation	Yes
§1-63(b)	$500-1,500 and/or suspension up to 60 days or revocation	Yes
§1-64(a)	$50-200	Yes
§1-65(b)	$50-200	Yes
§1-66(a)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of §1-68(a).)	N/A**
§1-67(a)	$50-350	Yes
§1-67(b)	$500-1,500 and/or suspension up to 60 days or revocation	Yes
§1-68(a)	$200 and suspension until compliance	Yes
§1-76(a)	$500-1,000 and/or suspension up to thirty days	Yes
§1-76(b)	$200	No
§1-76(c)	$200	No
§1-77(a)	$200	No
§1-77(b)	$500-1,000 and/or suspension up to thirty days	Yes
§1-78(a)	First violation $500 Second and subsequent violations: $1,000 and/or suspension of the medallion for up to thirty days In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the	Yes

	driver, equal to the excess that was charged to the driver.	
§1-78(a)(4)	First violation $500Second and subsequent violations:$1000 and/or suspension of the medallion for up to thirty days.In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess that was charged to the driver.	Yes
§1-78(b)(i)	[Repealed]	
§1-78(b)(3)	[Repealed]	
§1-78(d)	$100	No
§1-79.1(a)	$500	No
§1-79.1(b)	First violation $500Second and subsequent violations:$1000 and/or suspension of the medallion for up to thirty days. In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess or non-authorized charge that was charged to the driver.	Yes
§1-79.2	$50 plus driver gets free shift.	
§1-79.3	$1,000	No
§1-79(b)	First violation $250 Second violation $350 Third and subsequent violations:$500 and/or suspension of the medallion for up to thirty days In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the driver, equal to the excess that was withheld from the driver, or equal to the amount that the driver paid, at the requirement of the owner, to satisfy any summons against the owner.	Yes
§1-79(c)	$200	No
§1-79(d)-(e)	$50	No
§1-80(b)	$10,000 per entity, per medallion and attempted transfer invalid; penalty applicable to person or persons (transferor, transferee or both) whose actions constituted violation; revocation may be ordered.	No
§1-80(e)	$250	No
§1-81(f)	$10,000	No
§1-82(b)	$250 for failure to notify; revocation may be ordered if medallion operated beyond, or not transferred by, the periods specified.	No
§1-82(d)	$250	No
§1-83	$250 plus restitution to the driver of any replenishment account improperly retained by an owner or agent.	Yes
§1-85(a) and (b)	First violation: $200. Second violation: $300. Third violation: $500. In addition to the penalty payable to the Commission, the administrative law judge may order the owner to pay restitution to the passenger or driver, equal to the excess amount that was charged to the passenger or driver.	Yes
§1-87	See chapter 16 of this title	See chapter 16 of this title

**Not Applicable

HISTORICAL NOTE

Section amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record Apr. 30, 1992 eff. May 30, 1992.

Section heading amended City Record Apr. 1, 2009 §4, eff. May 1, 2009. [See T35 §1-78 Note 4]

Penalty column heading amended City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Table amended in part City Record Sept. 28, 1994 eff. Oct. 31, 1994.

§1-07(c) added City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§1-08(a) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-10(a) amended City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§1-10(b) amended City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§1-10(c) amended City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§1-10(d) amended City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§1-11(a) amended City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-11(c) amended City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-11(e)(i) added City Record June 12, 2007 §9, eff. July 12, 2007. [See T35 §1-01 Note 3]

§1-11(e)(ii) added City Record June 12, 2007 §9, eff. July 12, 2007. [See T35 §1-01 Note 3]

§1-11(f) added City Record June 12, 2007 §9, eff. July 12, 2007. [See T35 §1-01 Note 3]

§1-11(e), (f) repealed City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1] This repeal was overlooked in City Record June 12, 2007 amendment.

§1-11(e), (f) added City Record Apr. 14, 2004 §5, eff. May 14, 2004. [See T35 §3-03 Note 8]

§1-11(g) added City Record June 12, 2007 §9, eff. July 12, 2007. [See T35 §1-01 Note 3]

§1-11(h) added City Record June 12, 2007 §9, eff. July 12, 2007. [See T35 §1-01 Note 3]

§1-16(a) amended City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-17(a) added City Record Feb. 8, 1994 eff. Mar. 6, 1994.

§1-17(c) added City Record May 26, 2006 §3, eff. June 25, 2006. [See T35 §1-17 Note 3]

§1-17(d) added City Record Apr. 23, 2007 §3, eff. May 23, 2007. [See T35 §1-17 Note 4]

§1-17(e) added City Record Apr. 23, 2007 §3, eff. May 23, 2007. [See T35 §1-17 Note 4]

§1-17(f) added City Record Apr. 23, 2007 §3, eff. May 23, 2007. [See T35 §1-17 Note 4]

§1-18(a) added City Record Feb. 8, 1994 eff. Mar. 6, 1994.

§1-19(a) added City Record Mar. 29, 1996 eff. Apr. 28, 1996. [See T35 §3-03 Note 2]

§1-20(a)(2) repealed City Record Aug. 4, 1995 eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

§1-20(b)(1) added City Record Aug. 4, 1995 eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

§1-20(b)(2) added City Record Aug. 4, 1995 eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

§1-20(b)(3) added City Record Aug. 4, 1995 eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

§1-21(d) repealed City Record Aug. 4, 1995 eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

§1-23(a) amended City Record Nov. 2, 2006 §3, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§1-23(a) amended City Record Aug. 4, 1995 eff. Sept. 6, 1995. [See T35 §1-20 Note 1]

§1-24(c) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-26(a) added City Record July 8, 1997 eff. Aug. 11, 1997. [See T35 §1-26 Note 1]

§1-35(b)(1), (2), (3) and (4) so designated and amended City Record May 23, 2007 §4, eff. June 22, 2007. [See T35 §1-35 Note 1]

§1-35(b)(5) and (6) added City Record May 23, 2007 §4, eff. June 22, 2007. [See T35 §1-35 Note 1]

§1-35(e) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-35(f) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-37(a) added City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§1-37(b) added City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§1-37(c) added City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§1-40(c)(1) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 1]

§1-40(c)(2) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 1]

§1-40(d) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 2]

§1-40(d) amended City Record July 12, 1993 eff. Aug. 11, 1993.

§1-43(b) amended City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-43(c) amended City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-43(d) amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

§1-53(a)(1-5) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-54(a) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-54(b) repealed City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-55(b)(3) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-55 Note 2]

§1-55(b)(4) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-55 Note 2]

§1-56(b)(1-7) amended City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-56(e) added City Record Dec. 29, 1995 §20, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-58(a) repealed City Record Oct. 30, 1995 §4, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-58(b) repealed City Record Oct. 30, 1995 §4, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-58(c) repealed City Record Oct. 30, 1995 §4, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-60(b)(1) amended City Record Aug. 10, 1998 eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

§1-60(b)(2) added City Record Aug. 10, 1998 eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

§1-60(c) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

§1-60(c) amended City Record Sept. 28, 1994 eff. Oct. 28, 1994.

§1-60(d) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

§1-60(d) amended City Record Sept. 28, 1994 eff. Oct. 28, 1994.

§1-60(e) amended City Record Sept. 28, 1994 eff. Oct. 28, 1994.

§1-61(a)(b)(c)(d) amended City Record Sept. 28, 1994 eff. Oct. 28, 1994.

§1-61(e) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-02 Note 1]

§1-62(a) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

§1-63(a) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

§1-63(b) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

§1-65(a) repealed City Record Dec. 29, 1995 §20, Feb. 1, 1996. [See T35 §1-01 Note 1]

§1-67(b) added City Record Jan. 31, 2000 §3, eff. Mar. 1, 2000. [See T35 §1-23 Note 1]

§1-68(a) amended City Record Dec. 1, 1999 eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

§1-76(a) added City Record Mar. 29, 1996 eff. Apr. 28, 1996. [See T35 Chapter 12 footnote]

§1-76(b) added City Record Oct. 30, 1995 §7, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-76(c) added City Record Oct. 30, 1995 §7, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-77(a) added City Record Oct. 30, 1995 §7, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-77(b) added City Record Oct. 30, 1995 §7, eff. Nov. 29, 1995. [See T35 §1-75 Note 1]

§1-78(a) amended City Record Mar. 29, 1996 eff. Apr. 28, 1996. [See Note 1]

§1-78(a) added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §1-78 Note 2]

§1-78(a)(4) added City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-78(b) added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §1-78 Note 2]

§1-78(b)(i) repealed City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-78(b)(1) amended City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See T35 §1-78 Note 1]

§1-78(b)(3) repealed City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-78(b)(3) amended City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See T35 §1-78 Note 1]

§1-78(d) added City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-79(b) added City Record Dec. 29, 1995 §2, eff. Jan. 28, 1996. [See T35 §1-79 Note 1]

§1-79(c) added City Record Dec. 29, 1995 §2, eff. Jan. 28, 1996. [See T35 §1-79 Note 1]

§1-79(d)-(e) added City Record Dec. 29, 1995 §2, eff. Jan. 28, 1996. [See T35 §1-79 Note 1]

§1-79.1(a) added City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-79.1(b) added City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-79.2 added City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-79.3 added City Record Apr. 1, 2009 §5, eff. May 1, 2009. [See T35 §1-78 Note 4]

§1-80(b) added City Record Dec. 24, 2008 §9, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

§1-80(e) added City Record Dec. 24, 2008 §9, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

§1-81(f) added City Record Dec. 24, 2008 §9, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

§1-82(b) added City Record Dec. 24, 2008 §9, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

§1-82(d) added City Record Dec. 24, 2008 §9, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

§1-83 added City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§1-85(a) and (b) added City Record June 12, 2007 §9, eff. July 12, 2007. [See T35 §1-01 Note 3]

§1-87 added City Record Nov. 23, 2007 §1, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 29, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are

authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgated amendment increases the penalties for violation of the rule establishing a cap on the lease rates that owners could charge to drivers for the use of a licensed taxicab. The cap limits any increases in the lease price to no more than fourteen percent above the medallion's lease rate in effect on September 30, 1995.

The purpose of the amendment is to ensure compliance with the lease cap by increasing the penalties for violation of the rule.

2. Statement of Basis and Purpose in City Record June 26, 1998: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under Section 2303(b)(13) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purpose; under Section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter, and under Section 19-506 of said Administrative Code, authorizing the TLC to issue taxicab drivers licenses, for-hire vehicle driver licenses and paratransit vehicle drivers licenses. For serious acts committed against the riding public, Commission representatives and public servants, the current rules impose minimal fines with the possibility of a short term thirty day suspension. The amendments increase the monetary fines and impose suspensions, discretionary revocations, and in certain cases mandatory license revocation for serious offenses. The increased penalties involve amendments to the Taxicab Owners, Taxicab Drivers and For-Hire Vehicle Rules and apply to the violation of the following rules:

· **Using a taxicab, garage or office for any unlawful purpose** {Taxicab Owners Rule 1-60(c)};

· **Concealing evidence of a crime** (Taxicab Owners Rule 1-60(d); Taxicab Drivers Rule 2-61(c));

· **Offering gifts to Commission representatives, employees, public servants, dispatchers** (Taxicab Owners Rule 1-62(a); Taxicab Drivers Rule 2-62(a); FHV Rule 6-18(a));

· **Abuse, threats and harassment toward Commission representatives, public servants, passengers or other persons** (Taxicab Owners Rule 1-63(a); Taxicab Drivers Rule 2-60(a); FHV Rule 6-18(i));

· **Use of physical force against Commission representatives, public servants, passengers or other persons** (Taxicab Owners Rule 1-63(b); Taxicab Drivers Rule 2-60(b); FHV Rule 6-18(f));

· **Permitting another to use one's hack license** (Taxicab Driver Rule 2-13(b));

· **Driving while ability is impaired by drugs or alcohol** (Taxicab Driver Rule 2-20(a));

· **Discrimination by base owner against people with disabilities** (FHV Rule 6-07(e));

· **Base owner knowingly dispatches vehicle operated by a driver under the influence of drugs or alcohol** (FHV Rule 6-12(k)(3));

· **FHV driver refuses to transport a disabled person** (FHV Rule 6-16(1)).

The penalty of mandatory revocation, where required, empowers the Commission to remove from the industry those licensees who endanger the safety of the public. It also creates consistency and uniformity in the treatment of the

most serious offenders, since the Commission usually seeks discretionary revocation in such cases. Increasing monetary penalties and providing for the possibility for license suspensions or revocations in other cases will deter licensees from committing serious acts against the riding public, Commission representatives and other public servants.

Certain of these rule violations result in few convictions each year but are nonetheless serious. Others, such as Rules 2-60(a) and (b), which prohibit harassment or physical force against passengers or others, continue to occur with frequency. In 1997 alone, there were 464 convictions for violations of one of these two rules. The Commission believes that increasing the penalties for violations will have a significant deterrent effect and a positive impact upon public safety.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 1-87

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 1 TAXICAB OWNERS RULES

§1-87 Owners of Accessible Taxicabs.

An owner of an accessible taxicab medallion must also comply with chapter 16 of this title.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §2, eff. Dec. 23, 2007. [See

Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 23, 2007:

These rules are designed to provide for the dispatch of accessible taxicabs and participating wheelchair accessible liveries to provide transportation for hire to passengers who use wheelchairs. The provisions of these rules are authorized by section 2303 of the New York City Charter and section 19-503 of the Administrative Code of the City of New York.

These rules accompany and implement a two-year demonstration project for dispatch technology and service. Although the program is a demonstration project, a successful result may lead to a permanent implementation following the conclusion of the demonstration project or earlier. Among other things, the project and these rules, which implement the project for TLC licensed drivers and vehicles, represent an effort to match wheelchair accessible taxicabs (which have entered or will enter service through recent auctions of taxicab medallions) with passengers who require the

service of such taxicabs.

The program is intended to permit passengers in wheelchairs seeking transportation to call New York City's 311 system and obtain referral to a dispatcher selected by the TLC to match service requests with the nearest available accessible vehicles and dispatch vehicles in response to those requests. These rules would implement this program.

Under the rules, wheelchair accessible taxicabs and participating wheelchair accessible liveries must accept dispatches from the central dispatcher designated by the TLC to provide transportation to persons in wheelchairs. Each vehicle must have equipment provided by the dispatcher in order for the vehicle to receive the dispatch. Drivers of these vehicles must provide the transportation as well as relaying certain information to the dispatcher for tracking purposes. Since fares will be metered, all accessible vehicles participating in the program must contain a taximeter.

Operators of participating vehicles must be trained in use of the dispatch equipment and passenger assistance techniques. The driver must obtain a certificate of completion from the training courses in addition to holding the appropriate license approved by the Commission prior to operating an accessible vehicle.

A driver must assist and secure a passenger in a wheelchair along with any packages he/she may have into and out of the vehicle. Drivers of accessible vehicles are expected to be available to accept dispatches to provide transportation for persons in wheelchairs during their shifts. Failure to accept dispatches will be seen as a failure to participate in the program and may result in penalties.

Passengers using the program must be able to be at the curb at the time specified for pick up by the dispatcher. The cost of the rides will be based on a metered fare corresponding to taxicab fares, and participating wheelchair accessible liveries must install taximeters to be used for dispatched rides. Taximeters installed in participating livery vehicles are intended to be used solely during rides originating with the dispatch program.

If a dispatch has been requested and no passenger at the pick up location is in a wheelchair, the driver may refuse to provide the transportation or, in the alternative, charge twice the metered fare (including any wait time) for the transportation. A driver may turn the meter on at the later to occur of the driver's arrival at the pick up location or the time of pick-up indicated by the dispatcher. The fare will include wait time necessary for the passenger to arrive curbside and enter the vehicle.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-01 Definitions.

Accessible taxicab. An "accessible taxicab" is a taxicab that complies with section 3-03.2 of this title.

Applicant. An "applicant" is a person seeking a license from the Commission to drive a taxicab in the City of New York.

Chauffeur's license. A "chauffeur's license" is a valid license of the State of New York to operate a vehicle for hire or a valid license of similar class from another state of which the licensee is a resident.

Commission. The "Commission" is the New York City Taxi and Limousine Com- mission.

Driver. A "driver" is a person licensed to drive a medallion taxicab in the City of New York.

Licensed vehicle. A "licensed vehicle" is a taxicab or coach authorized to accept passengers for hire pursuant to these Rules and the Administrative Code of the City of New York.

Mailing address of driver. The "mailing address of driver" is the address designated by the driver for the mailing of all notices and correspondence from the Commission and for service of summonses. However, a driver may also designate a post office box number address as a mailing address.

Medallion. A "medallion" is the plate issued and affixed by the Commission for displaying the license number of a taxicab on the outside of the vehide.

MTA Tax. The "MTA Tax" is the 50-cent tax on taxicab trips that is imposed by article 29-A of the New York State Tax Law.

Occupant classification system. An "occupant classification system" is a device that is placed by the original equipment manufacturer within a vehicle seat that detects whether a person is occupying the seat and detects the mass or weight of that person, for purposes of deploying an airbag protecting a passenger in that seat, in the event of a collision, with high force, low force, or not at all.

Passenger. A "passenger" is any individual who has hired or attempted to hire a taxicab for travel to a destination.

Person with a Disability. A person with a disability is an individual with a physical or mental impairment or incapacity, including a person who uses a wheelchair, crutches, three-wheeled motorized scooter, other mobility aid, or a service animal, but who can transfer from such a mobility aid to a taxicab with or without reasonable assistance.

Portable or hands-free electronic device. A "portable or hands-free electronic device" is any electronic device able to:

1. make a wireless telephone call

2. send or receive a text message

3. allow its user to speak on the telephone hands-free or operate a device by voice command, even when otherwise allowed by New York State law

4. act as a personal assistant (PDA)

5. send and or receive data from the internet or from a wireless network

6. act as a laptop computer or portable computer

7. receive or send pages

8. allow two-way communications between different people or parties

9. play electronic games

10. play music or video; or

11. make or display images; or

12. any combination of the above

This definition is to be liberally construed in light of its purpose to minimize the distraction of drivers, and in recognition of the rapid development of electronic technologies and proliferation of electronic devices that may be made available in the future that similarly transfer digital images, sounds or messages.

"Portable or hands-free electronic device" does not include: (1) any device the use of which while driving is specifically authorized by TLC rules, or (2) the use of a global positioning navigation system ("GPS") which uses voice functions to convey directions, so long as the driver is not inputting data unless legally standing or parked and the GPS is not capable of being used as a cell phone or other portable or hands-free electronic device.

Rate card. A "rate card" is a card issued by the Commission for a taxicab which displays the taxicab's license number, rates of fare and such other data as the Commission may prescribe.

Renewal applicant. A "renewal applicant" is a person seeking to renew a taxicab driver's license within the time period established by the Commission.

Service Animal. A service animal is a guide dog, signal dog or any other animal trained specifically to work or to perform tasks for an individual with a disability, including, but not limited to, guiding individuals with visual impairments, alerting individuals with hearing impairments to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or retrieving dropped items.

Side Airbag. A "side airbag" is an airbag located by the original equipment manufacturer in a vehicle seat, and such airbag inflates between the seat occupant and the door.

Taxicab. A "taxicab" is a motor vehicle licensed and approved by the Commission to carry no more than five (5) passengers and authorized to accept hails from persons in the street.

Taxicab technology service provider. A "taxicab technology service provider" is a vendor who has contracted with the Commission to install and maintain the taxicab technology system in taxicabs.

Taxicab technology system. The "taxicab technology system" is hardware and software that provides the following four core services (collectively "four core services"): (i) credit, debit and prepaid card payment required by section 3-03(e)(7) of this title, (ii) text messaging required by section 3-03(e)(8) of this title, (iii) trip data collection and transmission required by section 3-06 of this title, and (iv) data transmission with the passenger information monitor required by section 3-07 of this title.

Taximeter. A "taximeter" is an instrument or device approved by the Commission by which the charge to a passenger of a taxicab is automatically calculated and on which such charge is plainly indicated.

Taxpayer. "Taxpayer" is a person or entity who is liable under article 29-A of the New York State Tax Law to pay the MTA Tax to the New York State Department of Taxation and Finance.

Trip record. A "trip record" also known as a trip sheet or trip log, is the written, computerized, automated and/or electronic accounting of a taxicab ride. The trip data to be transmitted or recorded shall include the taxicab license number (medallion number); the taxicab driver's license number; the location of trip initiation; the time of trip initiation; the number of passengers; the location of trip termination; the time of trip termination; the itemized metered fare for the trip (tolls, surcharge, and tip if paid by credit or debit card); the distance of the trip, the trip number, the method of payment, the total number of passengers, as well as such other information as may be required by the Commission. The electronic capture of required trip record data shall commence no later than the compliance date set forth in section 1-01 of this title. Trip record information shall be available to the TLC, the taxicab driver, medallion owner, taxicab owner and/or leasing agent upon reasonable demand based upon parameters set between the TLC and approved vendor(s). The trip record shall be kept in an approved archived form for a minimum of three years after the date of the taxicab ride.

Weapon. A weapon is any firearm (as defined in the New York State Penal Law) for which a license has not been issued as provided in the New York State Penal Law and the Administrative Code of the City of New York, electronic dartgun, gravity knife, switchblade knife, cane sword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sandstick, slingshot, pilum ballistic knife, sand bag, sand club, wrist brace type slingshot, shirken, kung fu star, dagger, dangerous knife, dirk, razor, stiletto, imitation pistol or any other instrument or thing whether real or simulated, and capable of inflicting or threatening bodily harm, including but not limited to any other weapons, the possession of which is prohibited pursuant to the New York State Penal Law.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Accessible taxicab added City Record Nov. 23, 2007 §3, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Chauffeur's license amended City Record Dec. 29, 1995 §21, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Handicapped person repealed City Record Dec. 29, 1995 §21, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

MTA Tax added City Record Sept. 25, 2009 §8, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Occupant classification system added City Record Oct. 1, 2008 §1, eff. Oct. 1, 2008 per City Record notice. [See T35 §2-26 Note 1]

Person with a Disability added City Record July 8, 1997 eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Portable or hands-free electronic device added City Record Dec. 30, 2009 §2, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Service Animal added City Record July 8, 1997 eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Side airbag added City Record Oct. 1, 2008 §1, eff. Oct. 1, 2008 per City Record notice. [See T35 §2-26 Note 1]

Taxicab technology service provider added City Record June 12, 2007 §10, eff. July 12, 2007. [See T35 §1-01 Note 3]

Taxicab technology system added City Record June 12, 2007 §10, eff. July 12, 2007. [See T35 §1-01 Note 3]

Taxpayer added City Record Sept. 25, 2009 §8, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Trip record amended City Record June 12, 2007 §10, eff. July 12, 2007. [See T35 §1-01 Note 3]

Trip record amended City Record May 11, 2005 §4, eff. June 10, 2005. [See T35 §3-03 Note 10]

Weapon amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-25 Note 2]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Administrative law judge determines that pepper spray is a weapon. **Taxi and Limousine Comm'n v. Dianis,** OATH Index No. 1832/00 (Apr. 10, 2000).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-02 Requirements for a Taxicab Driver's License to Operate a Medallion Taxicab.

(a) An applicant for a taxicab driver's license:

(1) must be at least 19 years of age;

(2) if an applicant for an original license, must provide to the Commission proof of identity in the form of

(i) A valid form of photo identification issued by the United States, any state or territory thereof, or any political subdivision of such state or territory; and

(ii) A valid, original social security card;

(3) must be a holder of a valid New York State chauffeur's license, or a holder of an equivalent class of valid license from another state of which he or she is a resident and who provides the Commission with an abstract of his or her driving record from that state. For the purposes of these rules, a valid chauffeur's license, or a license of an equivalent class, shall mean a license, issued by the New York State Department of Motor Vehicles or by the agency of another state which issues such license, which is neither probationary, suspended, revoked, conditional, nor restricted as to use for violations of traffic laws or regulations.

(4) must be of sound physical condition as certified to by a physician licensed to practice in New York State or in the state in which the applicant resides, on forms provided by the Commission. If the Commission has cause to believe that an applicant or driver has a physical or mental impairment that renders him or her unfit for the safe operation of a

taxicab, it may direct the applicant or driver to appear before a duly licensed physician designated by the Commission, for an examination of his physical or mental condition. Failure to appear as directed may lead to suspension or revocation of an existing license;

(5) must not be addicted to the use of drugs or intoxicating liquors;

(6) must be able to speak, read, write and understand the English language;

(7) must be of good moral character;

(8) must be familiar with the geography, streets and traffic regulations of the City of New York and the rules and regulations of the New York City Taxi and Limousine Commission, as well as the Vehicle and Traffic Law of the State of New York;

(9) must be the holder of a certificate of attendance for the required hours of instruction in taxi related subjects at a school approved by the Commission; and

(10) must be the holder of a certificate of completion for the required hours of instruction in a defensive driving course from a school, facility or agency authorized by the Commission and certified by the New York State Department of Motor Vehicles. The course must have been completed within six (6) months prior to the date of application.

(b) An application for a taxicab driver's license must be signed by the applicant and filed by him in person with the Commission, on the forms provided by the Commission. An applicant for a taxicab operator's license shall agree that service of any paper, notice, letter, summons, complaint or legal process of any kind or nature may be made by the City of New York, or any department thereof, upon the person to whom the license is issued by leaving a copy of any such paper, notice, letter, summons, complaint or legal process with any member of his or her family or other person with whom he or she may reside at the address listed in his or her application.

(c) An applicant is required to be fingerprinted and to pass all prescribed tests, both oral and written, as administered by the Commission or at its direction.

(d) Any member of the New York City Police Department, applying for a taxicab driver's license, and satisfying all the requirements herein for such a license, must present a letter from his commanding officer approving such application.

(e) Any material falsification contained in an original or renewal application for a license or any failure to notify the Commission of any material change in the information contained therein, shall be cause for denial, suspension or revocation of such license, in addition to any other sanctions imposed by the Commission.

(f) If at any time during the term of the taxicab driver's license the Commission becomes aware of information that the driver no longer meets the requirements for a taxicab driver's license, the Commission may deny his renewal application or suspend or revoke his license.

(g) An applicant or renewal applicant or any person acting on his behalf shall not offer or give any gift, gratuity or thing of value to any employee, representative or member of the Commission, or any public servant. An applicant or renewal applicant shall immediately report to the Inspector General of the Commission any request or demand for any gift, gratuity or thing of value by any employee, representative or member of the Commission, or any public servant.

(h) If the Commission determines that the applicant has failed to meet the requirements for a taxicab driver's license it will deny the license or its renewal and specify in writing to the applicant the reason for such denial.

(i) An applicant for a taxicab driver's license, other than an applicant who is a City of New York Police Officer, shall be tested, at the applicant's expense, for drugs or controlled substances, as set forth in §3306 of the Public Health

Law. Such testing shall be performed by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. A positive test shall result in the denial of a new application. Said determination shall be a final agency decision. A renewal applicant must be tested for drugs in accordance with §2-19(b) of this chapter.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Section heading amended City Record Dec. 29, 1995 §22, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (a) amended City Record Oct. 31, 2006 §2, eff. Nov. 30, 2006. [See T35 §1-02 Note 2]

Subd. (a) amended City Record Dec. 29, 1995 §22, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (a) par (3) amended City Record July 15, 1999 §1, eff. Aug. 14, 1999. [See Note 1]

Subd. (a) par (8) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (a) par (9) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (a) par (10) added City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (i) amended City Record Feb. 14, 2006 §6, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

Subd. (i) amended City Record Oct. 31, 2000 §2, eff. Nov. 30, 2000. [See T35 §2-03 Note 1]

Subd. (i) amended City Record Apr. 12, 1999 §1, eff. May 12, 1999. [See T35 §2-19 Note 1]

Subd. (i) added City Record June 26, 1998 eff. July 26, 1998. [See Note 3]

DERIVATION

Former §2-02 subd. (j) amended City Record Jan. 2, 1992 eff. Feb. 1, 1992.

NOTE

1. Statement of Basis and Purpose in City Record July 15, 1999:

The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the City, under §2303(b)(2) of such Charter, authorizing the TLC to promulgate rules relating to the standards and conditions of service, under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules necessary to exercise authority conferred upon it by the Charter, and under §19-505 of said Code, authorizing the Commission to establish qualifications for licensure.

The rule changes set forth herein establish uniform standards for the licensure of taxicab, for-hire vehicle, and paratransit services drivers, and prohibit such drivers from obtaining a TLC license while they hold a probationary, restricted, or conditional license issued by the New York State Department of Motor Vehicles or an equivalent agency of another State.

The purpose of these amendments is to protect public safety by ensuring that Commission licensees hold valid, unrestricted licenses. State law already precludes most holders of restricted or conditional licenses from obtaining TLC licenses. The amendments proposed herein would also prohibit the holders of probationary licenses from obtaining a TLC license until their probationary period has expired. Probationary licensees are newly licensed individuals. In most cases, probationary licensees have less than six months of driving experience. Prohibiting probationary drivers from holding TLC licenses will ensure that a licensee will have at least a minimum amount of driving experience, and will have demonstrated a satisfactory driving record.

No provision has been made for amending the commuter van rules since commuter van drivers are presently subject to the more rigorous requirements of Article 19-A of the Vehicle and Traffic Law.

2. Statement of Basis and Purpose in City Record June 26, 1998: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under section 2303(b)(2) of such Charter, authorizing TLC to promulgate rules and regulations reasonably related to safety and service quality; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The regulation requires all taxicab drivers and for-hire vehicle drivers to complete a Defensive Driving Program authorized by the Commission. New applicants for a taxicab or for-hire vehicle driver's license would be required to have completed this course within six (6) months prior to the date of application. Licensed taxicab and for-hire vehicle drivers would be required to complete the course every three (3) years. The purpose of the regulation is to promote the safety of drivers, passengers and the general public, by ensuring that taxicab drivers and for-hire vehicle drivers are skilled in defensive driving and other safe driving techniques. The course is the same as now required for all new licensees by the New York State Department of Motor Vehicles, and enables drivers to receive benefits on their DMV licenses, such as point reductions, and to receive a discount on their motor vehicle insurance premiums. Independent studies conducted by the State of New York have determined that participants in such defensive driving programs tend to be safer drivers.

3. Statement of Basis and Purpose in City Record June 26, 1998: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under Section 2303(b)(2) and (13) of such Charter authorizing the TLC to promulgate rules and regulations related to safety and standards of service which are reasonably designed to carry out its purpose; and under Section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The amendments require the testing of new and renewal applicants for taxicab and for-hire vehicle driver's licenses for drugs and other controlled substances. The drugs and controlled substances that would be tested for include those listed in Section 3306 of the New York State Public Health Law. The possession or use of these substances is prohibited by law. A positive test result would lead to the denial of a new license application, and may lead to the denial of a renewal application following a hearing. In addition, if the Commission has reasonable suspicion to believe that a licensed taxicab or for-hire vehicle driver is impaired due to ingestion of a drug or other controlled substance and unable to drive his taxicab or for-hire vehicle safely, the Commission may direct that the driver be tested for such impairment. If the results of said test(s) or examination(s) are positive, the driver's license may be revoked following a hearing. Furthermore, if the taxicab or for-hire vehicle driver fails to be tested or examined as directed, the driver's license may be suspended or revoked. The regulations promulgated by the Commission are similar in content to the mandatory drug testing provisions contained in the United States Department of Transportation (USDOT) regulations mandating drug testing for individuals who hold safety related positions with public transportation systems. The method of drug testing proposed by the Commission, urinalysis, is the least expensive or personally intrusive, and most reliable test presently available. Except for new and renewal applicants, drug testing for other licensees will be conducted only where there is a reasonable basis to believe the individual is using an illicit drug. Such reasonable basis must be articulated, based

upon objective criteria. The regulations also prohibit taxicab or for-hire vehicle drivers from operating their taxicab or for-hire vehicle while their ability is impaired by liquor, drugs or other controlled substances, and prohibit the use or consumption of drugs, alcohol or other controlled substances within six (6) hours of operating their vehicle. This portion of the proposed regulation is similar to New York State Vehicle and Traffic Law ("VTL") Section 509-L, which provides that no bus driver shall consume a drug, controlled substance or an intoxicating liquor regardless of its alcoholic content for six hours prior to going on duty or operating or physically controlling a bus. It is also similar to the USDOT regulations which prohibit employees of mass transit systems in safety related functions from consuming alcohol within four (4) hours of performing such duties. The regulations also impose a penalty of mandatory revocation of a hack or for-hire vehicle operator's license for a conviction of operating a vehicle while impaired, or operating a vehicle within six (6) hours of consuming intoxicating liquor, drugs or other controlled substances. The purpose of these proposed amendments to TLC regulations is to promote the safety of passengers and the general public by ensuring that taxicab and for-hire vehicle drivers are not operating their vehicles when they are unfit because of impairment caused by drug, controlled substance or alcohol use. The regulations clearly establish a Commission policy of zero tolerance for licensees who use illegal substances, or who operate their vehicles while their ability to do so is impaired by substances, whether or not illegal.

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35 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-03 Driver License Applicant Training.

(a) Except as set forth in subdivisions (c) and (d) of this section, all applicants for a taxicab driver's license are required to attend and pass an authorized course of training in taxi-related subjects. This course shall contain eighty (80) hours of instruction. The course shall include, but not be limited to, instruction on Commission rules and procedures, geography, map reading skills, driver/passenger relations and courtesy, as well as any other material deemed appropriate or relevant by the Commission. An applicant must successfully complete such course, and pass an examination administered by the Commission on mandatory subjects, as well as proficiency in the English language, as a prerequisite to obtaining a taxicab driver's license.

(b) Providers of authorized training services must be approved by the Commission and must administer the curriculum required by the Commission as set forth in subdivision (a) or (c). The Commission must also approve any and all charges to applicants by authorized providers of training services.

(c) Applicants who are City of New York Police Officers shall be exempt from the course requirement as set forth in subdivision (a). Such applicants must pass an examination administered by the Commission as a prerequisite to obtaining a taxicab driver's license.

(d) Any applicant for a license under this chapter who previously held a taxicab driver's license pursuant to this chapter and who had previously met the requirements of §2-03(a) of this chapter shall not be required to meet such requirements again and shall be deemed to have fulfilled the pre-requisite to obtaining a taxicab driver's license as specified in §2-03(a) of this chapter, provided that

(1) Such applicant's prior taxicab driver's license expired solely because the applicant was not available to timely renew such license because the applicant was on active military service, and not as a result of any action taken or commenced by the Commission to suspend, revoke, or otherwise terminate such license;

(2) Such applicant's military service commenced prior to the expiration date of his or her prior license and such applicant applies for a new taxicab driver's license under these rules within ninety (90) days of completing active military service, and in no event later than three (3) years following expiration of the prior license, and applicant provides proof of the dates of active military service; and

(3) Such applicant meets all other requirements for obtaining a new taxicab driver's license.

HISTORICAL NOTE

Section amended City Record Oct. 31, 2000 §1, eff. Nov. 30, 2000. [See Note 1]

Section amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section amended City Record Apr. 30, 1992 eff. May 30, 1992.

Section in original publication July 1, 1991.

Subd. (a) amended City Record May 26, 2006 §1, eff. June 25, 2006. [See Note 3]

Subd. (a) par (1) amended City Record Dec. 29, 1995 §23, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) par (1)-(3) amended City Record Dec. 29, 1995 §23, eff. Feb. 1, 1996. [See T35 §1-01

Note 1]

Subd. (c) repealed City Record Dec. 29, 1995 §23, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (d) added City Record May 26, 2006 §2, eff. June 25, 2006. [See Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 31, 2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which permits TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the City; under §2303(b)(5) of such Charter, authorizing TLC to promulgate rules and regulations regarding the licensing of taxicab and for-hire vehicle drivers; under §2303(b)(13) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under §19-505 of said Code, authorizing the TLC to promulgate Rules with respect to conditions for driver licensing.

The regulations shall exempt currently employed City of New York Police Officers from the 80-hour course requirement set forth in 35 RCNY §2-03, provided that they pass an examination administered by the Commission.

The purpose of this Rule amendment is to encourage Police Officers to apply for taxicab drivers' licenses by exempting such applicants from Commission course requirements.

Police Officers would also be exempt from mandatory drug testing applicable to both taxicab and for-hire vehicle drivers since such Officers are subject to random drug testing as a condition of their employment.

2. Statement of Basis and Purpose in City Record Oct. 21, 1998: The regulation promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under section 2303(a) of the Charter of the City of New York, which permits TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b)(5) of such Charter, authorizing TLC to promulgate rules and regulations regarding the licensing of taxicab drivers; under section 2303(b)(13) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The adopted rule replaces the series of fourteen (14), forty (40) and eighty (80) hour applicant training classes presently being offered with one standardized eighty (80) hour class required of all applicants. Applicants for a taxicab driver's license are currently administered an English proficiency test by the Commission upon submission of their application. The examination is administered in two parts: (1) applicants who pass only the first component of the exam qualify for the 80 hour course; and (2) applicants who pass both the first and second portions of the exam qualify for the 40 hour course. An applicant who fails both portions of the exam does not qualify for either the 40 hour or the 80 hour course, and he or she is eligible to be re-tested after three months. The 40-hour course emphasizes taxi related subjects, including map reading and geography. The 80-hour course includes instruction in English language skills, as well as the same taxi related subjects that are covered in the 40 hour course. In addition, applicants may also qualify for a 14-hour advanced placement course-a condensed course which emphasizes geography and TLC regulations. Very few applicants have qualified for the 14-hour advanced placement class. This rule standardizes the applicant testing process by requiring that all applicants enroll in and complete a comprehensive, eighty (80) hour training class. This class will expand and intensify instruction on such topics as geography and map reading, which would assure the driver's familiarity with New York City locations. It will also include extensive instruction on route design, passenger courtesy, and familiarity with TLC rules and the consequences of violating them. Changes in the rules recently enacted by the Commission will be highlighted in this course. Instruction in these subjects is particularly important in light of the recent rule changes mandating more serious penalties, including possible suspension or revocation of licenses, for certain TLC rule violations. The Commission will no longer provide instruction in English language skills as part of the applicant training process. This change is consistent with existing TLC rules, which make English proficiency a prerequisite for licensure. In order to assure integrity and proper control over the issuance of licenses, the Commission will incorporate an English proficiency component into the final examination covering taxi-related subjects, upon the completion of the eighty (80) hour course of study. This rule abolishes both the 40 hour class and the 14 hour Advanced Placement class, replacing it with a standardized 80 hour course for all applicants. This change is necessary because the material to be taught to all applicants, includding essential taxi-related skills such as map reading and geography, driver courtesy, route design, and knowledge of TLC rules and procedures, cannot be adequately covered in less than eighty- (80) hours of instruction. The rule amendment also deletes references to the fee schedule charged for the course by the TLC approved taxi schools, thereby enabling the Commission to adjust the course fee, as necessary, without a rule amendment. The deletion of the fee schedule allows the Commission to exercise agency discretion and flexibility in its dealings with the taxi schools, so that it may administratively monitor limitations on the fees charged to taxicab driver applicants, as part of its oversight and control of the quality of the education offered by the designated schools.

3. Statement of Basis and Purpose in City Record May 26, 2006: The rules amend previously existing Taxi and Limousine Commission ("TLC") rules in two respects. First, the rules alter license application requirements for taxicab drivers whose licenses expire because they are unable to file renewal applications due to active military service. Existing rules require a new applicant for a taxicab driver's license to complete 80 hours of instruction in taxi-related subjects and pass an examination as a pre-requisite to obtaining a taxicab driver's license. The amended rules waive this requirement for a taxicab driver who is unable to renew his or her driver's license due to active military service, provided that the driver files an application for a driver's license within 90 days of discharge from active military service, and within three years of expiration of his or her previous driver's license. The purpose of this change is to

allow taxicab drivers to resume taxicab service with a minimum of delay upon return from military duty. Second, the rules amend existing TLC rules to permit a licensed taxicab driver or for-hire vehicle driver to advance the date of expiration of his or her non-probationary license one time during the second year of any renewal period. Previously existing rules provide that a licensed taxicab or for-hire vehicle driver must submit a completed renewal application by the expiration date of the license to be renewed, and that such application must include drug testing performed no earlier than 30 days before the expiration date of the license to be renewed. Failure to take a drug test by the license expiration date or to renew within the prescribed time period results in expiration of the license; thereafter, in order to obtain a license, the applicant must complete the requirements for a new license, which are more extensive than the requirements for a renewal license. Experience has demonstrated that a significant number of taxicab and for-hire vehicle drivers are periodically absent from the New York City area for personal reasons, for extended periods of time. In some cases, those absences extend through the entire 30-day period during which the licensee must submit to drug testing and apply for license renewal, resulting in substantial inconvenience or even hardship to the licensee. The amended rules will permit a driver (other than a driver still in his or her probationary period) who is in the second year of a license and who might not be able to timely file a completed renewal application because of such an extended absence to advance his or her expiration date and complete the renewal application prior to the period of absence. The amended rules allow the licensee, upon submission of the prescribed form, to advance his or her license expiration date as of right one time during the second year of any renewal period, provided that the licensee has completed the drug test required for licensees in the first year of a two year license. The licensee's 30-day drug test window would be advanced to correspond to the advanced expiration date, and all other requirements of a license renewal application are retained. The renewal license then issued will be valid for two years from the advanced expiration date of the previous license. Finally, the rules enable those few drivers who are unable to take advantage of the foregoing because their licenses expire in the period between the date the revised drug test rules became effective on March 16, 2006 and June 23, 2006 to seek relief if they have been unable to take the drug test within the required time as a result of being absent from the New York City area. Under the rule, such drivers will have until September 15, 2006 to apply to the Chairperson or his or her designee for a six-month extension of time to renew their licenses. A driver seeking such an extension will be required to supply documentation demonstrating that the driver was absent from New York City during the time required for the taking of the drug test and was therefore not reasonably able to submit a completed license renewal application before the expiration of such holder's license. If a driver's request for an extension of time is granted, the driver must complete all requirements applicable to renewal license applicants and pay the late filing fee provided by the current rules. Such renewal applicants will be required to take their drug test no sooner than thirty days prior to the completion of the renewal application. A driver's license will remain expired until the renewal license is issued. This change is made to accommodate the small number of drivers who may not be able to advance their expiration dates as permitted by these amendments but whose licenses may have expired when they were unable to comply with the new drug test date requirements which became effective on March 16, 2006. Under current rules, a renewal applicant must file a completed application by the expiration date for his current license and such license will expire automatically if the drug test is not taken by such expiration date. Notice of Promulgation of Rules Notice is hereby given in accordance with §1043(e) of the Charter of the City of New York ("Charter") that the Taxi and Limousine Commission ("TLC") hereby promulgates rules altering license application requirements for taxicab drivers whose licenses expire because they are unable to file timely renewal applications due to active military service; and allowing licensed taxicabs and for-hire vehicle drivers to advance the dates of expiration of their non-probationary licenses one time during the second year of any renewal period. These rules are promulgated pursuant to §1043 of the Charter and §§19-503 and 19-505 of the Administrative Code of the City of New York. Proposed rules were published for comment in the City Record on April 7, 2006. A public hearing on those proposed rules was held before the TLC at its offices at 40 Rector Street, 5th Floor; New York, New York 10006 on May 11, 2006, and amendments to the proposed rules were made at the hearing. Pursuant to §1043(e)(1)(c) of the Charter, these rules will take effect 30 days following publication in the City Record.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Taxi driver's request for an adjournment to obtain an interpreter for his license revocation hearing is denied, where administrative law judge determined that driver was able to understand English and make himself understood;

administrative law judge also noted that taxi drivers are required to be proficient in English pursuant to section 2-03(a)(2). **Taxi and Limousine Comm'n v. Dimitrie,** OATH Index No. 1582/98 (Aug. 4, 1998).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-04 Probationary Licenses.

(a) An applicant will be issued a probationary license valid for a period of one year subsequent to the date the license was issued. The Commission will evaluate the applicant at the conclusion of the one-year probationary period, and will determine if renewal of the license is appropriate. In making such determination, the Commission may consider the driving record, any violation of the Taxicab Drivers Rules, or any other evidence that suggests that the driver no longer meets all requirements for a license.

(b) Issuance of a license following the probationary period will be automatically barred or the Commission may revoke a probationary license at any time if any of the following occurs during the probationary period:

(1) The driver is convicted of a crime in any jurisdiction.

(2) The driver is convicted of driving while impaired by alcohol or drugs.

(3) The driver is convicted of refusing to submit to a breathalyzer or other chemical test.

(4) The driver is convicted of leaving the scene of an accident.

(5) The driver accumulates eight or more points against his New York State Chauffeur's License or a comparable license issued by his State of residence, the total of which shall include points existing on the driver's State license prior to his or her application for a license with the Commission.

(6) The driver is convicted of three or more moving violations.

(7) The driver is convicted of two speeding violations.

(8) The driver accumulates four or more points in accordance with the Commission's persistent violator program described in Drivers Rule 2-70.

(9) The driver is convicted of two or more violations of Drivers Rules 2-34(a), 2-34(b), 2-50(a), or 2-50(b).

(c) For purposes of subdivision (b) of this rule, the Commission will consider the date of occurrence rather than the date of conviction when determining if a violation occurred within the probationary period.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1998 eff. July 26, 1998. [See Notes 1, 2]

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Nov. 2, 2006 §4, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

DERIVATION

Former §2-04 subd. (a) amended City Record Apr. 30, 1992 eff. May, 30, 1992.

NOTE

1. Former §2-04 Sponsored Taxicab Driver Applicants was repealed. Note Statement of Basis and Purpose in City Record June 26, 1998:

The rule deletion promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under Section 2303(a) of the New York City Charter, which empowers the TLC to regulate and supervise the business and industry of transportation of such persons by licensed vehicles for-hire in New York City; under Section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under Section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The Commission is deleting the rule concerning the sponsorship taxicab program, as it discontinued this program several years ago. The Commission further believes that no applicant should be permitted to drive a taxicab until all records of prior criminal acts and other licensing standards matters have been reviewed. The original purpose of the sponsorship program was to enable individuals to operate on a conditional basis while their license application was being processed. In the past, processing of license applications took several months because the New York State Division of Criminal Justice Services was unable to complete criminal background investigations of prospective licensees in an expeditious manner. The State is now able to process background investigations in several days; hence the TLC is able to process license applications more expeditiously than was previously the case. The sponsorship program is no longer necessary nor is it desirable since it enables individuals to transport passengers for hire before their criminal backgrounds have been investigated.

2. Statement of Basis and Purpose in City Record June 26, 1998: The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the New York City Charter, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in New York; under Section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under Section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred

upon it by the Charter. The rule promulgated herein provides for the issuance of a one-year probationary license to all new applicants. This regulation was patterned after the probationary driver program instituted by the New York State Department of Motor Vehicles, which permits the State to suspend the drivers licenses of new licensees who, in some instances, have committed only one traffic offense. The Commission is committed to raising the quality of service provided by taxicab and for-hire vehicle drivers, improving the driving habits of licensees, and identifying unsafe driving practices of licensees immediately after licensure. Under these regulations all new drivers will be closely scrutinized during the probationary period, and would not be able to renew their licenses as a matter of right. Drivers who are convicted of a crime, commit serious driving infractions, or repeatedly violate Commission rules will not be permitted to renew their licenses.

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***** Current through December 2009 ****

35 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-05 License Fees.

(a) In accordance with §19-505(j) of the Administrative Code of the City of New York, the fee for a taxicab driver's license shall be sixty dollars ($60) annually.

(b) The fee for an original license or a renewal thereof shall be paid at the time of filing the applications and shall not be refunded in the event of disapproval of the application.

(c) A driver shall submit an application for renewal of his or her driver's license no later than the expiration date of the license. There shall be an additional fee of twenty-five dollars ($25) for late filing of a license renewal application where such filing is permitted by the Commission.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (c) amended City Record Dec. 29, 1995 §24, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

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***** Current through December 2009 ****

35 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-06 Administrative Fees.

(a) An additional fee of twenty-five dollars ($25) shall be paid for each license issued to replace a lost or mutilated license.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

35 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-07 Critical Driver Program

(a) The taxicab driver's license of any driver who, within a period of fifteen months, accumulates six or more points against his license issued by the Department of Motor Vehicles or an equivalent license issued by the driver's state of residence, unless previously revoked, shall be suspended for thirty days.

(b) The taxicab driver's license of any driver who, within a period of fifteen months, accumulates ten or more points against his license issued by the Department of Motor Vehicles or an equivalent license issued by the driver's state of residence shall be revoked.

(c) The Commission may at any time review the fitness of a driver to be licensed by the Commission in view of any moving violation, accident, or other driving related incident. Nothing contained herein shall preclude the imposition by the Commission of additional or more severe penalties, or any other action deemed appropriate, in accordance with the Rules of the Commission.

(d) For the purpose of this rule, the points assigned by the Department of Motor Vehicles for any violation shall be deemed to have been accumulated as of the date of occurrence of the violation.

(e) The relevant fifteen month period to be used for calculating any suspension or revocation imposed under subsection (a) or (b) herein shall be calculated from the date of the most recent occurrence which led to a conviction of a violation carrying points; provided however, that no action under subsection (a) or (b) shall be taken with regard to any violation carrying points which occurred prior to February 15, 1999.

(f) For the purpose of calculating penalties pursuant to subsection (a) or (b), herein, a driver who has accumulated points for multiple violations arising from a single incident shall be deemed to have accumulated points for the single violation with the highest point total.

(g) Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the Department of Motor Vehicles, and who furnishes the Commission with proof that the course was completed on or before August 31, 1999, shall have two (2) points deducted from the total number of points assessed for the purpose of determining any suspension or revocation pursuant to this Rule. No point reduction shall affect any suspension or revocation action which may be taken pursuant to these Rules prior to the completion of the course; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

(h) Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the Department of Motor Vehicles, and who furnishes the Commission with proof that the course was completed on or after September 1, 1999, shall have two (2) points deducted from the total number of points assessed pursuant to this Rule. No point reduction shall affect any suspension or revocation action taken pursuant to these Rules prior to the completion of the course. No person shall receive a point reduction pursuant to this subsection more than once in any eighteen month period; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

HISTORICAL NOTE

Section repealed City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Section amended City Record Jan. 31, 2000 §1, eff. Mar. 1, 2000. [See Note 1]

Section added City Record Jan. 15, 1999 eff. Feb. 14, 1999. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 31, 2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under §§19-507.1 and 19-507.2 of said Code, setting forth provisions for Persistent Violator and Critical Driver Programs.

The rules amend the Commission's Program for Persistent Violators of Taxicab Drivers Rules and For-Hire Vehicle Rules, as well as the Commission's Critical Driver Program to conform with amendments to the Administrative Code enacted into law on May 26, 1999. The period of time for review of a licensee record is reduced from eighteen (18) to fifteen (15) months under each program. In addition, under the Persistent Violator Program, the number of points needed to result in a license suspension is increased from five (5) to six (6) and for license revocation from eight (8) to ten (10). The rules also provide for the opportunity of a point reduction through the voluntary attendance at a safety-related course.

The purpose of these amendments is to conform the Commission rules to the provisions of the Administrative Code that became effective on May 26, 1999. The Administrative Code contains Critical Driver and Persistent Violator Programs that differ in certain respects from the programs previously set forth in Commission rules. The rules

promulgated herein adopt the changes contained in the Administrative Code as part of Commission Rules.

In addition, the rule amendments make changes in the number of points assigned for violations of certain Commission rules. These changes were made to provide consistency in the number of points assigned for equivalent violations of the Taxicab Drivers and For-Hire Vehicle Rules. In addition, points were assigned for certain serious violations that presently do not carry persistent violator points. The point schedule contained in the For-Hire Vehicle Rules is repromulgated in its entirety to add a reference description for each rule violation, thereby providing consistency with the Taxicab Drivers Rules.

2. Statement of Basis and Purpose in City Record Jan. 15, 1999: The rule promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under §2303(a) of the New York City Charter, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in New York City; under §2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under §19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The rules establish a "Critical Driver Program," by which the Commission will review all driving infractions by taxicab and for-hire vehicle drivers which result in the imposition of "points" under Part 131 of the Regulations of the Department of Motor Vehicles ("DMV"). Those taxicab and for-hire vehicle drivers who accumulate six or more points on their New York State Department of Motor Vehicle Driver's Licenses within 18 months will have their TLC taxicab or for-hire vehicle driver licenses suspended for 30 days. Taxicab or for-hire vehicle ("FHV") drivers who accumulate ten or more points within a period of 18 months will have their taxicab or for-hire vehicle driver licenses revoked. This action will be taken irrespective of any action taken by DMV with respect to the licensee's state-issued operator's license. The purpose of this rule is to protect public safety by suspending or revoking the licenses of individuals who have an unsatisfactory driving record. This rule will relate the existing DMV "point" system, whereby motorists convicted of certain moving violations are assigned points based upon the severity of the offense, to the motorists's TLC license. The number of points required for TLC action against an individual's hack or FHV operator's license is less than the number of points that would result in licensing action being taken by DMV. However, where DMV has assigned points for more than one violation arising out of a particular incident, only the violation carrying the greatest number of points will be used in calculating Critical Driver penalties. The result of this program will be to hold licensees of the Commission to a higher standard with respect to their TLC licenses than the DMV currently holds the general public with respect to state-issued driver's licenses. This higher standard is justified based upon the direct impact licensees of the Commission have upon public safety. A review of the driving records of TLC licensees indicates that a significant number of licensees have accumulated excessive points on their DMV licenses and are still permitted to hold both a State-issued driver's license and a TLC license. Many of these drivers have been involved in serious accidents causing personal injury and property damage. For example, there are more than 100 TLC licensees who have accumulated at least 17 points on their DMV licenses within the past eighteen months. No action against these licensees has been taken by DMV. The Commission believes that adoption of the Critical Driver Program will reduce accidents and compel taxi and livery drivers to obey traffic regulations and operate their vehicles safely. This rule amendment may also reduce insurance costs by creating a better pool of qualified drivers. The Commission believes that a direct correlation between a licensee's DMV record and his or her ability to safely operate a taxicab or for-hire vehicle has been clearly established. The proposed text of this rule was first published in the **City Record** on April 26, 1998. A public hearing on this proposal was held on May 28, 1998. The text of the proposed rule was redrafted to clarify language contained in the earlier draft and to respond to comments received by the Commission in writing and at the public hearing.

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35 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-08 Drivers of Accessible Taxicabs.

A driver of an accessible taxicab must also comply with chapter 16 of this title.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §4, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-08 [Reserved]

HISTORICAL NOTE

Section repealed City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (f) par (2) subpar (11) amended City Record Mar. 6, 1992 eff. Apr. 5, 1992.

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35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-09 [Reserved]

HISTORICAL NOTE

Section repealed City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

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35 RCNY 2-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-10 Term of a License.

(a) The term of a taxicab driver's license shall be as follows:

(1) A license issued to a new applicant shall expire one year subsequent to the date the license was issued as provided in §2-04 of this chapter.

(2)(A) A license issued to a renewing applicant shall expire two years from the date on which the previous license expired. The Commission may, in its discretion, extend the expiration date of such license by up to an additional thirty-one days.

(B) The holder of a renewal license under subparagraph (a)(2)(A) of this paragraph who is in the second year of such license and who has completed the drug test required by §2-19(b)(1) of this chapter for licensees in the first year of such license, may, upon written request to the Chairperson, advance the expiration date of his or her license to any date prior to the scheduled expiration of such license. One such request may be made during the term for such license. The request must be made on a form to be prescribed by the Chairperson or his or her designee and must be submitted in accordance with instructions on that form.

(C) The holder of a license seeking to renew such license after advancing the expiration date thereof hereunder must comply with all requirements for renewal applicants, including with the requirements imposed by §§2-02, 2-11 and 2-19 of this chapter; notwithstanding the provisions of §2-19(b) of this chapter, the drug test provided for therein shall be performed no sooner than thirty (30) days prior to, and in any event no later than, such advanced expiration date. For purposes of §2-19(b) of this chapter, a licensee who has advanced his or her expiration date shall be treated as

being a licensee in the second year of a two-year license.

(D)(i) Notwithstanding the provisions of §2-05(c) of this chapter, the holder of a renewal license under subparagraph (a)(2)(A) of this paragraph that expires between March 16, 2006, and June 23, 2006, inclusive, may request an extension of the time to submit a license renewal application on the ground that the licensee was unable to submit to license renewal drug testing as required by §2-19(b)(1) of this chapter due to the licensee's absence from the New York City area during the entire time provided by that section for submission to such drug testing.

(ii) The request for an extension of time to submit a license renewal application shall be made in writing to the Chairperson or his or her designee and shall include documentation demonstrating that the holder of the license was absent from the New York City area during the entire time provided by §2-19(b)(1) of this chapter for submission to drug testing for the renewal of such license, and was therefore not reasonably able to submit a license renewal application before the expiration of such license.

(iii) Any such request for an extension of time must be received by the Chairperson or his or her designee no later than September 15, 2006. If the Chairperson or his or her designee grants the request, the licensee's time to submit an application for renewal of his or her license shall be extended to six months after the expiration of his or her license.

(iv) A license renewal application submitted by a licensee granted such an extension must comply with all requirements for renewal applications, including payment of the late-filing fee provided by §2-05(c) of this chapter, except that the drug test required by §2-19(b) of this chapter shall be taken no sooner than thirty (30) days prior to the completion of such license renewal application.

(v) The expiration of a license shall not be affected by the licensee's eligibility for an extension, or request for an extension, of the time to submit a license renewal application under this paragraph, and such license shall remain expired until a renewal license is issued under item (iv) of this subparagraph.

(3) A person who engages in a licensed activity after the expiration date of a license and before the issuance of a renewal license is engaged in unlicensed activity and may be subject to penalties pursuant to applicable statutes and regulations. Nothing contained herein shall prevent the Commission from taking any action pursuant to §2-04(b) with respect to conduct which occurred during the probationary period of a new applicant's license, either prior or subsequent to the expiration of the probationary period.

HISTORICAL NOTE

Section amended City Record Mar. 1, 1999 §1, eff. Mar. 31, 1999. [See Note 1]

Section amended City Record Dec. 29, 1995 §25, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (a) par (1) amended City Record Nov. 2, 2006 §5, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (a) par (2) amended City Record May 26, 2006 §3, eff. June 25, 2006. [See T35 §2-03 Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 1, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise

the business and industry of transportation of persons by licensed vehicles for-hire in the City; under §2303(b)(5) of such Charter, authorizing the TLC to adopt rules and regulations relating to issuance of licenses to drivers of taxicabs and for-hire vehicles; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-504(a)(1) of the Administrative Code of the City of New York, authorizing the Commission to issue for-hire vehicle licenses for a period of at least one (1), but not more than two (2) years; and under §19-505(g) of the Administrative Code of the City of New York, authorizing the TLC to issue taxicab driver's licenses and for-hire vehicle operator's permits for a period of at least one (1), but not more than three (3) years.

The rules of the Commission currently provide that all licenses issued by the Commission expire one year after issuance, and are renewable for additional one-year periods. The rules further provide that all licenses expire on the last day of each month, irrespective of the date issued.

This rule amendment provides that taxicab driver's licenses, for-hire vehicle permits and for-hire vehicle operator's permits, and paratransit service base and driver's licenses, would be initially issued and renewed for a period of two (2) years. The rule also provides that the license expiration date would be linked to the date of license issuance, in the case of a new applicant, or a date to be set by the Commission, in the case of a renewal applicant, instead of the last day of the month of issuance.

The existing rules place an unreasonable administrative burden upon the Licensing Division of the Commission. Since each license expires on the last day of a month, the Commission's licensing facility is expected to process a tremendous number of renewal applications at the end of each month. This volume creates delays and crowd control issues at the Commission's licensing facility, and does not provide for an efficient utilization of Commission personnel and other resources. The issuance of two (2) year new and renewal licenses will significantly reduce the number of persons appearing at the Commission's facility. Furthermore, setting the expiration date of a license at a date other than the end of the month will enable the Commission to better serve the public and to provide for the better utilization of resources.

Rules of the City of New York

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35 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-11 Driver Continuing Education.

(a) All licensees are required to attend and satisfactorily complete an authorized course of training in taxi-related subjects prior to the expiration of their probationary license pursuant to §2-04 of this chapter. The course shall be a minimum of four hours and shall include an update of rule changes, a review of driver responsibilities and duties, driver-passenger relations, and an awareness of serving passengers with disabilities. A renewal applicant must successfully complete such course, as verified by the designated school, as a prerequisite to the first renewal of a taxicab driver's license. The course must be completed no sooner than sixty (60) days prior to, and in any event no later than the expiration date of the one-year probationary license.

(b) All licensed taxicab drivers with licenses expiring November 30, 1997 through October 31, 1998 are required to meet the course training certification requirement of section (a) with their renewal application, as if such application is their first renewal application.

(c) The authorized providers of a taxi driver refresher course shall charge each applicant enrolled in such course a fee of twenty dollars ($20).

(d) All renewal applicants are required to attend and complete a defensive driving course from a school, facility or agency authorized by the Commission and certified by the New York State Department of Motor Vehicles. A renewal applicant who submits a certificate of completion for an authorized defensive driving course completed less than three (3) years from the date of the renewal application shall be exempt from this requirement.

HISTORICAL NOTE

Section added City Record July 8, 1997 eff. Aug. 11, 1997. [See Note 1]

Section repealed and reserved City Record Dec. 29, 1995 §26, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (a) amended City Record Nov. 2, 2006 §6, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (a) amended City Record Apr. 12, 1999 §3, eff. May 12, 1999. [See T35 §2-19 Note 1]

Subd. (d) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 2]

NOTE

1. Statement of Basis and Purpose in City Record July 8, 1997:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 2304(b) of such Charter, authorizing TLC to prescribe the rates of fare which may be charged for each type of service rendered; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgated rule requires all taxicab drivers to pass a refresher course in taxi-related subjects prior to receiving their first renewal license. All current drivers must attend such a course within the next year. The purpose of this rule is to provide for the on-going training of drivers, in order to increase the level of service provided to the public.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-12 Valid License Required.

(a) A driver shall not operate a taxicab in the City of New York while his taxicab driver's license is revoked, suspended or expired.

(b)A driver shall not operate a taxicab without a valid New York State chauffeur's license or a valid license of similar class of the state of which he is a resident.

(c) A driver shall immediately surrender his taxicab driver's license to the Commission, upon the suspension or revocation of his chauffeur's license.

(d) A driver shall comply with all restrictions endorsed by the Commission upon his taxicab driver's license.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (b) amended City Record Nov. 2, 2006 §7, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Respondent taxi driver was issued a summons for operating a cab with a suspended hack license. His hack

license was suspended solely because his DMV chauffeur's license had been suspended for thirteen days four months before. Although DMV reinstated respondent's chauffeur's license, he did not check to make sure that the Commission reinstated his hack license. Administrative law judge dismissed the charge because respondent's chauffeur's license had in fact been reinstated when he was served with the summons and therefore the reason for the suspension of the hack license was no longer valid. Commission deemed license revoked as of January 1999 because during pendency of proceeding, respondent was convicted of a new violation at the Commission tribunal and also had a prior record. Commission deemed license revoked as of January 1999 because during pendency of proceeding, respondent was convicted of a new violation at the Commission tribunal and also had a prior record. **Taxi and Limousine Comm'n v. Younis**, OATH Index No. 624/99 (Feb. 24, 1999), **rev'd**, Comm'n Decision (Mar. 2, 1999).

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35 RCNY 2-13

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-13 Improper Use of a License.

(a) A driver shall not apply for or accept more than one taxicab driver's license without the Commission's written permission.

(b) A driver shall not permit any other person to use the driver's taxicab driver's license while operating any vehicle.

HISTORICAL NOTE

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

Subd. (c) repealed City Record Dec. 29, 1995 §27, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Having falsely reported his original hack license lost, a taxicab driver's acceptance of a replacement hack license from the Commission constituted a violation of paragraph (a) of this section. Taxi and Limousine Commission v. Louis, OATH Index No. 1487/97 (Aug. 11, 1997).

¶ 2. Section 2-13(a) prohibits drivers from possessing more than one hack license. Driver violated section 2-13(a) and section 2-61(a) when he falsely reported his hack license stolen in order to obtain a replacement license and then

allowed an unauthorized person to use his replacement hack license, while respondent continued to use his original license. Revocation imposed. **Taxi and Limousine Comm'n v. Nawaz,** OATH Index No. 1433/97 (Jan. 28, 1998).

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***** Current through December 2009 ****

35 RCNY 2-14

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-14 License Must be Safeguarded.

(a) A driver, within seventy-two (72) hours exclusive of weekends and holidays, shall notify the Commission in writing of the loss or theft of his taxicab driver's license.

HISTORICAL NOTE

Section amended City Record Dec. 29, 1995 §28, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pursuant to this section, loss or theft of a hack license must be reported within 72 hours, excluding weekends and holidays. Where a taxicab driver lost his hack license on a Thursday and it was returned to him the following Tuesday, the recovery occurred within 72 hours of the loss as calculated pursuant to this section, and therefore the driver's failure to report the loss did not constitute a violation of this section. Taxi and Limousine Commission v. Ullah, OATH Index No. 1793/97 (Aug. 22, 1997).

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35 RCNY 2-15

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-15 License Must be Readable.

(a) A driver shall immediately surrender for replacement and reissue, any unreadable or unrecognizable taxicab driver's license.

HISTORICAL NOTE

Section amended City Record Dec. 29, 1995 §29, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section repealed and added City Record June 26, 1992 eff. July 26, 1992.

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

35 RCNY 2-16

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-16 Reporting Requirements.

(a) A driver shall report any change of mailing address to the Commission, either in person or by registered or certified mail, return receipt requested within seven (7) days exclusive of weekends and holidays. Any notice from the Commission shall be deemed sufficient if sent to the mailing address furnished by the driver.

(b) A driver shall submit four (4) new photographs to the Commission whenever his physical appearance has changed.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

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***** Current through December 2009 ****

35 RCNY 2-17

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-17 Vehicle Must be Licensed.

(a) A driver shall not knowingly operate a vehicle for hire unless such vehicle is properly licensed by the Commission.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Appointing a gypsy cab to look like a medallion cab, including use of yellow paint reserved for medallion taxis, violates this section as well as the general prohibition against fraud and misrepresentation in §2-61(a) of this title, warranting revocation of the respondent's hack license. Taxi and Limousine Commission v. Min, OATH Index No. 669/96 (Nov. 13, 1995).

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Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-18 [Reserved]

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35 RCNY 2-19

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-19 Drug Testing of Licensed Taxicab Drivers.

(a) If the Commission has reasonable suspicion to believe that a driver has a drug or controlled substance impairment that renders him or her unfit for the safe operation of a taxicab, it may direct that the driver be tested or examined for such impairment, at the driver's expense, by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. If the results of said test(s) or examination(s) are positive, the driver's license may be revoked after a hearing. Failure of a driver to be tested or examined as directed may lead to suspension or revocation of such driver's license in accordance with §8-16 of this title.

(b)(1) Notwithstanding the foregoing, each licensee, other than a licensee who is a City of New York Police Officer, also shall be tested annually, at the licensee's expense, for drugs or controlled substances, as set forth in §3306 of the Public Health Law. For licensees in the first year of a two-year license, such testing must occur no sooner than thirty (30) days prior to, and in any event no later than, the date one year prior to the expiration date of such license. For licensees in the second year of a two-year license, such testing must occur no sooner than thirty (30) days prior to, and in any event no later than the expiration date of such license. Such testing shall be performed by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health.

(2) If the results of said test are positive, the driver's license may be revoked after a hearing in accordance with §8-15 of this title.

(3) Failure of a licensee in the first year of a two-year license to be tested no sooner than thirty (30) days prior to, and in any event no later than, the date one year prior to the expiration date of such license shall result in suspension of the driver's license in accordance with §8-17 of this title. If such licensee undergoes the required testing within thirty

(30) days after the date one year prior to the expiration date of the current license, the suspension of the driver's license shall be lifted. If such licensee undergoes the required testing more than thirty (30) days after the date one year prior to the expiration date of the current license, such licensee shall also be required to pay a penalty of $200 to have the suspension of the driver's license lifted.

(4) Failure of a licensee in the second year of a two-year license to be tested by the expiration date of such license shall result in denial of a license renewal application, if any, and expiration of the license.

HISTORICAL NOTE

Section amended City Record Feb. 14, 2006 §1, eff. Mar. 16, 2006. [See Note 3]

Section amended City Record Nov. 21, 2005 §1, eff. Nov. 21, 2005 until Mar. 21, 2006 per Charter

§1043(h) 60 day extension notice in City Record Jan. 6, 2006. [See Note 1]

Section added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 3]

Subd. (b) amended City Record Oct. 31, 2000 §3, eff. Nov. 30, 2000. [See T35 §2-03 Note 1]

Subd. (b) added City Record Apr. 12, 1999 §2, eff. May 12, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 12, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under §2303(b)(5) of such Charter, authorizing the TLC to promulgate rules and regulations relating to issuance of licenses to drivers of taxicabs and for-hire vehicles; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under §19-505 of such Code, authorizing the Commission to establish criteria for licensure.

On February 18, 1999, the Commission adopted rules authorizing the issuance of two-year taxicab driver's licenses and for-hire vehicle operator's permits. The change in the term of licenses will have an impact upon the existing drug testing and continuing education requirements. Presently, applicants and licensees are tested annually for drugs and other controlled substances, in connection with the renewal of their licenses. New applicants are required to complete a continuing education program prior to the first annual renewal of their license.

The rule amendments set forth herein retain the annual drug testing requirement, notwithstanding the issuance of licenses for two year periods. In addition, newly-licensed taxicab drivers will still be required to complete the continuing education class within one year after obtaining a taxicab driver's license.

The purpose of these amendments is to ensure that existing driver continuing education and drug testing requirements remain unaltered, notwithstanding the issuance of taxicab driver's licenses and for-hire vehicle operator's permits for two-year periods.

2. Statement of Basis and Purpose in City Record Nov. 21, 2005: This rulemaking pursuant to §1043(h)(1) of the New York City Charter empowers the Taxi and Limousine Commission ("Commission") to impose fines on taxicab and for-hire vehicle drivers (collectively "licensees") for failure to take an annual drug test as required under the Commission's Rules. This rulemaking also establishes the procedure for suspension of licensees' driver's licenses following failure to comply with the annual drug test requirement. The rule provides that licensees who fail to undergo

annual drug testing shall have their driver's licenses suspended. Upon failure to be tested by the anniversary of the date of issuance of the current license, a licensee will not be allowed to operate a taxicab or a for-hire vehicle until he or she complies with the annual requirement and undergoes a drug test. This rule further clarifies that if the drug test result is positive, the licensee will undergo a fitness hearing to determine whether the license should be revoked. The rule establishes that if a licensee fails to take a drug test, the driver's license shall be summarily suspended. The Commission is required to notify the licensee either by personal service or by first class mail to the last mailing address filed with the Commission that the licensee's driver's license shall be suspended either immediately upon service of such notice if made by personal service, or five (5) days after the date of the mailing of such notice if mailed. The licensee is then given the opportunity to refute that suspension within ten (10) calendar days of such notice if such notice is given by personal service, or within fifteen (15) calendar days if such notice is sent by mail. Alternatively, instead of submitting documentation, a licensee may submit a guilty plea to the Commission, pay any applicable fine, comply with the underlying Rule or Administrative Code Section, and furnish proof of such compliance to the satisfaction of the Chairperson or his or her designee. If the licensee chooses to plead guilty, his or her opportunity to be heard shall be waived, and his or her suspension will be lifted upon the furnishing of the proof of compliance and the payment of a fine if applicable. If an ALJ determines that the licensee committed a violation by failing to take the drug test, or if the licensee waives the opportunity to be heard by failing to respond within ten (10) calendar days of personal service or fifteen (15) calendar days of the date of mailing if service is by mail, the penalty will be imposed and the suspension shall remain until the licensee complies with the requirement. An ALJ's determination is final, and the licensee may appeal the decision pursuant to §8-13 of the Commission Rules. Finally, to encourage prompt compliance with the drug test requirements, the rule provides that if a licensee who has failed to take his or her annual drug test by the anniversary of the date of the current license subsequently submits to such test within thirty (30) days of such anniversary, the suspension will be lifted, though a conviction will remain on the licensee's record. If a licensee waits to take the drug test until more than thirty (30) days after the anniversary of the issuance of the current license, the suspension will be lifted only after the licensee also pays a penalty of $200. Finding Pursuant to NYC Charter Section 1043(h)(1) I hereby make the following finding that a rulemaking pursuant to §1043(h)(1) of the New York City Charter relating to license suspension procedures for taxicab and for-hire vehicle drivers who fail to submit to required drug tests is necessary and proper. The Taxi and Limousine Commission licenses and regulates over 50,000 vehicles and approximately 100,000 drivers each year. Each day taxicabs and for-hire vehicles transport approximately 900,000 passengers. The vast number of New Yorkers affected by the use of taxicabs and for-hire vehicles requires that drivers be fit to operate such vehicles. A drug-free driving force ensures the health and safety of passengers, other motorists and pedestrians in the City of New York. The New York City Charter explicitly charges the Commission with the regulation and supervision of the industry of transportation of persons licensed by vehicles in the city, including the establishment of safety standards. City Charter §2303. The City Council previously established that taxicab and for-hire vehicle drivers must, as a requirement for licensure, not be addicted to the use of drugs or intoxicating liquors. Administrative Code §19-505(b)(6). Using such requirement as a guideline, the Commission required that all drivers must annually submit to a drug test as proof that they are not using drugs or alcohol. TLC Rules §2-19(b), 6-16(v). I find that this new procedure is necessary to ensure that the TLC licenses of drivers who fail to submit to their annual drug tests may be suspended immediately, pending their compliance with drug test requirements. THEREFORE, I find that the immediate effectiveness of a rule relating to the establishment of license suspension procedures for failure to be tested for drugs or controlled substances pursuant to Chapter 5 of Title 19 of the Administrative Code of the City of New York and §§2-19(b) and 6-16(v) of Title 35 of the Rules of the City of New York is necessary to address an imminent threat to health and safety. Dated: November 17, 2005

Matthew Daus, Chair Taxi and Limousine Commission Approved: Michael R. Bloomberg Mayor

3. Statement of Basis and Purpose in City Record Feb. 14, 2006: This rulemaking makes permanent the expedited rules promulgated pursuant to §1043(h)(1) of the New York City Charter on November 17, 2005. The rules empower the Taxi and Limousine Commission ("Commission") to impose fines on taxicab and for-hire vehicle drivers (collectively "licensees") for failure to take an annual drug test as required under the Commission's Rules. This rulemaking also establishes the procedure for suspension of licensees' driver's licenses following failure to comply with

the annual drug test requirement. In addition, the rules clarify the requirement that renewal applicants take a drug test no later than the expiration date of their driver's licenses, and the procedures that result from a failure to do so. The rule provides that licensees in the first year of a two-year license who fail to undergo annual drug testing shall have their driver's licenses suspended. Upon failure to be tested by the date one year prior to the expiration date of the current license, a licensee is not allowed to operate a taxicab or a for-hire vehicle until he or she complies with the annual requirement and undergoes a drug test. This rule further clarifies that if the drug test result is positive, the licensee will undergo a fitness hearing to determine whether the license should be revoked. The rule establishes that if a licensee in the first year of a two-year license fails to timely take a drug test, the driver's license shall be summarily suspended. The Commission is required to notify the licensee either by personal service or by first class mail to the last mailing address filed with the Commission that the licensee's driver's license shall be suspended either immediately upon service of such notice if made by personal service, or five (5) days after the date of the mailing of such notice if mailed. The licensee is then given the opportunity to refute that suspension within ten (10) calendar days of such notice if such notice is given by personal service, or within fifteen (15) calendar days of the date of mailing of the notice if such notice is sent by mail. Alternatively, instead of submitting documentation, a licensee may submit a guilty plea to the Commission, pay any applicable fine, comply with the underlying Rule or Administrative Code Section, and furnish proof of such compliance to the satisfaction of the Chairperson or his or her designee. If the licensee chooses to plead guilty, his or her opportunity to be heard shall be waived, and his or her suspension will be lifted upon the furnishing of the proof of compliance and the payment of a fine if applicable. If an ALJ determines that the licensee committed a violation by failing to take the drug test, or if the licensee waives the opportunity to be heard by failing to respond within ten (10) calendar days of personal service or fifteen (15) calendar days of the date of mailing if service is by mail, the penalty will be imposed and the suspension shall remain until the licensee complies with the requirement. An ALJ's determination is final, and the licensee may appeal the decision pursuant to §8-13 of the Commission Rules. To encourage prompt compliance with the drug test requirements, the rule provides that if a licensee who has failed to take his or her annual drug test one year prior to the expiration date of the current license subsequently submits to such test within thirty (30) days of such anniversary, the suspension will be lifted, though a conviction will remain on the licensee's record. If a licensee waits to take the drug test until more than thirty (30) days after the anniversary of the issuance of the current license, the suspension will be lifted only after the licensee also pays a penalty of $200. Finally, the rule provides that failure of a licensee in the second year of a two-year license to be tested by the expiration date of such license shall result in denial of any license renewal application and expiration of the license.

CASE NOTES

¶ 1. Documentary evidence was found sufficiently reliable, by itself without witness testimony, to establish prima facie case that licensee's urine tested positive for marijuana, which licensee failed to rebut. Documents included an affidavit from a toxicologist, with accompanying chain of custody form, toxicology reports and a confirmation from a medical review officer. Licensee was found unfit, license revocation recommended. **Taxi & Limousine Comm'n v. Shakoor**, OATH Index No. 860/08 (Nov. 30, 2007).

¶ 2. License revocation recommended under this section for driver who tested positive for marijuana. Driver failed to establish the affirmative defense of unknowing ingestion. **Taxi & Limousine Comm'n v. Moatassin**, OATH Index No. 643/08 (Oct. 29, 2007).

¶ 3. Taxi driver who tested positive for cocaine was found to be unfit; license revocation recommended. **Taxi & Limousine Comm'n v. Rodriguez**, OATH Index No. 950/08 (Nov. 19, 2007).

¶ 4. ALJ found Commission did not prove that urine sample that tested positive for marijuana was obtained from licensee and he recommended petition be dismissed. Commissioner/Chair found there was sufficient evidence in the record to find that the urine sample that tested positive had been obtained from the licensee and he imposed the penalty of license revocation. **Taxi & Limousine Comm'n v. Sajjad**, OATH Index No. 642/08 (Oct. 24, 2007), **rev'd**, Comm'r/Chair's Decision (Dec. 6, 2007).

¶ 5. In one case, a taxi driver, who allegedly tested positive for drugs, challenged the revocation of his license. The court held that 35 RCNY 2-19(b)(2) clearly puts licensees on notice that they are required to take annual drug tests, and upon failing such tests, their licenses may be revoked. In re Wai Lun Fung v. Matthew Daus, NYC Taxi and Limousine Comm., 45 AD3d 392, 846 N.Y.S.2d 104 (1st Dept. 2008).

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35 RCNY 2-20

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-20 Driving While Impaired.

(a) A driver shall not operate a taxicab while his driving ability is impaired by either intoxicating liquor (regardless of its alcoholic content), drugs or other controlled substances, nor while driving such taxicab or for six hours prior to driving or occupying such taxicab shall he consume any intoxicating liquor regardless of its alcoholic content or any drugs or other controlled substances.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 3]

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-21 Safe Driving and Traffic Accidents.

(a) A driver shall not operate his taxicab in such manner or at a speed which unreasonably endangers users of other vehicles, pedestrians, or his passengers.

(b) A driver shall operate his taxicab at all times in full compliance with all New York State and New York City traffic laws, rules and regulations and all rules, regulations and procedures of the Port Authority of New York and New Jersey, the Triboro Bridge and Tunnel Authority, and any regulatory body or governmental agency having jurisdiction over motor vehicles, with respect to matters not otherwise specifically covered in these rules. Violations of the foregoing shall be classified as follows for purposes of this subdivision:

(1) Laws, rules or regulations governing stationary vehicles.

(2) Laws, rules or regulations governing moving vehicles, other than hazardous moving violations defined by paragraph (3) of this subdivision.

(3) Laws, rules or regulations governing moving vehicles which involve hazardous moving violations defined as follows:

(i) speeding;

(ii) failing to stop for school bus;

(iii) following too closely;

(iv) inadequate brakes (own vehicle);

(v) inadequate brakes (employer's vehicle);

(vi) failing to yield right of way;

(vii) traffic signal violation;

(viii) stop sign violation;

(ix) yield sign violation;

(x) railroad crossing violation;

(xi) improper passing;

(xii) unsafe lane change;

(xiii) driving left of center;

(xiv) driving in wrong direction;

(xv) leaving scene of an accident involving property damage or injury to animal.

(c) A driver who, knowingly or having cause to know that personal injury has been caused to another person or that damage has been caused to the property of another person due to an accident involving the driver's taxicab, shall, before leaving the place where said damage or injury occurred, stop, exhibit to such other person his chauffeur's license, taxicab driver's license, and rate card, and give to such other person, his name, residence address, chauffeur's license number, taxicab driver's number, and taxicab medallion number, as well as the name of the taxicab's insurance carrier and the insurance policy number.

(d) A driver, while operating a taxicab, shall immediately report to the owner of the vehicle any motor vehicle accident in which he is involved.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (b) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 1]

Subd. (b) amended City Record Dec. 29, 1995 §30, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1998:

The regulation promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under Section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under Section 2303(b)(2) of such Charter, authorizing the TLC to promulgate rules and regulations relating to standards and conditions of service; under section 2303(b)(13) of such Charter, authorizing TLC to promulgate rules and regulations which are reasonably designed to carry out its purposes; under Section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under Section 19-505 of said Administrative Code, authorizing the TLC to issue taxicab drivers licenses,

for-hire vehicle drivers licenses and paratransit vehicle drivers licenses.

The purpose of these rule changes is to protect the riding public from drivers who operate their vehicles in an unsafe manner, and to provide for a more equitable penalty structure for those convicted of violations. Presently, all violations of the Vehicle and Traffic Law ("VTL"), Traffic Regulations and TLC Rules governing moving vehicles are treated identically. The fine structure under this amendment will now create more stringent penalties for the most serious offenses. For example, operating a vehicle with defective equipment, such as an inoperable tail light, would carry a lower fine than a hazardous moving violation, such as passing a red light or speeding.

In addition, the penalty for violations of Rule 2-21(a) and 6-16(a), dangerous driving, has been substantially increased. During 1997, there were 573 convictions for dangerous driving. These licensees committed acts which were so reckless that they presented a danger to their passengers, other vehicles, or pedestrians. The penalty for this violation has been increased from the present maximum of $350 per offense, to a maximum of $1,000 per offense, together with the possibility of license suspension, or revocation for repeat offenders.

During 1997, there were more than 15,000 summonses issued for violations of the Vehicle and Traffic Law or other traffic regulations. More than 11,500 of these summonses ended in convictions. This is an increase of more than 5,000 over the previous year. While part of the increase relates to enhanced enforcement efforts, it is nonetheless evident that unsafe driving is a major concern of the Commission and the riding public. The minimum penalty for each violation hereunder has been increased; the penalty now will be proportionate to the offense committed. The likelihood of greater monetary penalties will be a deterrent to this form of misconduct by licensees.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Taxi driver did not violate section 2-21(a) when he used care backing up cab, even though irate pedestrian believed that he was driving recklessly. Charge dismissed. **Taxi and Limousine Comm'n v. Singh,** OATH Index No. 280/99 (Sept. 22, 1998).

¶ 2. Taxi driver violated section 2-21(a) by engaging in reckless driving when he pulled away with the cab door open and while a passenger inside the cab was still saying goodbye to a passenger outside the vehicle. **Taxi and Limousine Comm'n v. Singh,** OATH Index No. 1359/98 (May 4, 1998).

¶ 3. Petitioner was not required to prove the elements of reckless driving as set forth in the Vehicle and Traffic Law, even though the language of the reckless driving statute and Drivers Rule 2-21 (a), under which respondent Ghulam was charged, track one another. Given the different focus of the Drivers Rules and the nature of the agency's mission, the lesser negligence standard is all that need be applied under Driver Rule 2-21(b), **i.e.,** was respondent Ghulam's conduct "unreasonable" in the circumstances. That ruling was followed by the First Department on appeal, which held that the Commission was "in no way limited by judicial precedents arising under New York's reckless driving statute, notwithstanding the textual similarity between the statute and the regulations pursuant to which petitioner was administratively disciplined." **Taxi and Limousine Comm'n v. Akhter,** OATH Index Nos. 1237-38/98 (June 3, 1998), **Ghulam** (1238/98) **modified on penalty,** Comm'n decision (Oct. 1, 1998), **aff'd sub nom. Ghulam v. NYC Taxi and Limousine Comm'n,** 261 A.D.2d 309, 691 N.Y.S.2d 408 (1st Dep't 1999).

¶ 4. Petitioner cannot sanction one cab driver under rule 2-21(b) for his split-second reaction to an unexpected and unforeseen event, even if another driver might have reacted differently and been able to maintain control of the cab. Mere errors of judgment or actions that are reflexive or reactive in nature, do not constitute driver misconduct. Petitioner could sanction another cab driver under rule 2-21(b) because it proved that he made an unsafe lane change which caused his cab to collide with another cab. **Taxi and Limousine Comm'n v. Akhter,** OATH Index Nos. 1237-38/98 (June 3, 1998), **Ghulam** (1238/98) **modified on penalty,** Comm'n decision (Oct. 1, 1998), **aff'd sub nom. Ghulam v. NYC Taxi and Limousine Comm'n,** 261 A.D.2d 309, 691 N.Y.S.2d 408 (1st Dep't 1999).

¶ 5. Taxi driver violated paragraph (a) of this section when he unreasonably endangered a bicyclist by driving his

taxicab in her direct path. **Taxi and Limousine Comm'n v. Smith**, OATH Index No. 498/00 (Oct. 12, 1999).

¶ 6. Taxi driver operated his taxicab recklessly in that he moved it forward while the rear door was open thereby endangering a passenger in the rear seat. Taxi driver also failed to obey all traffic laws in that he proceeded through a red stop light (2-21(b)). **Taxi and Limousine Comm'n v. Appelbaum,** OATH Index No. 724/00 (Jan. 27, 2000).

¶ 7. Revocation of taxi license recommended where taxi driver, drove away with the rear door open, while the passenger attempted to retrieve her bag, and the passenger was thrown to the street. Driver was aware that passenger had fallen to the street as his taxicab drove away and refused to stop. **Taxi and Limousine Comm'n v. Yousaf,**, OATH Index No. 984/00 (Feb. 18, 2000).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-22 [Reserved]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-23

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-23 Driver's Shift.

(a) A driver shall not operate a taxicab for more than twelve (12) consecutive hours.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-24

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-24 Authorized Drivers.

(a) A driver shall not operate a taxicab unless either:

(1) the driver's name has been entered by TLC on the rate card, and a lease driver whose name is so entered is not operating past the expiration date for the lease; or

(2) the taxicab is operated by "Unspecified Drivers," and such fact has been noted by TLC on the rate card.

(b) A driver who is permitted to operate a taxicab pursuant to a lease from the taxicab owner shall not sublease the taxicab to another party.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-25

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-25 Driver's Shift Responsibilities.

(a) A driver, while operating a taxicab, shall not, without the Chairperson's written authorization, have in his or her possession or in the vehicle, a weapon as defined by §2-01 of these Rules, or any other instrument which is intended to be used as a weapon.

(b) A driver shall be clean and neat in dress and person. A driver may not wear as outer clothing: underwear, tank tops, tube tops, body shirts, swimwear, bathing trunks, or cut-off shorts.

(c) A driver shall not smoke in a taxicab.

(d) During the workshift a driver shall not allow another person to operate the taxicab or occupy the driver's seat, except in the event of an emergency.

(e) A driver while on duty shall not lock either of the rear doors except at a passenger's request or with his consent or for a reason specified in these rules. A driver may lock the front doors. However, this does not give drivers the right to refuse parties of four persons, in which one person must occupy the front seat.

(f) The driver shall comply with the Air Pollution Control Code of the City of New York, and shall not cause or permit the engine of his taxicab to idle for longer than three minutes.

(g) A driver shall not permit the taxicab to be operated for hire by another person who is not currently licensed by the Commission as a taxicab driver.

(h) A driver shall not use a portable or hands-free electronic device while operating a taxicab, unless such taxicab shall be lawfully standing or parked. "Use" of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver's ear.

A driver may offer as an affirmative defense that he or she was using a portable or hands-free electronic device while operating a taxicab for the sole purpose of communicating with an emergency response operator that there exists an imminent threat to life or property, and that it was impossible for the driver to safely stop the vehicle before placing the call. The driver must provide documentary proof that the electronic communication was to an emergency response operator.

(i) A driver shall reimburse an E-Z Pass tag holder for all tolls paid through the use of the E-Z Pass immediately upon the return of the vehicle to the E-Z Pass tag holder or his agent at the end of the shift or lease period. If a driver has a replenishment account with the owner or agent pursuant to §1-83 of the Taxicab Owners rules, the driver shall be required to contribute to the reimbursement account any monies that have been depleted from the account to reimburse the owner or agent for E-Z Pass tolls paid by the owner or agent but not reimbursed.

(j) If the driver is not a Taxpayer who is liable for the MTA Tax, the driver shall forward to the Taxpayer the amount of fifty cents for each taxicab trip driven by the driver that originated in New York City and terminated either in New York City or in the county of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk or Westchester, no less often than weekly. A driver shall not collect the MTA Tax for any taxicab trip unless the trip originated in New York City and terminated either in New York City or in the county of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk or Westchester.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record June 26, 1998 eff. July 26, 1998. [See Note 2]

Subd. (b) amended City Record Dec. 29, 1995 §31, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (g) added City Record Dec. 29, 1995 §31, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (h) amended City Record Dec. 30, 2009 §3, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Subd. (h) added City Record May 27, 1999 §1, eff. June 26, 1999. [See Note 1]

Subd. (i) added City Record Dec. 1, 1999 §5, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

Subd. (j) added City Record Sept. 25, 2009 §9, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record May. 27, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under §2303(b)(2) of such Charter, authorizing the TLC to promulgate rules and regulations relating to the standards and conditions of service; and under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter.

The rule changes set forth herein prohibit a taxicab, for-hire vehicle, paratransit, or commuter van driver from using a telephone while operating a vehicle licensed by the Commission.

The purpose of these amendments is to protect public safety. The use of telephones while driving a vehicle constitutes a serious safety risk. Telephone use while driving creates a distraction that prevents a driver from devoting his or her undivided attention to road conditions and the proper handling of the vehicle. A driver using a telephone while the vehicle is in operation is less able to maintain control of the vehicle than other operators and presents an increased risk of accidents to passengers, pedestrians and drivers. Since the rule amendment does not prohibit drivers from carrying cellular or other telephones in their vehicles, there is no adverse impact upon driver safety.

2. Statement of Basis and Purpose in City Record June 26, 1998: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under Section 2303(b)(2) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under Section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under Section 19-505 of said Administrative Code, authorizing the TLC to issue taxicab drivers licenses, for-hire vehicle drivers licenses and paratransit vehicle drivers licenses. The regulation prohibits drivers from carrying dangerous weapons and increases the penalty to mandatory revocation for any possession of either a weapon, as this term is defined in the Penal Law, or any other instrument intended to be used as a weapon, without the written permission of the Chairperson. The possession or carrying of any unlawful weapon or other dangerous object which is intended to cause harm in a taxicab cannot be condoned. The riding public should be assured of their personal safety when they are in a taxicab or for-hire vehicle operated by a driver duly licensed by the Commission. Previous initiatives adopted by the Commission, such as the mandatory partitions and trouble lights, provide for the safety of drivers and the riding public. A licensee who places the public at risk by carrying an illegal weapon or other dangerous instrument should not be permitted to operate a taxicab or other vehicle for-hire. During 1996 and 1997, there were approximately 50 convictions each year under these rules. Since the rule prohibits a driver from carrying not only any instrument prohibited by the Penal Law, but also any object which is intended to be used as a weapon, the TLC imposes a higher standard upon its licensees than the New York State Penal Law in light of a licensed driver's privilege to transport passengers, and the threat to the public safety which would be caused by any licensee carrying a dangerous instrument in a taxicab.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Respondent violated weapons rule, paragraph (a) of this section, by carrying mace. Commission authorization to carry the weapon was not in question because carrying Mace or pepper spray is illegal. **Taxi and Limousine Comm'n v. Dianis,** OATH Index No. 1832/00 (Apr. 10, 2000).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-25.1

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-25.1 Additional penalties for use of a portable or hands-free electronic device while operating a taxicab.

(a) For purposes of this section, "portable or hands-free electronic device violation" shall mean a violation of §2-25(h) of this chapter or a violation of any state law or rule prohibiting or restricting the use of a portable or hands-free electronic device while driving, such violation having been adjudicated by a court or other tribunal having jurisdiction over such violations.

(b) Any taxicab driver who commits a portable or hands-free electronic device violation is required to attend and satisfactorily complete an authorized course of training in the dangers of driving while distracted by portable or hands-free electronic devices. The course shall be a minimum of one hour and shall include a review of the rules governing the use of portable or hands-free devices, and the dangers of driving while distracted. The course must be completed and verification of course completion provided by the designated school within sixty days of TLC's issuance of a directive to the taxicab driver that he or she is required to take such course.

HISTORICAL NOTE

Section added City Record Dec. 30, 2009 §4, eff. Jan. 20, 2010. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 30, 2009:

For more than ten years, Taxi and Limousine Commission rules have prohibited the Commission's licensed drivers

from using cell phones while driving. In May, 1999, the Commission was the first regulator in the country to ban hands-free cell phone use while driving. Despite enforcement of those rules, cell phone use remains a significant problem in the for-hire transportation industries. Moreover, the proliferation of both portable electronic devices and hands-free electronic devices in recent years demands that the Commission expand the prohibition beyond cell phones to other electronic devices. This rulemaking prohibits the use of portable or hands-free electronic devices while driving, and clarifies what constitutes use of such a device.

Recent studies have quantified the long-known dangers of driving while distracted by portable or hands-free electronic devices. Just one example is the Virginia Tech Transportation Institute's recently released study demonstrating that texting while driving increases a driver's collision risk 23-fold. In addition, the U.S. Department of Transportation's National Highway Traffic Safety Administration, as well as a study published by University of Utah psychologists, found that hands-free use of cell phones was no safer than handheld use. The studies concluded that the distracting effects of phone conversation are not mitigated by the use of hands-free devices.

This rule makes five changes to existing rules:

· The rule expands the Commission's prohibition of electronic devices from telephones to all portable and hands-free electronic devices.

· The rule expands the definition of "use" from using a telephone to using any of the functions of any portable or hands-free electronic device, or having a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver's ear.

· The rule increases the assessment of persistent violator points against taxicab and for-hire vehicle drivers who use portable or hands-free electronic devices. The base penalty is increased from two to three persistent violator points, which would apply to first and second offenses. For a third offense, the driver would be assessed four points. As a result, even if the driver had no other persistent violator points, the driver's license would be suspended for 30 days after a second violation, and the driver's license would be revoked after a third violation committed within 15 months.

· The rule requires a driver who commits a violation to take a new driver education course emphasizing the dangers of driving while distracted by portable or hands-free electronic devices.

· The rule requires a passenger information decal in taxicabs, highlighting the new restrictions against driver use of portable or hands-free electronic devices.

Following publication of the proposed rule, Commission staff concluded a number of meetings about the proposed rules with a number of industry groups, representing taxicab, livery, black car and luxury limousine businesses. The staff has concluded that, unlike the taxicab, paratransit and commuter van industries, the for-hire industries rely on industries of a requirement that the use of electronic devices must be deferred until the vehicle is standing or parked would substantially impair the operation of those businesses. Furthermore, staff research indicates that short, simple conversations regarding specific issues, such as vehicle dispatch, do not adversely affect the driver's ability to maintain road position (Briem & Hedman, **Behavioral Effects of Mobile Phone Use During Simulated Driving,** 1995; Rakauskas, Gugerty & Ward, **Effects of a Naturalistic Cell Phone Conversations on Driving Performance,** 2004). Other studies have shown that listening to verbal material, by itself, does not interfere with a driver's safe operation of the vehicle (Strayer & Johnston, **Dual-Task Studies of Simulated Driving and Conversing on a Cellular Telephone,** 2001). The scientific literature distinguishes such communications from conversations of greater duration and intensity, which dangerously distract drivers and slow their reaction times, whether the conversation is conducted by handheld or hands-free device.

Some for-hire vehicle bases rely on two-way radios, while others have upgraded to devices that are voice-activated or that use pre-programmed function keys. Based on a review of the scientific literature and the unique business needs of the for-hire vehicle industries, the proposed rule was revised to allow for-hire vehicle drivers to engage in short,

solely business-related communications in connection with a dispatch from a base, by means of two-way radios, or by means of a device that is mounted in a fixed position and utilizes one-touch pre-programmed buttons or voice communications.

In addition, in response to a large number of comments regarding the requirement that the engine must be turned off in order to use a portable or electronic device, Commission staff concluded that it is sufficient that the vehicle be lawfully parked or standing. (Of course, laws limiting vehicle idling still apply.) Staff also responded to comments regarding the requirement that a GPS device may only be used if the device does not use video or image functions; the rule now permits GPS devices which use voice functions so long as the device is not being used as a cell phone or other portable or hands-free electronic device. These changes in the rule apply to all industries.

The Commission intends to deploy these rule revisions in combination with enhanced enforcement efforts, to address the continuing problem of driving while distracted by the use of portable or hands-free electronic devices.

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35 RCNY 2-26

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-26 Condition of Taxicab.

(a) A driver shall not operate a taxicab without continuing personal inspection and reasonable determination that all equipment, including brakes, tires, lights, signals and passenger seatbelts and shoulder belts are in good working order.

(b) A driver, during his workshift, shall keep the taxicab's interior clean.

(c) A driver, during his workshift, shall keep clean and free from obstruction the medallion number on the front and rear of the roof light so that the medallion number shall be plainly visible at all times.

(d) A driver shall not (1) operate a taxicab having any equipment or mechanical devices not specifically enumerated in these rules, unless authorized in writing by the Commission; (2) place a cushion or other orthopedic device on the seat portion of a taxicab seat that is equipped with an occupant classification system; or (3) place a back rest or other orthopedic device on the back portion of a taxicab seat that is equipped with side airbags.

(e) A driver shall not place any signs in a taxicab not specifically enumerated in these rules, unless authorized in writing by the Commission.

(f) (i) For any taxicab that is required to be equipped with the taxicab technology system, such equipment shall at all times be in good working order and each of the four core services shall at all times be functioning. (ii) In the event of any malfunction or failure to operate of such taxicab technology system, the driver shall file an incident report with the authorized taxicab technology service provider promptly and in no event more than one (1) hour following the driver's

discovery of such malfunction or failure to operate or such time as the driver reasonably should have known of such malfunction or failure to operate, or the end of the driver's shift, whichever occurs first. If the owner or taxicab agent previously filed a timely incident report regarding such malfunction or failure to operate, the driver shall not be required to file a separate incident report but shall obtain an incident report number from the owner, agent or taxicab technology service provider. A taxicab in which any of the four core services of the taxicab technology system, or any part thereof, are not functioning shall not operate more than forty-eight (48) hours following the timely filing of an incident report by the owner, driver or agent.

(g) If any passenger information monitor is not operational and can be made operational by the driver, the driver shall do so.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Subd. (b) amended City Record Dec. 29, 1995 §32, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (d) amended City Record Oct. 1, 2008 §2, eff. Oct. 1, 2008 per City Record notice. [See

Note 1]

Subd. (d) amended City Record July 12, 1993 eff. Aug. 11, 1993.

Subd. (e) amended City Record Dec. 29, 1995 §32, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (e) added City Record July 12, 1993 eff. Aug. 11, 1993.

Subd. (f) added City Record June 12, 2007 §11, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (g) added City Record June 12, 2007 §11, eff. July 12, 2007. [See T35 §1-01 Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Oct. 1, 2008:

Automobile manufacturers recently advised the Taxi and Limousine Commission that the operation of airbags can be affected by the post-manufacture installation of vinyl seat covers and by the use of back rests and similar devices. Therefore, three modifications of existing Commission rules relating to taxicabs are required:

First, the promulgated rules eliminate the requirement of post-manufacture installation of vinyl seat coverings for taxicab seats that are equipped with OCS technology and for seats that are equipped with side airbags, and require the removal of any post-manufacture vinyl coverings previously placed over seats equipped with OCS technology or with side airbags.

The installation of post-manufacture vinyl seat coverings may impair the operation of occupant classification systems (OCS) that detect the presence of children or small adults in seats. In the event of a collision, the OCS prevents the seat's airbag from deploying, or limits the force of the deployment of the airbag. This innovation reduces the risk of injury to small adults and children who are at heightened risk of injury from the regular deployment of airbags. Installation of post-manufacture vinyl seat coverings creates the risk that airbags will not deploy even when adults occupy the seats equipped with OCS devices.

Also, the addition of post-manufacture vinyl seat coverings may impair the deployment of side airbags installed in seats. Side airbags reduce the risk of injury incurred during a collision with the side of a vehicle.

Second, the promulgated rules prohibit the use of seat cushions or similar devices on seats equipped with OCS, in order to avoid interference with the proper functioning of OCS technology.

Third, the promulgated rules prohibit the use of back rests and similar devices in the seats of taxicabs equipped with seat-mounted side airbags in order to avoid interference with the proper deployment of those airbags.

Statement of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043(e)(1)(c) of the New York City Charter, that there is a substantial need for the implementation, immediately upon the publication in the **City Record** of its Notice of Adoption, of rules amending the specifications governing taxicabs set forth in §§2-26(d) and 3-03(e)(iv) of Title 35 of the Rules of the City of New York.

The amendments eliminate the requirement that taxicab seats be re-covered with vinyl upholstery, for seats that are equipped with occupant classification systems (OCS). The post-manufacture re-covering of OCS-equipped seats impairs the functioning of the OCS, which controls the deployment of the front airbags based on the OCS sensors' determination of the weight and position of the occupant of the seat. Impaired functioning of the OCS creates a risk in a collision that the airbags might deploy incorrectly, thereby endangering the occupant of the seat.

The amendments also prohibit the use of seat cushions and other orthopedic devices on the seat portion of taxicab seats that are equipped with OCS. This amendment is needed in order that the OCS functions properly regarding the deployment of airbags.

Finally, the amendments prohibit the use of back rests and other orthopedic devices on the backs of taxicab seats that are equipped with front seat-mounted side airbags. This amendment is necessary in order that the airbags be able to deploy unobstructed in the event of a collision.

The earlier implementation of these rules is necessary because they relate to the proper functioning of the newest vehicle safety technologies in taxicabs. Delay in the implementation of these rules would unnecessarily risk the safety of taxicab drivers and of passengers riding in the front seats of taxicabs.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of paragraph (d) of this section, as well as §§1-23, 1-60(b), 1-67(a), 2-30(a), 2-31(a), 2-61(a) and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

¶ 2. A taxicab driver's possession in her cab of a "zapper," a device that enables the driver to accelerate the cab's meter, constituted a violation of paragraph (d) of this section even if the device was not actually connected to the meter when found by a police officer. Taxi and Limousine Commission v. Decriollo, OATH Index No. 1480/97 (Sept. 4, 1997).

¶ 3. A taxicab driver's operation of his cab with a device that increased the meter's fare calculation by 30 cents for every second that the device was engaged constituted a violation of paragraph (d) of this section. Taxi and Limousine Commission v. Fisher, OATH Index No. 1733/97 (July 23, 1997).

¶ 4. Taxi driver is found to have overcharged two passengers based upon testimony from the passengers and meter

acceleration device found in the cab during an inspection following the passenger complaints. **Taxi and Limousine Comm'n v. Flores,** OATH Index No. 1652/98 (Aug. 7, 1998).

¶ 5. Operation of a taxicab by defaulting respondent, one of two drivers and owners of the cab, with a meter acceleration device known as a "zapper," constituted a violation of this section and several others, the penalty for which was revocation of respondent's hack license and forced sale of his medallion. **Taxi and Limousine Comm'n v. Hom,** OATH Index Nos. 433 & 435/99 (Oct. 28, 1998).

¶ 6. Taxi driver violated section 2-26(d) when he installed a switch which could deactivate the roof light and the meter. The opportunity to pick and choose customers, to refuse passengers and to accelerate the meter are major concerns for the Commission, hence the prohibition against such devices in section 2-26(a). Petitioner failed to prove, however, that the driver engaged in a scheme to defraud the public by possessing a "zapper," where the Commission inspector testified that the device would not accelerate the meter without a battery and no battery was found when the cab was stopped by police following a near accident. **Taxi and Limousine Comm'n v. Drumond,** OATH Index No. 1114/98 (May 12, 1998).

¶ 7. Driver found in violation of this section after equipment used for meter acceleration was found inside cab and in trunk of cab during inspection. It is fair to infer that the presence of the equipment in the cab was for the purpose of operating an illegal device, and that operation of the cab by both authorized drivers with the illegal device took place on and prior to the date of inspection. License revocation recommended and imposed. **Taxi and Limousine Comm'n v. Kewal**, OATH Index No. 938/99 (Apr. 13, 1999), **aff'd**, Comm'n Dec. (May 20, 1999).

¶ 8. Discovery of a visible zapper or meter acceleration device in a vehicle results in the revocation of the current taxi drivers' hack licenses, whether the drivers were driving the cab at the time of discovery or not. Pursuant to this section, drivers have a general obligation of "continuing personal inspection" and are prohibited from operating a taxicab "having any equipment or mechanical devices not specifically enumerated in these rules." **Taxi and Limousine Comm'n v. Kandov**, OATH Index Nos. 941-42/99 (May 12, 1999).

¶ 9. Inspection of taxicab revealed tampered meter harness wiring and presence of unauthorized meter acceleration device in a CB radio. Respondents, identified on the rate card as regular drivers of the taxicab in which the device had been placed at least 6 or 7 months earlier, and possibly longer, were liable for meter tampering and operating cab with unauthorized device and engaging in a scheme to defraud the public, on and prior to date of discovery by Commission investigator. **Taxi and Limousine Comm'n v. Zargar**, OATH Index Nos. 1130-31/99 (Mar. 9, 1999), **rev'd in part**, Comm'n Dec. (April 15, 1999).

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***** Current through December 2009 ****

35 RCNY 2-27

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-27 Items Which Must be Present in the Taxicab.

(a) A driver shall not operate a taxicab unless the following are present in the taxicab: (1) The taxicab technology system as defined in section 2-01 of this chapter, provided, however, that, if the taxicab is not yet required to be equipped with such taxicab technology system and whenever such taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, the driver must maintain a written trip record also known as a "trip sheet," containing such information as required by sections 2-01 and 2-28(a) of this chapter and section 3-06(b) of this title.

(2) his taxicab driver's license in the appropriate frame;

(3) the rate card assigned to the taxicab, bearing the serial number of the taximeter, in the frame alongside the frame for his taxicab driver's license;

(4) a New York City five (5) borough indexed street map; and

(5) receipts for passengers.

(b) A driver shall not operate a taxicab after sunset unless all of the following items are illuminated so that they are clearly visible from the rear seat by a passenger with normal vision:

(1) the face of the taximeter;

(2) his taxicab driver's license; and

(3) the rate card.

(c) A driver shall not obstruct a passenger's view of any of the items required in a taxicab by these rules, including the taximeter.

(d) A driver shall not operate a taxicab for hire that is not equipped with an E-Z Pass tag and shall use E-Z Pass at all crossings within the jurisdiction of the Metropolitan Transportation Authority, Triborough Bridge and Tunnel Authority, where E-Z Pass is accepted. Nothing contained herein shall preclude a driver from using his personal E-Z Pass tag for any toll.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Dec. 29, 1995 §33, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (a) par (1) amended City Record June 12, 2007 §12, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) par (1) amended City Record May 11, 2005 §5, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (a) par (1) amended City Record Apr. 14, 2004 §6, eff. May 14, 2004. [See T35 §3-03 Note 8]

Subd. (a) par (1) amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Subd. (a) par (2) amended City Record June 7, 1994 eff. July 7, 1994.

Subd. (d) added City Record Dec. 1, 1999 §6, eff. Dec. 31, 1999 [See T35 §1-37 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Taxi driver is found to have obstructed view of taxi license in violation of paragraph ;cw) of this section where license was partially obscured with paper towel. **Taxi and Limousine Comm'n v. Tokosi,** OATH Index No. 513/00 (Feb. 18, 2000), **modified on penalty,** Comm'n Dec. (Apr. 12, 2000).

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35 RCNY 2-28

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-28 Trip Records.

(a) Until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, a driver shall keep a written trip record in the taxicab as specified in section 2-27(a) and shall enter the following information legibly in ink, as follows:

(1) at the start of each trip, the starting time, specific location and the number of passengers;

(2) on completion of the trip, the destination, the time, the amount of the fare, and any tolls paid;

(3) the taximeter readings and the concluding time of his or her workshift;

(4) any toll bridges or tunnels used by the driver, whether or not with a passenger; and

(5) all other entries required by these rules.

(b) Until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, a driver shall, at the beginning of each workshift, sign and certify on the written trip record that, with the exception of the taxicab technology system, the taxicab and its equipment are in good working condition and

that, with the exception of such taxicab technology system, the items required in the taxicab are present, before operating the taxicab.

(c) For any taxicab that is required to be equipped with the taxicab technology system, a driver shall transmit to an electronic database all necessary corrections that need to be made to the electronic trip record. A driver shall at no time make erasures or obliterations on any written trip record, shall correct any wrong entry only by drawing a single line through the incorrect entry and recording the date, time and reason for the change, and shall not leave blank lines between entries on any written trip record.

(d) A driver shall at no time rewrite a written trip record either in whole or in part, unless authorized by the Commission.

(e) Until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, a driver shall submit his written trip sheet to the owner at the conclusion of the driver's shift or lease period. Whenever a taxicab's taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider, the driver must maintain written trip records during the forty-eight (48) hours immediately following the filing of such incident report.

HISTORICAL NOTE

Section amended (without laying out § heading) City Record June 12, 2007 §13, eff. July 12, 2007.

[See T35 §1-01 Note 3]

Section amended City Record May 11, 2005 §6, eff. June 10, 2005. [See T35 §3-03 Note 10]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Dec. 1, 1999 §7, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

Subd. (a) amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Subd. (b) amended City Record Dec. 29, 1995 §34, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (f) added City Record Dec. 1, 1999 §8, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. A driver's failure to record a trip on the trip sheet constitutes a violation of this section. Taxi and Limousine Commission v. Panic, OATH Index No. 1875/96 (Aug. 28, 1996), modified as to penalty, Comm'n Decision (Nov. 7, 1996).

¶ 2. Under sections 2-87 and 88, Commission has discretion to seek revocation for failing to make trip sheet entries in violation of 2-28(a)(4). **Taxi and Limousine Comm'n v. Baig,** OATH Index No. 1115/00 (Mar. 31, 2000), **modified on penalty,** Comm'n Dec. (July 25, 2000).

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CHAPTER 2 TAXICAB DRIVERS RULES

§2-29 [Reserved]

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Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-30 Taximeter Condition.

(a) A driver shall not drive a taxicab unless all taximeter seals and cable housing seals are in good condition and pressed by the Commission or its authorized designee. The serial number of the taximeter must be the same as that shown on the rate card assigned to the taxicab.

(b) A driver shall not pick up or transport a passenger unless the taximeter is properly equipped with paper for the printing of receipts.

(c) A driver while on duty shall not operate a taxicab unless the rooflight is lit when the taximeter is not in use, and unlit when the taximeter is in use.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (b), (c) relettered and amended (former subds. (c), (d)) City Record Dec. 29, 1995 §35, eff.

Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) repealed City Record Dec. 29, 1995 eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of this section, as well as §§1-23, 1-60(b), 1-67(a), 2-26(d), 2-31(a), 2-61(a) and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

35 RCNY 2-31

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Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-31 Tampering with Taximeter, Taximeter Technology System and Rooflight Prohibited.

(a) A driver shall not operate a taxicab in which the taximeter or the seals affixed thereto by a licensed taximeter repair shop or the taxicab technology system have been tampered with, broken or altered in any manner. The operation of a taxicab with a broken taximeter seal shall give rise to a rebuttable presumption that the driver knew of the tampering or alteration and operated the taxicab with such knowledge.

(b) A driver shall not tamper with, repair or attempt to repair, or connect any unauthorized device to, the taximeter or the taxicab technology system, or any seal, cable connection or electrical wiring thereof, or make any change in the vehicle's mechanism or its tires which would affect the operation of the taximeter or the taxicab technology system.

(c) A driver shall not tamper with the roof light or any of the interior lights or connections except to replace a defective bulb or fuse. The rooflight of a taxicab shall be automatically controlled only by the movement of the taximeter button or ignition switch so that it is lighted only when the taximeter is in an off or "Vacant" position and unlighted when the taximeter is in a recording or "Hired" position. The operation of a taxicab with an unauthorized installation or device controlling interior or roof lighting shall give rise to a rebuttable presumption that the driver knew of the unauthorized installation or device and operated the taxicab with such knowledge.

(d) It shall be an affirmative defense to a violation of section 2-31(b) that the driver: (1) did not know of or participate in the alleged taximeter or taxicab technology system tampering; and (2) exercised due diligence to ensure that taximeter-tampering or tampering with the taxicab technology system does not occur.

HISTORICAL NOTE

Section heading amended City Record June 12, 2007 §14, eff. July 12, 2007. [See T35 §1-01 Note 3]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record June 12, 2007 §14, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (b) amended City Record June 12, 2007 §14, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (d) amended City Record June 12, 2007 §14, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (d) added City Record Jan. 31, 2000 §4, eff. Mar. 1, 2000. [See T35 §1-23 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of this section, as well as §§1-23, 1-60(b), 1-67(a), 2-26(d), 2-30(a), 2-61(a) and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

¶ 2. Operation of a taxicab by defaulting respondent, one of two drivers and owners of the cab, with a meter acceleration device known as a "zapper," constituted a violation of this section and several others, the penalty for which was revocation of respondent's hack license and forced sale of his medallion. **Taxi and Limousine Comm'n v. Hom,** OATH Index Nos. 433 & 435/99 (Oct. 28, 1998).

¶ 3. Where a zapper device, used to accelerate taximeters, was concealed inside the car door of a taxicab and where the inspector observed that a portion of the pulse wire was bare, three drivers violated this section. The visibly exposed wire gave the three drivers "reason to know that the taxicab's equipment had been tampered with by another driver." Administrative law judge recommended that the licenses of the three drivers be revoked and recommended forced sale of the medallion by the owner. **Taxi and Limousine Comm'n v. Singh**, OATH Index Nos. 828-30/99 (Apr. 15, 1999).

¶ 4. License revocation recommended where respondents operated taxicab with an unauthorized wire spliced into the pulse wire in violation of this section. **Taxi and Limousine Comm'n v. Kandov**, OATH Index Nos. 941-42/99 (May 12, 1999).

¶ 5. Testimony of overcharged passenger and tests on meter proved that respondent taxi driver operated cab while it was equipped with a meter acceleration device or zapper. **Taxi and Limousine Comm'n v. Ahmed**, OATH Index No. 2077/99 (July 22, 1999).

¶ 6. Inspection of taxicab revealed tampered harness wiring and presence of unauthorized meter acceleration device in a CB radio. Respondents, identified on the rate card as regular drivers of the taxicab in which the device had been placed at least 6 or 7 months earlier, and possibly longer, were liable for meter tampering, operating cab with unauthorized device and engaging in a scheme to defraud the public, on and prior to date of discovery by Commission investigator. **Taxi and Limousine Comm'n v. Zargar**, OATH Index Nos. 1130-31/99 (Mar. 9, 1999), **rev'd in part**, Comm'n Dec. (April 15, 1999).

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Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-32 If Taximeter or Credit/Debit Card Acceptance Equipment Is Defective During Shift.

(a) A driver shall not pick up or transport a passenger when the taximeter is defective, until it has been repaired at a licensed taximeter shop or replaced by such shop with a taximeter which has been inspected, sealed and approved within the preceding twelve (12) months. Until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, if the taximeter is equipped to accept credit or debit card payments for fares, a driver may not pick up or transport a passenger when the taximeter is incapable of accepting or processing credit or debit card transactions. When a taxicab is required to be equipped with the taxicab technology system, the driver may not pick up or transport a passenger when the system is incapable of accepting or processing credit or debit card transactions, unless: (i) in the event of any malfunction or failure to operate of the credit or debit card acceptance equipment, the driver promptly files an incident report with the authorized taxicab technology service provider, as set forth in section 2-26 of this chapter, and obtains an incident report number, and not more than forty-eight (48) hours have passed following the filing of such incident report, and (ii) the driver advises the passenger of the malfunction or failure to operate of the credit or debit card acceptance equipment prior to engaging the meter. In the event that the wireless payment equipment used to accept payment by credit and debit cards is inoperable at the destination of a trip as a result of a technical problem in the system's communication network that is not related to the equipment in the taxicab, the customer has the option of either (i) paying cash or (ii) requesting the taxicab driver continue to a location where the wireless payment system may communicate with its network. If a taximeter or its parts become defective during the driver's shift while a passenger is in the taxicab, or if the taxicab technology system or its parts become defective while a passenger is in the taxicab such that the driver is unable to inform the passenger of the proper fare, the driver shall immediately notify the passenger and offer him or her the option of continuing the trip with a mutually agreed upon reasonable fare, or terminating the trip and paying the fare shown on the taximeter to that point.

(b) Upon terminating a trip because of a defective taximeter or defective taxicab technology system, the driver shall illuminate the "Off Duty" light, lock the rear doors, transmit to an electronic database for entry on the electronic trip record that the taximeter and/or the taxicab technology system is defective or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taximeter technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report as set forth in section 2-26 of this chapter, enter on the written trip record that the taximeter and/or the taxicab technology system is defective. Whether or not the taxicab is required to be equipped with the taxicab technology system, the driver shall return the taxicab immediately to the garage of record or a licensed taximeter repair shop.

(c) A driver shall not charge a mark-up to any passenger for credit/debit card transactions.

HISTORICAL NOTE

Section amended City Record June 12, 2007 §15, eff. July 12, 2007. [See T35 §1-01 Note 3]

Section heading amended City Record Apr. 14, 2004 §7, eff. May 14, 2004. [See T35 §3-03 Note 8]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Apr. 14, 2004 §7, eff. May 14, 2004. [See T35 §3-03 Note 8]

Subd. (a) amended City Record Dec. 29, 1995 §36, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) amended City Record May 11, 2005 §7, eff. June 10, 2005. [See T35 §3-03 Note 10]

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35 RCNY 2-33

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CHAPTER 2 TAXICAB DRIVERS RULES

§2-33 Taximeter Operation.

(a) When a taxicab is occupied by anyone in addition to the driver, the taximeter shall immediately be placed in the recording or "Hired" position and kept in that position until arrival at the destination, provided that if the passenger is not being charged a fare, the driver, in lieu of activating the meter, may illuminate the "Off Duty" light and transmit to an electronic database for entry on the electronic trip record that he or she is off duty and transporting a non-paying passenger and the details of time and distance of the free fare or until such time when a taxicab is required to be equipped with data collection and transmission equipment as described in Section 3-06 of the Taxicab Specifications enter on his or her written trip record that he or she is off duty and transporting a non-paying passenger and the details of time, distance and reason for the transportation without charge. When the taxicab is engaged in a flat fare trip from Kennedy Airport to Manhattan in accordance with Owners Rule 1-69, the driver shall not activate the meter, except in accordance with subdivision (b) of Rule §1-69, and shall transmit to an electronic database for entry on the electronic trip record or enter on the written trip record that this is a flat fare trip from Kennedy Airport and the details of time and distance. When a taxicab is occupied by a passenger who is a person with a disability, the driver shall place the taximeter in the recording or "Hired" position only after the passenger has safely entered the taxicab. A taxicab driver shall not place the taximeter in the recording or "Hired" position while the driver is assisting a person with a disability to enter the taxicab or while assisting with that passenger's mobility aid. Notwithstanding anything else contained in this section, a taxicab driver who is a driver of an accessible taxicab and who has accepted a dispatch of a wheelchair passenger pursuant to chapter 16 of this title shall turn on the meter as provided in section 16-08(d) of this title.

(b) Upon reaching the passenger's destination, the driver shall place the taximeter in a non-recording or "Time Off" position, inform the passenger of the fare due and leave the taximeter in a non-recording position until the fare is paid.

If the passenger is an individual with a disability who requires assistance to exit the taxicab, the driver shall place the taximeter in a non-recording position before assisting such passenger and shall leave the taximeter in a non-recording position until such passenger has paid the fare and safely exited the cab.

(c) Immediately after the passenger leaves the taxicab, the driver shall clear the taximeter, placing it in an off or "Vacant" position in which it must remain until the next passenger enters the taxicab.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Nov. 23, 2007 §5, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Subd. (a) amended City Record June 12, 2007 §16, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) amended City Record May 11, 2005 §8, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (a) amended City Record July 8, 1997 §3, eff. Aug. 11, 1997.[See T35 §4-01 Note 1]

Subd. (a) amended City Record July 1, 1996 eff. Aug. 1, 1996. [See T35 §1-69 Note 3]

Subd. (a) amended City Record Dec. 29, 1995 §2, eff. Jan. 28, 1996. [See T35 §1-69 Note 2]

Subd. (b) amended City Record July 8, 1997 §3, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

35 RCNY 2-34

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CHAPTER 2 TAXICAB DRIVERS RULES

§2-34 Overcharges Prohibited.

(a) A driver shall not charge or attempt to charge a fare above the approved rates, as provided by these rules. A driver shall not impose or attempt to impose any additional charge for transporting a person with a disability, a service animal accompanying a person with a disability or a wheelchair or other mobility aid.

(b) A driver shall not collect or attempt to collect separate fares from individual passengers who have shared a taxicab for part or all of a trip unless such fares are specifically authorized as part of a group riding program established by the Commission.

(c) A driver shall give the correct change to a passenger who has paid the fare.

(d) A driver shall not ask a passenger for a tip nor indicate that a tip is expected or required.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Section amended City Record Feb. 22, 1993 eff. Mar. 22, 1993.

Subd. (a) amended City Record July 8, 1997 §4, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (e) repealed City Record Dec. 29, 1995 §37, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (f) repealed City Record Dec. 29, 1995 §37, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. An overcharge was not proven where a passenger complained to the taxi driver that the meter was too fast, the driver threatened the passenger, sped up, and refused to get off the highway at the exit the passenger requested. The passenger testified that after she complained about the meter being too fast, respondent violently denied it and terminated the ride without charging her at all. **Taxi and Limousine Comm'n v. Raoul**, OATH Index No. 752/99 (Feb. 8, 1999).

35 RCNY 2-35

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-35 Trips Beyond the City.

(a) For a trip beyond the limits of the City of New York, except for the counties of Westchester or Nassau, or the facilities of the Port Authority of New York and New Jersey at Newark Airport, the following shall be applicable:

(1) the driver shall not start the trip until agreement has been made on a flat rate, as set forth in Owner Rule §1-73;

(2) the driver shall place the taximeter in a recording position at the beginning of the trip, and the taximeter shall remain in such recording position for the entire trip;

(3) the out-of-City destination shall be transmitted to an electronic database upon arrival at the destination for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, entered on the written trip record; and

(4) the total charge shall be captured by an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, entered on the written trip record.

(b) For a trip to the counties of Westchester or Nassau, or Newark Airport, the following shall be applicable:

(1) the driver shall place the taximeter in a recording position at the start of the trip and shall keep the taximeter in the recording position at all times;

(2) the driver must inform the passenger of the rate of fare, set forth in Taxicab Owners Rule §1-73, before the start of the trip, and for a trip to the Counties of Westchester or Nassau he or she shall advise the passenger when the taxicab crosses the City limit;

(3) the driver must inform the passenger before the start of the trip that all necessary tolls to and from the destination shall be paid by the passenger; and

(4) the total charge shall be transmitted to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, entered on the written trip record.

HISTORICAL NOTE

Section amended City Record May 11, 2005 §9, eff. June 10, 2005. [See T35 §3-03 Note 10]

Section renumbered and amended (former §2-38) City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) pars (3), (4) amended City Record June 12, 2007 §17, eff. July 12, 2007. [See T35 §1-01

Note 3]

Subd. (b) par (4) amended City Record June 12, 2007 §17, eff. July 12, 2007. [See T35 §1-01

Note 3]

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CHAPTER 2 TAXICAB DRIVERS RULES

§2-36 [Reserved]

HISTORICAL NOTE

Section repealed City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record June 26, 1992 eff. July 26, 1992.

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CHAPTER 2 TAXICAB DRIVERS RULES

§2-37 [Reserved]

HISTORICAL NOTE

Section repealed City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record June 26, 1992 eff. July 26, 1992.

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§2-38 [Reserved]

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§2-39 Non-Paying Passengers.

(a) If a passenger refuses to pay the metered fare, the driver must place the meter in the off or "Vacant" position, illuminate the "Off Duty" light, transmit the relevant information and the amount of fare on the taximeter to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, enter the words "Off Duty" and the amount of fare on the taximeter on the written trip record. Whether or not the taxicab is required to be equipped with the taxicab technology system, the driver shall proceed directly to the nearest police precinct, present the facts to the police and follow their instructions for resolving the dispute.

HISTORICAL NOTE

Section amended City Record June 12, 2007 §18, eff. July 12, 2007. [See T35 §1-01 Note 3]

Section amended City Record May 11, 2005 §10, eff. June 10, 2005. [See T35 §3-03 Note 10]

Section added City Record June 26, 1992 eff. July 26, 1992.

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§2-40 [Reserved]

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§2-41 [Reserved]

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CHAPTER 2 TAXICAB DRIVERS RULES

§2-42 Courteous.

(a) A driver shall be courteous to passengers.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A taxicab driver who, when questioned by a passenger about a delay, answered, "Do I want to sit in this street? I'm not making any money," did not violate the section. Taxi and Limousine Commission v. Rana, OATH Index No. 1396/96 (July 19, 1996).

¶ 2. Charge of directing abusive language towards the passenger in violation of 35 RCNY § 2-60(a) was conformed to proof of discourtesy in violation of 35 RCNY § 2-42. Administrative law judge credited the passenger's testimony that respondent had told her to shut up when she gave him her desired route. Administrative law judge found that the language used by respondent did not rise to the level of a 2-60(a) violation, because that rule addresses physical force and abuse. Nevertheless, the administrative law judge found that respondent's conduct amounted to a clear act of discourtesy, in violation of 2-42. **Taxi and Limousine Comm'n v. Ahmed**, OATH Index No. 1790/99 (May 3, 1999).

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§2-43 Seating.

(a) A driver shall not permit more than four (4) passen- gers to ride in a four (4) passenger taxicab, nor more than five (5) passengers in a five (5) passenger taxicab, except that an additional passenger must be accepted if such passenger is under the age of seven (7) and is held on the lap of an adult passenger seated in the rear.

(b) A passenger who is unable to enter or ride in the passenger part of the taxicab, must be permitted to occupy the front seat alongside the driver. If a passenger's luggage, wheelchair, crutches, other mobility aid or other property occupies the rear passenger part of the taxicab, a passenger must be permitted to occupy the front seat alongside the driver.

(c) A driver shall not pick up additional passengers except if the passenger who hired the taxicab requests that the driver do so.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (b) amended City Record July 8, 1997 §5, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (b) amended City Record Dec. 29, 1995 §38, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

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35 RCNY 2-44

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CHAPTER 2 TAXICAB DRIVERS RULES

§2-44 Luggage and Property.

(a) Upon request of a passenger, the driver shall load or unload a passenger's luggage, wheelchair, crutches or other property in or from the taxicab's interior or trunk compartment, and shall secure such compartment.

(b) A driver shall not transport for hire any property, except blood or vital human organs, unless such property is in the possession of a passenger.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

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35 RCNY 2-45

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§2-45 Route and Method of Payment.

(a) A driver shall take a passenger to his destination by the shortest reasonable route unless the passenger requests a different route, or unless the driver proposes a faster alternative route which the passenger agrees to. The driver shall comply with all reasonable and lawful routing requests of the passenger.

(b) A driver shall comply with any request of a passenger during the trip to change his or her destination or terminate the trip, unless it is impossible or unsafe for the driver to comply with such request, and the passenger shall pay the amount shown on the taximeter until such time as the taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter or, after such time, the amount shown on the passenger information monitor, unless the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, or there is a discrepancy between the amount shown on the passenger information monitor and the taximeter. In that event, the passenger shall pay the amount shown on the taximeter, at the destination or time of termination.

(c) In a taxicab equipped with the taxicab technology system as defined in section 2-01 of this chapter or otherwise equipped to accept credit and debit card payment for fares, the driver shall comply with any request of a passenger as to the method for payment of the fare, whether in cash or by credit or debit card. Provided, however, that if such taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, the driver shall not be required to accept payment by credit or debit card.

HISTORICAL NOTE

Section heading amended City Record June 12, 2007 §19, eff. July 12, 2007. [See T35 §1-01 Note 3]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (b) amended City Record June 12, 2007 §19, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (c) added City Record June 12, 2007 §19, eff. July 12, 2007. [See T35 §1-01 Note 3]

CASE AND ADMINISTRATIVE NOTES

¶ 1. A driver who misrepresented to a passenger that he knew the route to the passenger's destination, and failed to deliver her to that destination, then charged the passenger for the trip, thereby violated paragraph (a) of this section. Taxi and Limousine Commission v. Panic, OATH Index No. 1875/96 (Aug. 28, 1996), modified as to penalty, Comm'n Decision (Nov. 7, 1996).

¶ 2. A taxicab driver's choice to drive south from 54th Street on Fifth Avenue rather than on Seventh Avenue or Broadway, based on the driver's knowledge of the usual traffic conditions in the area, did not constitute a violation of his obligation to take the shortest reasonable route pursuant to paragraph (a) of this section. Taxi and Limousine Commission v. Rana, OATH Index No. 1396/96 (July 19, 1996).

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35 RCNY 2-46

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§2-46 Reasonable Requests.

(a) A driver shall comply with all the reasonable requests of a passenger, including but not limited to giving upon request his name, his taxicab driver's license number and the medallion number.

(b) A driver shall give a passenger a receipt for payment of the fare at the end of the trip. Such a receipt shall state the date, time, medallion number, fare paid, extras and the Commission Complaint Department telephone number.

(c) All audio equipment controlled by the driver shall be turned on or off at the request of the passenger. The passenger shall have the right to select what is to be played on the audio equipment. Whether or not a taxicab is hired, an audio device shall be played at normal volume only, and all noise ordinances shall be complied with.

(d) An air conditioning device in a taxicab shall be turned on or off at the request of a passenger.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (b) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 29, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgated rules require that taxi drivers automatically provide passengers with a printed receipt at the end of the trip, rather than providing a receipt upon request. Similarly, taximeters must automatically print a receipt at the end of the trip.

The purpose of these amendments is to provide passengers with a written record of their trip, which will aid the passenger in making a complaint about the driver or the taxicab to the Commission, and will also help the passenger locate lost property.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Driver violated rule 2-46(b) when he refused to give a passenger a receipt upon request. **Taxi and Limousine Comm'n v. Hossain**, OATH Index No. 1296/99 (May 11, 1999).

¶ 2. Taxi driver unreasonably refused a passenger request to make two stops where passenger offered partial payment of the fair showing on the meter and gave assurances that he had every intention of returning to the taxi and continuing to the final destination. **Taxi and Limousine Comm'n v. Jaffar,** OATH Index No. 2174/00 (July 13, 2000).

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35 RCNY 2-47

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§2-47 Change.

(a) A driver shall be required to accept United States currency.

(b) A driver must always be capable of making change of a $20 bill, provided that if the driver finds himself or herself unable to change a $20 bill during his or her workshift the driver may, with the passenger's consent, place the meter in an off or "Vacant" position, illuminate the "Off Duty" light, transmit the relevant information to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, make an appropriate written trip record entry. The driver shall then proceed to the nearest location where he or she may reasonably expect to obtain change.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Dec. 29, 1995 §39, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) amended City Record June 12, 2007 §20, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (b) amended City Record May 11, 2005 §11, eff. June 10, 2005. [See T35 §3-03 Note 10]

CASE AND ADMINISTRATIVE NOTES

¶ 1. For a taxicab driver who was unable to make change for a twenty-dollar bill in violation of paragraph (b) of this section, who spoke in a threatening manner to his passenger regarding payment of the fare in violation of §2-60(a) of this chapter, and who grabbed the passenger, threw him to the ground and attempted to kick him, in violation of §2-60(b) of this chapter, the penalty imposed was revocation of the driver's hack license. Taxi and Limousine Commission v. Kalontarov, OATH Index No. 1732/97 (Sept. 10, 1997).

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§2-48 [Reserved]

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§2-49 [Reserved]

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§2-50 Refusals.

(a) A driver shall not seek to ascertain the destination of a passenger before such passenger is seated in the taxicab.

(b) A driver shall not refuse by words, gestures or any other means, without justifiable grounds set forth in §2-50(e) herein, to take any passenger to any destination within the City of New York, the counties of Westchester or Nassau or Newark Airport. This includes a person with a disability and any service animal accompanying such person.

(c) A driver shall not require a person with a disability to be accompanied by an attendant. However, where a person with a disability is accompanied by an attendant, a taxicab driver shall not impose or attempt to impose any additional charge for transporting the attendant.

(d) A driver shall not refuse to transport a passenger's luggage, wheelchair, crutches, other mobility aid or other property.

(e) Justifiable grounds for the conduct otherwise prohibited by §§2-50(a), 2-50(b), 2-50(c) and 2-50(d) shall be the following:

(1) another passenger is already seated in the taxicab;

(2) a hail from another person has already been acknowledged by the driver, and that other person is being picked up or is about to be picked up. Provided, however, that a driver shall not acknowledge the hail of a prospective passenger over the hail of another prospective passenger with an intent to avoid transporting the passenger whose hail

was not acknowledged;

(3) the passenger is carrying, or is in possession of any article, package, case or container, other than a wheelchair or other mobility aid, which the driver may reasonably believe will cause damage to the interior of the taxicab, impair its efficient operation, or cause it to become stained or foul smelling;

(4) the driver is ending his or her workshift, has already illuminated the "Off Duty" sign, locked both rear doors, and has transmitted the relevant information to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, indicated on the written trip record that he or she is off duty and proceeding to his or her garage or home;

(5) it is necessary to take the taxicab out of service for one of the reasons specified in section 2-52(a) of this chapter, and the driver has already illuminated the "Off Duty" sign, transmitted the relevant information to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, made the appropriate written trip record entry, and the driver has further locked both rear doors;

(6) the driver is discharging his last passenger or passengers prior to going off duty, has already illuminated his "Off Duty" sign and transmitted the relevant information to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, made the appropriate written trip record entry;

(7) the passenger is escorting or accompanied by an animal which is not properly or adequately secured in a kennel case or other suitable container. This provision shall not apply to service animals accompanying people with disabilities;

(8) the destination is within the counties of Nassau or Westchester, or Newark Airport, and the driver has been operating the taxicab for more than eight (8) hours of any continuous twenty-four (24) hour period;

(9) the passenger is disorderly or intoxicated. Provided, however, that a driver shall not refuse to provide service to a person with a disability solely because such person's disability results in an appearance or involuntary behavior which may offend, annoy, or inconvenience the driver;

(10) a driver has a position on the "long haul" line at an airport taxi stand and the passenger desires "short haul" transportation and there is another taxicab available on the "short haul" line; or the driver has a position on the "short haul" line and the passenger desires "long haul" transportation and there is another taxicab available on the "long haul" line; or

(11) if the passenger has refused a request by the driver to obey the no-smoking requirement of law; the driver may discharge the passenger after asking the passenger to cease smoking in the taxicab, but if he does discharge the passenger it must be at a safe location.

HISTORICAL NOTE

Section amended City Record July 8, 1997 §6, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (e) pars (4), (5), (6) amended City Record June 12, 2007 §21, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (e) pars (4), (5), (6) amended City Record May 11, 2005 §12, eff. June 10, 2005. [See T35 §3-03 Note 10]

CASE AND ADMINISTRATIVE NOTES

¶ 1. A taxicab driver's termination of a trip due to a flat tire is permissible under paragraph (e) (formerly paragraph (d)) of this section. Taxi and Limousine Commission v. Rana, OATH Index No. 1396/96 (July 19, 1996).

¶ 2. In a default proceeding, the administrative law judge found that taxi driver violated section 2-50(b), when, while off-duty, he would not take a passenger to his requested downtown destination but was willing to take the passenger to either LaGuardia airport or midtown Manhattan. The administrative law judge held that limiting a passenger's destination in such a manner is equivalent to refusing to take a passenger to his destination. **Taxi and Limousine Comm'n v. Khan,** OATH Index No. 935/98 (Jan. 21, 1998).

¶ 3. See Padberg v. McGrath-McKechnie, 2002 WL 826795, N.Y.L.J., May 2, 2002, page 32, col. 1, U.S. Dist.Ct., E.D.N.Y., discussed under case note 2, 35 RCNY 2-61.

¶ 4. A refusal was proven where a passenger complained that the taxi driver's meter was too fast, the driver threatened the passenger, sped up, and refused to get off the highway at the exit the passenger requested. Pursuant to paragraph (b) of this section, drivers are prohibited from refusing to transport passengers to their requested destinations. **Taxi and Limousine Comm'n v. Raoul**, OATH Index No. 752/99 (Feb. 8, 1999).

¶ 5. Driver refused to transport a passenger to his destination, but the refusal was found to be not racially or ethnically motivated nor motivated by bias against a neighborhood. **Taxi and Limousine Comm'n v. Abubakar**, OATH Index No. 1174/00 (Feb. 29, 1999).

¶ 6. Where respondent took an alternate route despite having been told by the passenger to take another route, the taxi driver violated this section. When the passenger expressed a desire to terminate the ride and hail another cab, respondent stopped and as she was exiting, he accelerated, causing her to fall to the ground and respondent left the scene of the accident. **Taxi and Limousine Comm'n v. Ahmed**, OATH Index No. 1790/99 (May 3, 1999).

¶ 7. Taxi driver's fear that he would get lost in Staten Island is not a justification to refuse to transport a passenger. Taxi driver is expected to know the route or to at least be able to find it on a map if destination is within the five boroughs. **Taxi and Limousine Comm'n v. Ali,** OATH Index No. 1246/00 (Feb. 22, 2000), **penalty modified,** Comm'n Dec. (July 25, 2000).

¶ 8. Taxi driver found to have refused to pick up minority passengers in violation of §2-50(a), through Operation Refusal, a Commission and Police Department initiative. Administrative law judge recommended $350 fine, holding fine in that amount and not revocation to be the maximum penalty for a first refusal offense pursuant to section 19-507(b) of the Administrative Code. **Taxi and Limousine Comm'n v. Ouali,** OATH Index No. 1855/00 (May 3, 2000), **modified on penalty,** Comm'n Dec. (May 1, 2001).

¶ 9. Administrative law judge concluded that respondent refused to stop and pick up a passenger based on that passenger's race where the passenger was in respondent's direct line of vision, respondent briefly paused after making eye contact with the passenger, and respondent continued to drive fifty feet before stopping for another passenger. Drivers who refuse passengers based upon perceived or actual bias in any form should be penalized and need to

understand that such behavior while serving the public will not be tolerated. Administrative law judge recommends a fine of $500 and a 30-day suspension, the maximum permissible penalty for a second refusal offense pursuant to section 19-507(b) of the Administrative Code. **Taxi and Limousine Comm'n v. Hayat,** OATH Index No. 1834/00 (June 9, 2000), **modified on penalty,** Comm'n Dec. (May 10, 2001).

¶ 10. Commission is limited to imposition of mandatory penalties under Administrative Code section 19-507(b) for taxi driver's first refusal-to-take-passenger offense; revocation not available for a first offense. **Taxi and Limousine Comm'n v. Park,** OATH Index No. 1014/00, supp. rep. (Feb. 2, 2000), **modified penalty,** Comm'n Dec. (May 25, 2000).

¶ 11. Taxi driver's off-duty defense to refusal charge did not excuse refusal to pick up passenger where driver did not comply with the procedures for going off-duty. Administrative law judge recommended maximum fine of $350 for a first time refusal offense pursuant to §19-507(b) of the Administrative Code. **Taxi and Limousine Comm'n v. Azad,** OATH Index No. 1180/00 (Mar. 1, 2000), **modified on penalty,** Comm'n Dec. (May 1, 2001).

¶ 12. Taxi driver's simultaneous hail defense, §2-50(e), to refusal charge did not justify refusal to pick up passenger where driver did not pick up either passenger. **Taxi and Limousine Comm'n v. Islam,** OATH Index No. 1181/00 (May 1, 2000), **modified on penalty,** Comm'n Dec. (May 10, 2001).

¶ 13. Taxi driver was found not to have refused to intentionally transport a passenger where he saw another prospective passenger first. **Taxi and Limousine Comm'n v. Singh,** OATH Index No. 1173/00 (Apr. 19, 2000).

¶ 14. Pursuant to subsection (b) of this rule, a taxicab driver cannot refuse to take a passenger to any destination within New York City. An exception is provided in subsection (e)(9), which permits a driver to refuse to transport a passenger if the passenger is disorderly or intoxicated. A driver violated subsection (b) when he terminated a ride after going one block because the passenger and his date were kissing and embracing. Driver did not establish that the passengers were disorderly or intoxicated to the point that his refusal to transport them was justified under subsection (e)(9). **Taxi & Limousine Comm'n v. Hussein**, OATH Index No. 572/08 (Jan. 14, 2008).

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§2-51 [Reserved]

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35 RCNY 2-52

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§2-52 Off-Duty Procedure.

(a) Before going off duty a driver shall transmit the relevant information to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, shall enter on his or her written trip record the time, place and reason for going off duty; he or she shall illuminate the "Off Duty" light or display a "Relief Time" sign inside the windshield and visible from the street; and he or she shall lock the rear doors.

(b) Upon completion of the off duty activity a driver shall immediately transmit the relevant information to an electronic database for entry on the electronic trip record or, until a taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider as set forth in section 2-26 of this chapter, enter on his or her written trip record the time thereof. The driver shall then turn off the "Off Duty" light or remove the "Relief Time" sign, and return to service.

(c) When the taxicab is operated for personal use, a "Personal Use-Off Duty" entry shall be transmitted to an electronic database for entry on the electronic trip record or made on the written trip record, and the "Off Duty" light shall be illuminated.

(d) A driver shall illuminate the "Off Duty" light only by use of a manually operated switch on the taxicab dashboard.

HISTORICAL NOTE

Section amended City Record Dec. 29, 1995 §40, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subds. (a), (b) amended City Record June 12, 2007 §22, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subds. (a), (b), (c) amended City Record May 11, 2005 §13, eff. June 10, 2005. [See T35 §3-03 Note 10]

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§2-53 Accepting Passengers While Off-Duty.

(a) A driver who has illuminated the "Off Duty" light may not solicit nor accept a passenger unless that driver is returning the taxicab to his or her garage or home and has transmitted the relevant information to an electronic database for entry on the electronic trip record or made a written trip record entry "Returning to garage (or home)" and the passenger's destination is directly en route thereto; when the last passenger is discharged, the driver shall lock the doors and return to his garage or home.

HISTORICAL NOTE

Section amended City Record May 11, 2005 §14, eff. June 10, 2005. [See T35 §3-03 Note 10]

Section added City Record June 26, 1992 eff. July 26, 1992.

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35 RCNY 2-54

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§2-54 Solicitation of Passengers.

(a) A driver shall solicit a passenger only from the driver's seat and only with the words "taxi" or "cab" or "taxicab."

(b) A driver may not use another person, other than a dispatcher at an authorized group-ride taxi line, to solicit a passenger, nor suggest to a passenger that an additional person be accepted as a passenger, except that a driver of an accessible taxicab shall accept dispatches as provided by chapter 16 of this title.

(c) A driver shall not induce the hire of his taxicab by giving misleading information, including but not limited to, the times of arrival and departure of transportation facilities, the location of a building or place, or the distance between two points.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (b) amended City Record Nov. 23, 2007 §6, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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§2-55 Solicitation Prohibited.

(a) A driver shall not solicit passengers within 100 feet of any bus stop, nor stop there unless hailed.

(b) A driver may not, in omnibus fashion, pick up passengers at one or more locations.

(c) A driver shall not solicit or cruise for the purpose of soliciting passengers: (1) at Kennedy, LaGuardia or Newark Airports; or

(2) within 100 feet of any authorized taxi stand; or

(3) within the private streets of Lincoln Center; or

(4) in any area of the City of New York where taxicab cruising is prohibited.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-56

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-56 Taxi Stands.

(a) A driver has the right to take a position on any taxi stand having a vacancy, and no other taxicab driver may interfere with that right.

(b) A driver may not occupy a taxi stand for the purpose of repairing his taxicab, except for minor emergency repairs.

(c) A driver shall not overcrowd, crash or back into a front position on a taxi stand; he shall take the rear position on the line formed at such a stand, unless it is a relief stand that has a vacancy.

(d) A driver may occupy a taxi stand only when he is on duty or when, for a period not to exceed one hour, he has gone off duty pursuant to §§2-52(a) through (c).

(e) The driver of each of the first two taxicabs on a taxi stand, other than a relief stand, shall remain in the driver's seat ready to accept passengers; any other driver on such a stand shall be no more than fifteen feet from his taxicab unless if he is off duty and the required "Off Duty" light or "Relief Time" sign is visibly displayed.

(f) The space immediately in front of a fire hydrant on a street, where parking is not prohibited, is an active taxi stand for one taxicab, except when forbidden by §2-55(c). However, the driver must be seated in his taxicab, ready for operation at all times.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-57

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-57 Terminals.

(a) The rules regarding taxi stands also apply to special taxi stands and feed lines at air, rail, bus and ship terminals. Where taxicab holding areas are provided at such terminals, a driver, before leaving on relief time, shall park the taxicab in such holding area, to which he may not bring any passengers; upon returning, he shall take a rear position on the feed line.

(b) Where at an airport taxi stand, there is a choice of "long haul" and "short haul" lines available to the taxicabs, a driver already on the "short haul" line may not accept a passenger who desires "long haul" transportation if there is an available taxicab on the "long haul" line; and conversely a driver already on the "long haul" line may not accept a passenger who desires "short haul" transportation, if there is an available taxicab on the "short haul" line.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

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***** Current through December 2009 ****

35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-58 [Reserved]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-59

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-59 Lost Property.

(a) The driver shall inspect the interior of the taxicab and the trunk compartment, if used, immediately after termination of each trip to Kennedy, La Guardia and Newark Airports.

(b) Property found by a driver in a taxicab shall be returned to the passenger if possible; otherwise it shall be taken without delay to the police precinct closest to where the passenger was discharged.

(c) If the property is not returned to the passenger, the driver shall promptly inform the Commission of the details regarding the found property and the police precinct where it is held.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Dec. 29, 1995 §41, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Subd. (b) amended City Record Dec. 29, 1995 §41, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-60

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-60 Abuse and Physical Force Prohibited.

(a) A driver shall not threaten, harass or abuse any passenger or any governmental or Commission representative, public servant or other person while performing his duties and responsibilities as a driver. A driver shall not distract or attempt to distract a service animal accompanying a person with a disability.

(b) A driver shall not use or attempt to use any physical force against a passenger, Commission representative, public servant or other person while performing his duties and responsibilities as a driver. A driver shall not harm or use physical force against or attempt to harm or use physical force against a service animal accompanying a person with a disability.

HISTORICAL NOTE

Section amended City Record July 8, 1997 §7, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Section added City Record June 26, 1992 eff. July 26, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. By verbally abusing, threatening and spitting on a Commission inspector at the Commission's offices, a driver committed conduct under this section warranting revocation of his hack license. **Taxi and Limousine Commission v. Vedrine,** OATH Index No. 1001/95 (Sept. 7, 1995).

¶ 2. For a taxicab driver who was unable to make change for a twenty-dollar bill in violation of §2-47(b) of this

chapter, who spoke in a threatening manner to his passenger regarding payment of the fare in violation of paragraph (a) of this section, and who grabbed the passenger, threw him to the ground and attempted to kick him, in violation of paragraph (b) of this section, the penalty imposed was revocation of the driver's hack license. Taxi and Limousine Commission v. Kalontarov, OATH Index No. 1732/97 (Sept. 10, 1997).

¶ 3. A taxicab driver who struck his passenger in the face violated paragraph (b) of this section, notwithstanding the fact that the passenger took the keys to the driver's cab during a dispute between them that arose from the driver's refusal to drive the passenger to her destination. Although the driver may have believed that the passenger was trying to do something more than take the keys from the cab, striking a passenger is not justified even in extreme circumstances, except in self-defense. Taxi and Limousine Commission v. Ramadan, OATH Index No. 1644/97 (July 22, 1997).

¶ 4. Taxi driver was found to have violated rule 2-60(b) when he punched a passenger in the head and face, knocking the passenger to the ground, during a fare dispute. License revocation imposed. **Taxi and Limousine Comm'n v. Belenky,** OATH Index No. 121/99 (Aug. 10, 1998).

¶ 5. Taxi driver, angry that female passenger, a professional magician, was entering his taxicab with birds used in her act, pulled the magician's assistant out of the cab and pushed the magician into the cab, locked the door and proceeded rapidly up Madison Avenue. As she screamed to be let out, the driver told the magician "Lady, I'm going to take you for a ride you're never going to forget." The magician's little finger was broken during the incident. Driver's conduct violated rules 2-60(a) and 2-60(b). License revocation imposed. **Taxi and Limousine Comm'n v. Abit-Osman,** OATH Index No. 1452/98 (July 31, 1998).

¶ 6. Taxi driver found to have struck passenger, without provocation, with a stick and a clipboard. License revocation imposed. **Taxi and Limousine Comm'n v. Mohamed,** OATH Index No. 1206/98 (May 8, 1998).

¶ 7. Taxi driver visited JFK Airport while off-duty to handle outstanding summonses incurred as a cab driver. Driver got into an argument with Commission personnel and then assaulted law enforcement personnel who were called to eject driver from the facility. The administrative law judge determined that the assault had a sufficient nexus to the driver's hack license since it occurred "while performing his duties and responsibilities as a driver" as defined by rule 2-60(a). The fact that the visit occurred while the driver was not on duty driving his cab was deemed to be inconsequential. License revocation imposed. **Taxi and Limousine Comm'n v. Khan,** OATH Index No. 333/99 (Dec. 14, 1998).

¶ 8. Taxi driver's use of force against pedestrian, if any, was found to be defensive and therefore not in violation of rule 2-60. Charge dismissed. **Taxi and Limousine Comm'n v. Singh,** OATH Index No. 280/99 (Sept. 22, 1998).

¶ 9. Driver violated rules prohibiting threats, harassment, abuse, and physical force on passengers after a passenger complained that the meter was too fast and the taxi driver told her, "I'll put you in jail before you get me in jail" and threatened her life. Taxi driver also pulled her arm to force her to exit the cab. **Taxi and Limousine Comm'n v. Raoul**, OATH Index No. 752/99 (Feb. 8, 1999).

¶ 10. Use of force against pedestrian was unjustified even if pedestrian provoked some response by striking cab window. Administrative law judge found that pedestrian's action was prompted by respondent's reckless driving. **Taxi and Limousine Comm'n v. Smith**, OATH Index No. 498/00 (Oct. 12, 1999).

¶ 11. License revocation imposed where taxicab driver was found to have physically assaulted a passenger by kicking her after a verbal dispute over his failure to follow her directions as to what route to take. **Taxi and Limousine Comm'n v. Mughal**, OATH Index No. 1939/99 (June 16, 1999), **aff'd**, Comm'n Dec. (Sept. 27, 1999).

¶ 12. Taxi driver was found to have caressed and rubbed the hands and inner thigh of an eighteen year-old female passenger without her consent, after offering her a free ride in the front seat of the cab. Administrative law judge rejected respondent's alibi defense and credited the complainant's unequivocal in-court identification of respondent.

License revocation recommended. **Taxi and Limousine Comm'n v. Rauf**, OATH Index No. 2033/99 (July 30, 1999).

¶ 13. Taxi driver violated this section where he pushed complaining witness' car three or four times with the bumper of the taxi, causing the complainant to get out and ask respondent why he continued to push his car, and where the respondent got out of the cab and punched the complainant in the face. License revocation recommended because of driver's actions and past driving record. **Taxi and Limousine Comm'n v. Singh**, OATH Index No. 618/00 (Dec. 20, 1999).

¶ 14. License revocation imposed where taxi driver was found to have screamed at female passenger to get out of the cab and threatened to hit her "in the face." **Taxi and Limousine Comm'n v. Verma**, OATH Index No. 1085/99 (Mar. 9, 1999), **aff'd**, Comm'n Dec. (Apr. 26, 1999).

¶ 15. License revocation imposed where respondent spoke lewdly to four young women in his cab and assaulted one of the them. **Taxi and Limousine Comm'n v. Kouyate**, OATH Index No. 152/00 (Aug. 13, 1999), **aff'd**, Comm'n Dec. (Oct. 27, 1999).

¶ 16. Taxi driver found to have violated section 2-60(a) when he cursed at passenger in annoyance over passenger having dozed off before giving him full and specific directions. **Taxi and Limousine Comm'n v. Tokosi,** OATH Index No. 513/00 (Feb. 18, 2000), **modified on penalty,** Comm'n Dec. (Apr. 12, 2000).

¶ 17. Administrative law judge found that taxi driver abused and harassed the female passenger in violation of section 2-60(a) by manipulating and exposing his penis in her presence. **Taxi and Limousine Comm'n v. Kumar,** OATH Index No. 499/00 (Jan. 31, 2000)

¶ 18. Respondent used physical force against a passenger when he accelerated his taxicab while the rear door was open, the result of which was that the door closed and passenger was restrained from exiting the taxi in violation of section 2-60(b). **Taxi and Limousine Comm'n v. Appelbaum,** OATH Index No. 724/00 (Jan. 27, 2000).

¶ 19. Taxi driver abruptly drove his cab forward, with passenger partially inside the cab and the rear door open, causing the passenger to fall to the street, in violation of paragraphs (a) and (b) of this section. **Taxi and Limousine Comm'n v. Yousaf,** OATH Index No. 984/00 (Feb. 18, 2000).

¶ 20. Belief that passenger is attempting to evade fare, no matter how reasonable or certain, does not justify resort to physical self-help. Proof of injury not required to establish a violation of section 2-60(b). **Taxi and Limousine Comm'n v. Tokosi,** OATH Index No. 513/00 (Feb. 18, 2000), **modified on penalty,** Comm'n Dec. (Apr. 12, 2000)

¶ 21. Petitioner's unrebutted evidence was sufficient to establish that respondent used intemperate language and, without provocation, struck a passenger in the face. The rule imposes an absolute prohibition on verbal abuse and/or the use of physical force against a passenger while on duty as a driver. **Taxi and Limousine Comm'n v. Jaffar,** OATH Index No. 2174/00 (July 13, 2000).

¶ 22. License revocation recommended for taxi driver, who was unhappy with a decision after a hearing, pushed and cursed at Commission employee and guard. Driver's conduct violated sections 2-60(a) and 2-60(b). **Taxi and Limousine Comm'n v. Nicolas,** OATH Index No. 1762/00 (Apr. 12, 2000).

¶ 23. In default hearing, agency convincingly proved through testimony of another cab driver that the respondent sprayed a Mace-like substance into his face after a minor traffic incident. Identity of respondent was not in question-other driver picked him out of photo array and management company certified he was driving the particular cab at the time of the incident. **Taxi and Limousine Comm'n v. Dianis,** OATH Index No. 1832/00 (Apr. 10, 2000).

¶ 24. Subsection (a) of this rule prohibits taxi drivers from threatening, harassing, or abusing passengers or other persons while performing their "duties and responsibilities as a driver." Taxi driver argued this section did not apply to a

dispute with a female motorist that occurred while he was off-duty, driving his wife to a train station. ALJ found the rule did apply and that the driver violated it when he cursed at the female motorist. The rule requires drivers to conduct themselves with appropriate deportment not only before passengers but also before "other persons." The judge inferred from the evidence that the driver was on duty before his wife called and asked him to take her to the train station. **Taxi & Limousine Comm'n v. Narcisse**, OATH Index No. 1998/07 (Aug. 16, 2007), **modified on penalty**, Comm'r/Chair Decision (Sept. 24, 2007).

¶ 25. Taxi driver found to have verbally harassed a passenger in violation of subsection (a) of this rule, but not to have assaulted the passenger in violation of subsection (b) of this rule. ALJ credited driver's testimony that he put his hand out at arm's length to avoid further confrontation, finding no intent to cause harm. Fine of $500 recommended for verbal harassment. **Taxi & Limousine Comm'n v. Conille**, OATH Index No. 361/08 (Nov. 15, 2007).

¶ 26. A licensed driver was charged with both verbal abuse and physical force against two fourteen year old female passengers. He pleaded guilty and surrendered his license pursuant to a stipulation under which he could reapply for a license after one year. The stipulation also said that if he reapplied, the application would be subject to a fitness review, that such review would consider the facts underlying the charges, and that there was no guarantee that the application would be approved. Petitioner waited three years before reapplying for a license. An administrative law judge reviewed the case, noted that only three years had elapsed since the incident, and found that petitioner was unfit to be a driver. The ALJ recommended that the application be denied, and the Commissioner agreed. The court upheld the denial of the application. Judicial review of an administrative determination is limited to whether this determination was arbitrary or capricious, or without a rational basis. The commission was free to weigh all the facts against petitioner, and consider any accomplishments made by the petitioner during the three year period that the petitioner's license was surrendered. The court agreed that the stipulation was based on serious misconduct which had occurred in the relatively recent past. In re Boutros Mankarios v. NYC Taxi and Limousine Comm. 2008 NY Slip Op. 2013, 49 AD3d 316, 853 NYS2d 69, 2008 NY App. Div. Lexis 1998.

¶ 27. Subsection (a) of this rule prohibits a driver from verbally abusing another person "while performing his duties and responsibilities as a driver." Driver charged with violation of this rule for cursing at another driver during an argument which ensued after a traffic incident. ALJ rejected driver's argument that the rule did not apply because the dispute occurred while he was off-duty. Regardless of whether the driver was on or off-duty, he was driving his taxi and he cursed at another person in a public place. Since the incident could reflect poorly on the Commission, it has an interest in regulating this conduct. **Taxi & Limousine Comm'n v. Sobczak**, OATH Index No. 1691/08 (Apr. 7, 2008), **modified on penalty**, Comm'r/Chair's dec. (May 9, 2008).

¶ 28.Announcing that "the time for more civilized drivers has come", Commissioner/Chair overrules **Taxi & Limousine Comm'n v. Baudin**, OATH Index No. 341/81 (Feb. 10, 1982), and progeny. In **Baudin**, the ALJ ruled that the use of profane language by a cab driver must be evaluated in the context of each case to determine whether such conduct goes beyond the mores of the community and "giving cognizance to the realities of life in New York City", and dismissed a charge that a taxi driver had violated this section when he used profanity during a fight with a pedestrian. **Taxi & Limousine Comm'n v. Sobczak**, Comm'r/Chair's dec. (May 9, 2008), **modifying on penalty** OATH Index No. 1691/08 (Apr. 7, 2008).

¶ 29. To the extent that prior precedent (**Taxi & Limousine Comm'n v. Baudin**, OATH Index No. 341/81 (Feb. 10, 1982), and progeny) could be read to exclude the penalty of license revocation for verbal abuse or harassment, those decisions were overruled by the Commissioner/Chair in **Taxi & Limousine Comm'n v. Sobczak**, Comm'r/Chair's dec. (May 9, 2008), **modifying on penalty** OATH Index No. 1691/08 (Apr. 7, 2008).

¶ 30. Commissioner/Chair imposed the penalty of a $1000 fine and a 30 day suspension for a taxi driver who cursed at another taxi driver following a traffic dispute. **Taxi & Limousine Comm'n v. Sobczak**, Comm'r/Chair's dec. (May 9, 2008), **modifying on penalty** OATH Index No. 1691/08 (Apr. 7, 2008).

¶ 31. The maximum suspension for a violation of subsection (a) of this section is thirty days. ALJ's recommendation of a ninety day suspension was impermissible. **Taxi & Limousine Comm'n v. Iqbal**, Comm'r/Chair's dec. (Nov. 25, 2008), **modifying on penalty** OATH Index No. 457/09 (Oct. 20, 2008).

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35 RCNY 2-61

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-61 Compliance with Law.

(a)(1) A driver, while performing his duties and responsibilities as a driver shall not commit or attempt to commit, alone or in concert with another, any act of fraud, misrepresentation or larceny against a passenger, Commission representative, public servant or any other person.

(2) A driver, while performing his duties and responsibilities as a taxicab driver, shall not commit or attempt to commit, alone or in concert with another, any willful act of omission or commission which is against the best interests of the public, although not specifically mentioned in these Rules.

(b) A driver shall not use or permit any other person to use his taxicab for any unlawful purpose.

(c) A driver shall not conceal any evidence of a crime nor voluntarily aid violators to escape arrest.

(d) A driver shall report immediately to the police any attempt to use his taxicab to commit a crime or escape from the scene of a crime.

(e) A driver shall, upon filing for Workers' Compensation benefits because of a disabling work-related injury, submit his or her driver's license to the Commission and cease driving, for so long as the driver claims a disability that prevents the driver from operating a taxicab. Such license shall not be returned until such driver presents to the Commission documentation of cessation of Workers' Compensation benefits due to recovery from such work-related disability, as provided in §1-43(d) of this title.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) amended City Record Aug. 10, 1998 §3, eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

Subd. (e) amended City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Subd. (e) added City Record Sept. 13, 1993 eff. Oct. 13, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Taxicab driver's license was revoked because evidence supported the determination that petitioner harassed, made sexual comments to and grabbed breast of female passenger in his taxicab. Taxicab Drivers rule 109 (35 RCNY 2-61(a)) prohibits driver, while performing his duties and responsibilities, from performing "any willful act of omission or commission which is against the best interests of the public, even though not specifically mentioned in these rules", is not unconstitutionally vague. Matter of Fernandez v. NYC Taxi & Limo. Comm., 193 AD2d 423 [1993].

¶ 2. Taxi driver violated this section in creating a disturbance in the Commission's offices, by swearing, yelling, threatening Commission employees, engaging in violent and tumultuous conduct, and refusing repeated lawful requests to leave the building. Taxi and Limousine Commission v. Cleef, OATH Index No. 306/95 (Oct. 12, 1994).

¶ 3. This rule, which prohibits a taxi driver from performing willful acts which are "against the best interests of the public," is broad enough to prohibit sexual harassment of and offensive touching of a female passenger. The court rejected a claim that the rule was unconstitutionally vague. Fernandez v. New York City Taxi and Limousine Commission, 193 A.D.2d 423 (1st Dept. 1993).

¶ 4. Appointing a gypsy cab to look like a medallion cab, including use of yellow paint reserved for medallion taxis, violates paragraph (a) of this section as well as §2-17 of this title, prohibiting the knowing operation of a vehicle for hire without a proper license, warranting revocation of the respondent's hack license. Taxi and Limousine Commission v. Min, OATH Index No. 669/96 (Nov. 13, 1995).

¶ 5. A taxicab driver who misrepresented to a passenger that he knew the route to the passenger's destination, then was unable to take her to that destination, violated paragraph (a) of this section. Taxi and Limousine Commission v. Panic, OATH Index No. 1875/96 (Aug. 28, 1996), modified as to penalty, Comm'n Decision (Nov. 7, 1996).

¶ 6. A taxicab driver who filed a report with the Commission falsely stating that his hack license had been lost, when in fact it had been forcibly taken by a passenger during a dispute, thereby committed the crime of offering a false instrument for filing in the second degree and a violation of paragraph (a) of this section. Taxi and Limousine Commission v. Ullah, OATH Index No. 1793/97 (Aug. 22, 1997).

¶ 7. A taxicab driver's false report to the Commission that his hack license had been lost constituted a violation of paragraph (a) of this section. Taxi and Limousine Commission v. Louis, OATH Index No. 1487/97 (Aug. 11, 1997).

¶ 8. Where a taxicab driver obtained a replacement hack license from the Commission by reporting that his original hack license had been lost, when in fact the original hack license had been confiscated by a police officer, the driver committed a violation of paragraph (a) of this section, the penalty for which was revocation of the hack license. Taxi and Limousine Commission v. Diallo, OATH Index No. 234/98 (Sept. 9, 1997).

¶ 9. Possession by a taxicab driver of a counterfeit hack license constituted a violation of paragraph (a) of this section, the penalty for which was revocation of the driver's hack license. Taxi and Limousine Commission v. Gondal, OATH Index No. 985/97 (Apr. 17, 1997).

¶ 10. Having obtained a replacement hack license by reporting his original hack license to be lost, the respondent posted as bond his superseded original hack license rather than his replacement license, in order to be able to continue driving his taxicab while his license was suspended. In addition, the respondent obtained a temporary hack license without disclosing his possession of the replacement hack license. Both acts constituted violations of paragraph (a) of this section, the penalty for which was revocation of the respondent's hack license. Taxi and Limousine Commission v. Mbaye, OATH Index No. 1749/97 (Sept. 11, 1997).

¶ 11. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of this section, as well as §§1-23, 1-60(b), 1-67(a), 2-26(d), 2-30(a), 2-31(a), and 2-66(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

¶ 12. Taxicab driver's possession in her cab of a "zapper," a device that enables the driver to accelerate the cab's meter, constituted a violation of §2-26(d) of this title and paragraph (a) of this section, the penalty for which was revocation of the driver's hack license. Taxi and Limousine Commission v. Decriollo, OATH Index No. 1480/97 (Sept. 4, 1997).

¶ 13. Taxicab driver's forgery of a hack license constituted a fraud in violation of paragraph (a) of this section. Taxi and Limousine Commission v. Windell, OATH Index No. 1748/97 (July 11, 1997).

¶ 14. This rule, which states that drivers shall not engage in willful acts of commission or omission which is "against the best interests of the public," is not unconstitutionally vague. In this case, drivers disciplined for refusal of service had more than fair warning that such conduct could subject them to disciplinary action. Padberg v. McGrath-McKechnie, N.Y.L.J., May 2, 2002, page 32, col. 1, 2002 WL 826795, U.S. Dist.Ct., E.D.N.Y.

¶ 15. In Fernandez v. New York City Taxi & Limousine Commission, 193 A.D.2d 423, 597 N.Y.S.2d 337 (1st Dept. 1993), the court held that the "public interest" rule was not unconstitutionally vague as applied to driver who made sexual comments to and grabbed breasts of female passenger.

¶ 16. The TLC has the power to revoke a taxi driver's license even for a first-time refusal of service. Any unjustified service refusals by licensed taxicab drivers threatens the best interests of the public, since such refusals not only perpetuate the insidious problem of discrimination, but also adversely impact a vital and integral component of the transportation system of the city. Arif v. New York City Taxi & Limousine Commission, 3 A.D.3d 345, 770 N.Y.S.2d 344 (1st Dept. 2004). The Court of Appeals has granted leave to appeal.

¶ 17. In Lys v. New York City Taxi and Limousine Commission, N.Y.L.J., Jan. 31, 2002, page 21, col. 4, 2002 WL 338187 (Civ.Ct. New York Co.) the court held where a driver was accused of refusal of service, that the TLC could not summarily suspend the driver's license without a hearing. Moreover, the court held that a post-hearing suspension of the driver's license by reason of a first offense of service refusal unlawfully deprived the driver of the property right which the license represented. The penalties imposed were in excess of those called for by Admin. Code Sec. 19-507, which provided for a fine of between $250 and $350 for a first offense.

¶ 18. Taxi driver fraudulently claimed that his failure to appear at Commission hearing was because he had been a crime victim. The driver submitted altered police reports which falsely attested to his being a crime victim four days after the scheduled hearing. License revocation imposed. **Taxi and Limousine Comm'n v. Dimitrie,** OATH Index No. 1582/98 (Aug. 4, 1998).

¶ 19. Operation of a taxicab by defaulting respondent, one of two drivers and owners of the cab, with a meter acceleration device known as a "zapper," constituted a violation of this section and several others, the penalty for which was revocation of respondent's hack license and forced sale of his medallion. **Taxi and Limousine Comm'n v. Hom,** OATH Index Nos. 433 & 435/99 (Oct. 28, 1998).

¶ 20. The Commission proved that an unauthorized meter acceleration device had been installed in a taxi. The two named respondents were the full time drivers of the cab who had the motive and opportunity to tamper with the meter. Respondents' default permitted the administrative law judge to infer that neither driver had any defense to the evidence presented. Both drivers were found to have engaged in a scheme to defraud the riding public in violation of section 2-61. License revocation imposed. **Taxi and Limousine Comm'n v. Mohammad,** OATH Index Nos. 173-75/99 (Oct. 6, 1998).

¶ 21. Taxi driver is found to have overcharged two passengers based upon testimony from the passengers and meter acceleration device found in the cab during an inspection following the passenger complaints. License revocation imposed**. Taxi and Limousine Comm'n v. Flores,** OATH Index No. 1652/98 (Aug. 7, 1998).

¶ 22. Driver violated section 2-13(a) and section 2-61(a) when he falsely reported his hack license stolen in order to obtain a replacement license and then allowed an unauthorized person to use his replacement hack license, while respondent continued to use his original license. Revocation imposed. **Taxi and Limousine Comm'n v. Nawaz,** OATH Index No. 1433/97 (Jan. 28, 1998).

¶ 23. License revocation imposed for a taxi driver, operating his taxi while his license was suspended, who presented a fake (photocopy of original) hack license to a police officer when the officer served the driver with summonses. **Taxi and Limousine Comm'n v. Ilyas,** OATH Index No. 1574/98 (June 17, 1998).

¶ 24. Hearsay evidence, including an affidavit and several e-mails from a foreign passenger, proved that taxi driver had exposed himself to the female passenger. License revocation imposed. **Taxi and Limousine Comm'n v. Fernandez,** OATH Index No. 334/99 (Oct. 16, 1998).

¶ 25. License revocation recommended where undisputed evidence established that an unknown imposter represented himself to be respondent and presented respondent's hack license and DMV license in attempting to register for a course required for hack license renewal. **Taxi and Limousine Comm'n v. Elsayed**, OATH Index No. 462/99 (Jan. 11, 1999).

¶ 26. Respondent participated in a scheme to alter hack license and permit an unauthorized individual to drive a taxicab in violation of this section. **Taxi and Limousine Comm'n v. Shah**, OATH Index No. 514/99 (Jan. 27, 1999).

¶ 27. Respondents engaged in a scheme to defraud the public by operating taxicab while it was equipped with a zapper, or unauthorized device to accelerate the taximeter. **Taxi and Limousine Comm'n v. Kandov**, OATH Index Nos. 941-42/99 (May 12, 1999).

¶ 28. Respondents violated this section when they engaged in a scheme to ensure that they and others received passing grades on the drivers final licensing examination. Respondents, who denied any knowledge of or in involvement in the scheme, could not explain how the former employee could have been provided with their Commission-issued hack license numbers, taxi school each attended and other personal information without their knowledge and cooperation in the scheme. **Taxi and Limousine Comm'n v. Ghotra**, OATH Index Nos. 659 & 1938/99 (July 21, 1999).

¶ 29. Respondents, identified on the rate card as regular drivers of the taxicab in which the devices had been placed at least 6 or 7 months earlier, and possibly longer, were liable for meter tampering and operating cab with unauthorized device and engaging in a scheme to defraud the public, on and prior to date of discovery by Commission investigator. Inspection of taxicab revealed tampered harness wiring and presence of unauthorized meter acceleration device in a CB radio. **Taxi and Limousine Comm'n v. Zargar**, OATH Index Nos. 1130-31/99 (Mar. 9, 1999), **rev'd in part**, Comm'n Dec. (April 15, 1999).

¶ 30. There was insufficient evidence that a taxi driver bribed a Commission employee to secure a passing score on a drivers examination. Administrative law judge found that the employee's written statement, indicating only that she

accepted bribes from unidentified "middlemen" on behalf of forty drivers, was insufficient to sustain the allegations and recommended that the charges be dismissed. **Taxi and Limousine Comm'n v. Khan,** OATH Index No. 584/99 (Jan. 5, 1999).

¶ 31. License revocation recommended for taxi driver who abruptly drove his cab forward, with passenger partially inside the cab and the rear door open, causing the passenger to fall to the street, in violation of Drivers Rules section 2-61(a) and Vehicle and Traffic Law sections 600(2) and 1162. **Taxi and Limousine Comm'n v. Yousaf,** OATH Index No. 984/00 (Feb. 18, 2000).

¶ 32. Administrative law judge found that taxi driver manipulated and exposed his penis in the presence of a female passenger. **Taxi and Limousine Comm'n v. Kumar,** OATH Index No. 499/00 (Jan. 31, 2000).

¶ 33. In a default proceeding, administrative law judge found that taxi driver exposed his penis to a pedestrian and at the same time and place, punched that pedestrian. **Taxi and Limousine Comm'n v. Majeed,** OATH Index No. 1540/00 (Apr. 12, 2000).

¶ 34. Held, the Commission could not use its general rule prohibiting acts against the best interests of the riding public (§ 2-61(a)) as justification to revoke a license for a first-time service refusal offense, because service refusals are governed by a specific Administrative Code provision (§19-507) which contains a mandatory graduated penalty scheme limiting the penalty for a first offense to a fine. For service refusal, administrative law judge found violation of refusal rule (§2-50) but not a separate violation of rule 2-61(a). Administrative law judge recommended dismissal of section 2-61(a) violation. See e.g. **Taxi and Limousine Comm'n v. Ouali,** OATH Index No. 1855/00 (May 3, 2000), modified on penalty, Comm'n Dec. (May 1, 2001); **Taxi and Limousine Comm'n v. Mussa,** OATH Index No. 1053/00 (Feb. 2, 2000).

¶ 35. Violation of rules prohibiting driver or owner from acting against the best interest of the public may be found for conduct which is also prescribed by other rules where conflicting penalty provisions are not at issue. **Taxi and Limousine Comm'n v. Egalite,** OATH Index No. 1542/00 (Aug. 4, 2000) (citing **Taxi and Limousine Comm'n v. Jaffar,** OATH Index No. 2174/00 (July 13, 2000).

¶ 36. Driver's physical and verbal abuse of passenger was found to have violated both specific rule prohibiting abuse of passenger (§ 2-60) and catchall rule prohibiting conduct against the best interests of the public (§ 2-61(a)(2)). In cases involving service refusals, the general best interests rule can not be invoked in order to impose the penalty of license revocation in contravention of the specific graduated penalties set for refusals. Where conflicting penalty provisions are not at issue, findings of multiple rule violations may be made where the same conduct violates more than one provision or rule. **Taxi and Limousine Comm'n v. Jaffar,** OATH Index No. 2174/00 (July 13, 2000).

¶ 37. Respondent's race-based refusal to stop to pick up a passenger violated section 2-50(b), however, it does not generate a separate violation under section 2-61(a)(2). Section 2-61(a)(2) is a general provision that, by its own language, yields to the more specific rules regulating the conduct of drivers and is not applicable to respondent in the instant case. The concluding phrase, "although not specifically mentioned in these Rules," indicates that this section regulates conduct not otherwise articulated. This interpretation is in accord with general principles of statutory construction and applies here. **People v. Lawrence,** 64 N.Y.2d 200, 204, 485 N.Y.S.2d 233, 236 (1984); **People v. Mobil Oil Corp.,** 48 N.Y.2d 192, 200, 422 N.Y.S.2d 33, 38 (1979); N.Y. Statutes § 238 (McKinney Supp. 1999) (It is a well established principle in the construction of statutes that, whenever there is a general and a particular provision in the same statute, the general does not overrule the particular, but applies only where the particular enactment is inapplicable.); **Prospect v. Cohalan,** 109 A.D.2d 210, 216, 490 N.Y.S.2d 795, 799 (2d Dep't), **aff'd,** 65 N.Y.2d 867, 493 N.Y.S.2d 293 (1985). **Taxi and Limousine Comm'n v. Hayat**, OATH Index No. 1834/00 (June 9, 2000), **modified on penalty,** Comm'n Dec. (May 10, 2001).

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§2-62 Gifts Prohibited.

(a) A driver or any person acting on his behalf shall not offer or give any gift, gratuity or thing of value to any employee, representative or member of the Commission, or any public servant, or any dispatcher employed at a public transportation facility.

(b) A driver shall immediately report to the Commission and the NYC Department of Investigation any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the Commission or any public servant or any dispatcher employed at a public transportation facility or authorized group-ride taxi line.

(c) A driver shall remove all currency from the taxicab's interior prior to its examination by any Commission personnel.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Testimony from TLC inspector, who admitted that he accepted bribes from those who presented taxicabs to him for inspection, was found insufficient to establish charges that taxi cab driver had bribed the inspector, due to inconsistencies in the inspector's testimony and other problems with his credibility. **Taxi and Limousine Comm'n v. Chrisanthos, Inc.,** OATH Index Nos. 1626-32/95 (July 21, 1998).

¶ 2. TLC inspector's testimony was found to be sufficient to establish that medallion owners attempted to bribe the inspector. **Taxi and Limousine Comm'n v. N & J Taxi, Inc.,** OATH Index Nos. 1542-53/95 (Jan. 9, 1996), **aff'd in part, remanded on other grounds sub nom. Statharos v. NYC Taxi & Limousine Comm'n,** 269 A.D.2d 280, 703 N.Y.S.2d 461 (1st Dep't 2000).

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§2-63 Conviction of a Crime.

(a) A driver shall notify the Commission in writing of his conviction of a crime within fifteen (15) days of such conviction, and he shall deliver to the Commission a certified copy of the certificate of disposition issued by the Clerk of the Court within fifteen (15) days of sentencing.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The fact that a taxi driver's criminal conviction was subject to a pending appeal did not relieve the driver of the obligation under this section to report his criminal conviction to the Commission. Taxi and Limousine Commission v. Ojo, OATH Index No. 949/94 (Aug. 4, 1994).

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CHAPTER 2 TAXICAB DRIVERS RULES

§2-64 Participation in Processions and Parades. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 29, 1995 §42, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

Section added City Record June 26, 1992 eff. July 26, 1992.

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§2-65 Merchandise Solicitation Prohibited.

(a) A driver shall not sell, advertise or recommend any service or merchandise to any passenger without prior written Commission approval.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

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§2-66 Cooperating with TLC.

(a) A driver shall, at all times, cooperate with all law enforcement officers, authorized representatives of the Commission, the NYC Department of Investigation, and dispatchers at public transportation terminals and at authorized group-ride taxi lines, and shall comply with all their reasonable requests, including but not limited to giving, upon request, his or her name and taxicab driver's license number and exhibiting the rate card, the required electronic or written trip record and, when the taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, if off duty produce the off-duty code receipt, and other documents required to be in his or her possession.

(b) A driver shall promptly answer and comply as directed with all questions, communications, directives and summonses from the Commission or its representatives and the NYC Department of Investigation or its representatives. A driver shall produce his or her taxicab driver's license and DMV license, required electronic or written trip records and, when the taxicab is required to be equipped with the taxicab technology system as defined in section 2-01 of this chapter, if off duty produce the off-duty code receipt, or other documents whenever the Commission requires him or her to do so.

(c) A driver shall notify the Owner and the Commission by telephone immediately, and in writing within twenty-four (24) hours, upon the discovery of any of the following with respect to the following equipment:

(1) Any taximeter other than the taximeter approved by the Commission and indicated on the rate card, has been installed in the taxicab operated by the driver;

(2) Any taximeter seal in the taxicab operated by the driver has been removed or tampered with;

(3) Any unauthorized device has been connected to the taximeter, any seal, cable connection or electrical wiring of the taxicab operated by the driver, which may affect the operation of a taximeter;

(4) Any intervening connections, splices, "Y" connections or direct or indirect interruptions or connections of any kind whatsoever have been discovered on any wiring harness attached to the taximeter in the taxicab operated by the driver.

HISTORICAL NOTE

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a), (b) amended City Record June 12, 2007 §23, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subds. (a), (b) amended City Record May 11, 2005 §15, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (c) added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §1-23 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Operation of a taxicab by the respondent, the owner and driver of the cab, with a device known as a "zapper," the purpose of which was to enable the operator to tamper with the taximeter and artificially increase the fare to be charged to customers, constituted a violation of this section, as well as §§1-23, 1-60(b), 1-67(a), 2-26(d), 2-30(a), 2-31(a) and 2-61(a), the penalty for which was revocation of the respondent's hack license and forced sale of his medallion. Taxi and Limousine Commission v. Malek, OATH Index No. 1540/97 (Aug. 5, 1997).

¶ 2. Respondent was found to have failed to appear at a Commission hearing despite having received adequate notice of the hearing. Respondent's license was suspended after his default at the Commission hearing. Petitioner's proof of service showed notice was "unclaimed." Address to which notice was sent was the same address as multiple other notices, which respondent acknowledged receiving. **Taxi and Limousine Comm'n v. Shah**, OATH Index No. 514/99 (Jan. 27, 1999).

¶ 3. Taxicab drivers are required to comply with directives from the Commission and its representatives. Driver was found to have failed to comply with a directive to provide certain documents regarding a small claims judgment. The penalty for a proven violation of this rule is a $200 fine and license suspension until driver complies with directive. Suspension until compliance, without fine, is imposed where Commission requested only that sanction. **Taxi & Limousine Comm'n v. Hussain**, OATH Index No. 1297/08 (Jan. 11, 2008).

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§2-67 [Reserved]

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§2-68 [Reserved]

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§2-70 Program for Persistent Violators of Taxicab Drivers Rules (effective date, October 15, 1989).

(a) Any driver who has been found guilty of three or more violations that occurred within a fifteen month period and whose license has not been revoked shall be required to attend a remedial or refresher course and will accumulate one point on his taxicab driver's license. Any driver who does not complete such course upon notification by the Commission shall have his license suspended until compliance.

(b) Any driver who has accumulated six or more points against his taxicab driver's license within a fifteen month period and whose license has not been revoked shall have his license suspended for thirty days.

(c) Any driver who has accumulated ten or more points against his taxicab driver's license within a fifteen month period shall have his license revoked.

(d) For the purposes of subdivisions (a) through (c) of this section, a driver who has been found guilty of multiple violations arising from a single incident shall be deemed guilty of the single violation with the highest point total for purposes of this section.

(e) The minimum penalties set forth in subdivisions (a) through (c) of this section shall not preclude the imposition by the Commission of additional or more severe penalties in accordance with Rules of the Commission.

(f) The penalties set forth herein will be imposed following the hearing where the driver has been found in violation of rules that bring his accumulated point total to the level described in subdivisions (b) and (c). Persistent violator penalties will be in addition to those penalties imposed for the underlying rule violations.

(g) Rule violations that occurred prior to July 26, 1998 will not be deemed to have any point value for the purpose of imposing any persistent violator penalty under this section.

(h) The Schedule of Points is as follows:

Rule No.	Points	Reference Description
§2-12(a)	2	Operating a taxicab while taxi driver license is revoked, suspended or expired
§2-12(b)	2	Operating a taxicab without a valid class 1, 2, 3, or 4, or equivalent state driver license
§2-12(c)	1	Failure to surrender taxi driver license
§2-13(a)	3	Applying for or possession of more than one taxi driver license
§2-15(a)	1	Altered or mutilated taxi driver license
§2-17(a)	3	Operating an unlicensed vehicle
§2-21(a)	4	Reckless driving
§2-21(b)(3)		Hazardous moving violations as follows:
		Speeding:
§2-21(b)(3)(i)	3	1 to 10 miles above posted speed limit
	4	11 to 20 miles above posted speed limit
	5	21 to 30 miles above posted speed limit
	6	31 to 40 miles above posted speed limit
	8	41 or more miles above speed limit
§2-21(b)(3)(ii)	5	Failing to stop for school bus
§2-21(b)(3)(iii)	4	Following too closely
§2-21(b)(3)(iv)	4	Inadequate brakes (own vehicle)
§2-21(b)(3)(v)	2	Inadequate brakes (employer's vehicle)
§2-21(b)(3)(vi)	3	Failing to yield right of way
§2-21(b)(3)(vii)	3	Traffic signal violation
§2-21(b)(3)(viii)	3	Stop sign violation
§2-21(b)(3)(ix)	3	Yield sign violation
§2-21(b)(3)(x)	3	Railroad crossing violation
§2-21(b)(3)(xi)	3	Improper passing
§2-21(b)(3)(xii)	3	Unsafe lane change
§2-21(b)(3)(xiii)	3	Driving left of center
§2-21(b)(3)(xiv)	3	Driving in wrong direction
§2-21(b)(3)(xv)	3	Leaving scene of an accident involving property damage or injury to animal
§2-21(c)	3	Failure to stop after an accident
§2-21(d)	3	Failure to report accident to owner
§2-23(a)	1	Operation for more than 12 consecutive hours
§2-24(a)(1)	1	Driver's name not on rate card
§2-24(a)(2)	1	Vehicle operated by unspecified driver
§2-24(b)	2	Improper sublease
§2-25(e)	2	Locking rear doors while on duty
§2-25(g)	5	Permitting operation by unlicensed driver
§2-25(h)	3	Use of portable or hands-free electronic device while operating taxicab; first offense or second offense committed within any 15-month period
	4	Use of portable or hands-free electronic device while operating taxicab; third offense committed within any 15-month period
§2-26(d)	1	Operating taxicab with unauthorized equipment
§2-27(a)(2)	2	Operating a taxicab without taxi driver license in the display frame
§2-27(a)(3)	1	Operating a taxicab without a rate card
§2-30(a)	2	Operating taxicab with broken meter seals, or with unauthorized meter

§2-30(c)	1	Rooflight not illuminated
§2-31(a)	3	Operating with taximeter seals broken
§2-31(b)	3	Tampering with taximeter or equipment
§2-31(c)	3	Tampering with rooflight
§2-32(a)	1	Failure to follow prescribed procedure when taximeter becomes defective during a trip
§2-33(a)	1	Improper operation of rooflight
§2-33(c)	1	Improper operation of rooflight after passenger leaves taxicab
§2-34(b)	2	Collection of separate fares from individuals sharing a taxicab ride
§2-34(c)	2	Failure to give correct change
§2-35(a)(1-4)	2	Violation of rules applicable to trips beyond the limits of New York City
§2-35(b)(2)	2	Failure to inform a passenger of the rate of fare before the start of trips beyond the limits of New York City, or to inform a passenger when the taxi crosses the City limit
§2-42(a)	2	Discourteousness to passengers
§2-43(c)	2	Picking up additional passengers
§2-45(a)	2	Not using shortest reasonable route
§2-45(b)	2	Not complying with request to change destination
§2-46(a)	1	Failure to comply with a reasonable request from a passenger
§2-46(b)	1	Failure to give passenger a receipt
§2-52(a-b)	1	Abuse of procedure to go "OFF DUTY"
§2-53(a)	1	Abuses while "OFF DUTY"
§2-54(a)	1	Soliciting
§2-54(c)	3	Soliciting passenger by giving misleading information
§2-55(a)	1	Soliciting near bus stop
§2-55(c)(1-4)	1	Soliciting at airports, near taxi stand, et al.
§2-60(a)	3	Harassment
§2-60(b)	4	Physical abuse
§2-61(a)(1)	4	Fraud or larceny
§2-61(a)(2)	3	Action against the best interests of the public
§2-61(b)	3	Using taxicab for any unlawful purpose
§2-61(c)	3	Concealing evidence of a crime
§2-61(d)	3	Failure to report attempt to use taxi to commit crime
§2-62(b)	3	Failure to report request for gift/gratuity
§2-63(a)	3	Failure to notify TLC of criminal conviction
§2-66(a)	2	Failure to cooperate with law enforcement officials
§2-66(b)	2	Failure to comply with Commission request

(i) Any licensee who voluntarily attends and satisfactorily completes a remedial or refresher course approved by the Commission and who furnishes the Commission with proof that the course was completed on or before August 31, 1999, shall have two (2) points deducted from the total number of points assessed for the purpose of determining any suspension or revocation pursuant to this Rule. No point reduction shall affect any suspension or revocation action which may be taken pursuant to these Rules prior to the completion of the course; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

(j) Any licensee who voluntarily attends and satisfactorily completes a remedial or refresher course approved by the Commission, and who furnishes the Commission with proof that the course was completed on or after September 1, 1999, shall have two (2) points deducted from the total number of points assessed pursuant to this Rule. No point reduction shall affect any suspension or revocation action which may be taken pursuant to these Rules prior to the completion of the course. No person shall receive a point reduction pursuant to this subdivision more than once in any five year period.

(k) It shall be an affirmative defense that the act which formed the basis for the violation was beyond the control and influence of the taxicab driver.

HISTORICAL NOTE

Section amended City Record Jan. 31, 2000 §3, eff. Mar. 1, 2000. [See T35 §2-07 Note 1]

DERIVATION

Section amended City Record June 26, 1998 eff. July 26, 1998. [See Note 1]

Section added City Record June 26, 1992 eff. July 26, 1992.

§2-21(b)(3)(i) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(ii) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(iii) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(iv) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(v) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(vi) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(vii) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(viii) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(ix) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(x) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(xi) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(xii) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(xiii) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(xiv) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

§2-21(b)(3)(xv) amended City Record Oct. 21, 1998 eff. Nov. 20, 1998. [See Note 2]

Subd. (h) §2-25(h) amended City Record Dec. 30, 2009 §5, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

§2-25(h) added City Record May 27, 1999 §2, eff. June 26, 1999. [See T35 §2-25 Note 1]

§2-30(b) amended City Record Dec. 29, 1995 §43, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§2-30(c) amended City Record Dec. 29 1995 §43, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§2-30(d) repealed City Record Dec. 29, 1995 §43, eff. Feb. 1, 1996. [See T35 §1-01 Note 1]

§2-52(a-c) renamed 2-52(a-b) City Record Dec. 29, 1995 §43, eff. Feb. 1, 1996. [See T35 §1-01

Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1998:

The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the New York City Charter, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in New York City; under Section 2303(b)(2) of such Charter, which empowers the TLC to establish standards for service and safety under Section 2303(b)(13) of such Charter, which empowers the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under Section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The rules amend and reconstitute the TLC's Persistent Violator Program, replacing the current system where Taxicab Driver rule violations are assigned a class number with a point system. Also, a Persistent Violator Program with a similar point system is established for for-hire vehicle drivers.

The Commission currently has a Persistent Violator Program in place which imposes progressive penalties upon taxicab drivers who chronically violate Commission rules. The amendment simplifies the process by establishing a point system for certain rule violations. The most serious offenses are assigned the highest number of points. Some offenses are assigned no points; however, a driver convicted of any three rule violations within an 18 month period will be assigned one additional point. This new program identifies problem taxicab drivers more expeditiously, and unsafe drivers will be promptly suspended or removed from the industry. The Commission currently utilizes a cumbersome review process that involves classifying rule violations and counting the different classes of violations to determine if any of the six combinations of rule violations have been met. This process is administratively difficult to monitor and control. Hearings are then conducted in which an Administrative Law Judge reviews the accuracy of Commission records.

It is equally important to identify for-hire vehicle drivers who chronically violate Commission rules. The Commission, by adding a point based "Persistent Violator Program" to the For Hire Vehicle Rules, will be able to promptly identify and discipline problematic drivers.

2. Statement of Basis and Purpose in City Record Oct. 21, 1998: The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the New York City Charter, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in New York City; under Section 2303(b)(2) of such Charter, which authorizes the TLC to establish standards for service and safety under Section 2303(b)(13) of such Charter, which authorizes the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under Section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. On May 28, 1998, the TLC adopted changes to its rules which amended and reconstituted the TLC's Persistent Violator Program, replacing the system where taxicab driver rule violations are assigned a class number with a point system. In addition, a Persistent Violator Program with a similar point system was established for for-hire vehicle drivers. This amendment makes certain technical changes to the numbering of several rules. As part of the TLC Reforms adopted on May 28, 1998 by the Commission, certain traffic offenses were defined as hazardous moving violations and renumbered. These violations were assigned points pursuant to the Persistent Violator Program. For the purpose of clarity, the rule sections assigning points under the Persistent Violators Program are renumbered to conform to the changes in the hazardous moving violation sections.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The constitutionality of Sec. 2-70, which relates to points to be assigned to taxicab drivers for violations of proscribed conduct, has been upheld as a valid exercise of the police power. United Car & Limousine Foundation, Inc. v. New York City Taxi and Limousine Comm., 680 N.Y.S.2d 814 (Sup.Ct. New York Co. 1998).

¶ 2. Where a taxi driver accumulates 8 points within an 18 month period, suspension of the driver's license is mandatory, and the Taxi and Limousine Commission does not have discretion to impose a lesser penalty. Muscadi v. McGrath-McKechnie, N.Y.L.J., Dec. 20, 1999, page 33, col. 1 (Sup.Ct. Queens Co.).

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§2-71 [Reserved]

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§2-72 [Reserved]

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§2-81 [Reserved]

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§2-82 [Reserved]

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§2-83 [Reserved]

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§2-84 [Reserved]

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§2-85 Procedures in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (c) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 1]

Subd. (e) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 1]

Subd. (e) amended City Record May 15, 1995 §2, eff. June 19, 1995. [See T35 §1-85 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 29, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The adopted regulations shorten the amount of notice required to be given for hearings on summonses written to drivers for traffic violations. The 15 day notice of hearing remains in effect for all other violations.

The purpose of the adopted regulations is to rapidly respond to public safety concerns. Drivers who are accused of driving in an unsafe manner could be dealt with in a speedy fashion. Timely response is an important element in the deterrence of misconduct.

Based on public comments, the proposal was revised to require five business days prior notice, rather than calendar days. This provides at least two additional days of prior notice. The rule was then clarified to specify as to other violations that calendar days will be counted, as at present. In addition, the rule allows respondents in this instance to adjourn the hearing up until the date of the hearing in order to provide ample opportunity to obtain counsel.

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§2-86 Penalties for Violation of Rules Governing Taxicab Drivers.

Rule No.	Penalty All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	Personal Appearance-Required
§2-03(a)	$25	No
§2-03(b)	$25	No
§2-08	See chapter 16 of this title	No
§2-12(a)	$50-350 and/or suspension up to 30 days	Yes
§2-12(b)	$100-350 and/or suspension up to 30 days; summary suspension until compliance pursuant to §8-17(b) of this title. *Presentation of a valid license in effect on the date of the violation shall result in a dismissal of the charge.	Yes
§2-12(c)	$100	No
§2-12(d)	$50	No
§2-13(a)	$100-350 and/or suspension up to 30 days	Yes
§2-13(b)	Revocation and $10,000	Yes
§2-14(a)	$50	No
§2-15(a)	$50	No
§2-16(a)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of Rule 2-66(b).)	N/A**
§2-16(b)	$50	No

§2-17(a)	$25-350 and/or suspension up to 30 days	Yes
§2-19(b)(3)	Suspension until compliance (If compliance after 30 days, $200 penalty for reinstatement)	N/A**
§2-20(a)	Revocation	Yes
§2-21(a)	$350-1,000 and/or suspension up to 30 days or revocation if driver is found guilty of having violated this rule more than 3 times within an 18 month period.	Yes
§2-21(b)(1)	$50	No
§2-21(b)(2)	$150	No
§2-21(b)(3)	$250	No
§2-21(c)	$50-350 and/or suspension up to 30 days or revocation if driver is found guilty of having violated this rule more than 3 times within a 12 month period.	Yes
§2-21(d)	$50-350 and/or suspension up to 30 days	Yes
§2-23(a)	$25	No
§2-24(a)	$100-350. For the third or subsequent violation within 36 months, the license may also be suspended for up to 30 days.	Yes
§2-24(b)	$100-350. For the third or subsequent violation within 36 months, the license may also be suspended for up to 30 days.	Yes
§2-25(a)	Revocation	Yes
§2-25(b)	$25	No
§2-25(c)	For offenses occurring prior to July 26, 1999, $50 for the first conviction within a 12 month period and $150 for each subsequent violation. For offenses occurring on or after July 26, 1999, $150.	No
§2-25(d)	$50	No
§2-25(e)	$50-250 and/or suspension up to 30 days	Yes
§2-25(f)	$25	No
§2-25(g)	$100-350 and/or suspension up to 30 days	Yes
§2-25(h)	$200	No
§2-25(i)	$50 plus restitution to the E-Z Pass tag holder of any amount not reimbursed, and suspension until compliance with any restitution order	Yes
§2-26(a)	$25	No
§2-26(b)	$25	No
§2-26(c)	$50	No
§2-26(d)	$50-350 and/or suspension up to 30 days	Yes
§2-26(e)	$25	No
§2-26(f)(i)	$250 and suspension until compliance.	Yes
§2-26(f)(ii)	$250 and suspension until compliance.	Yes
§2-26(g)	$100	No
§2-27(a)(1)	$30	No
§2-27(a)(2)	$50	No
§2-27(a)(3)	$50	No
§2-27(a)(4)	$25	No
§2-27(a)(5)	$25	No
§2-27(b)	$25 for violation of each subdivision hereof.No fine for violation of this rule shall exceed $50.	No
§2-27(c)	$50	No
§2-27(d)	$50	No
§2-28(a)(1-5)	$15 per omitted entry on an electronic or written trip record; provided that the total penalty for violation of this rule shall not exceed $30 per electronic or written trip record	No
§2-28(b)	Notice to correct within 10 days (Failure to comply with such notice shall be a violation of Rule 2-66[b].)	N/A**

§2-28(c)	$25	No
§2-28(d)	$50	No
§2-28(e)	$100-350 and/or suspension up to 30 days	Yes
§2-28(f)	$50	No
§2-30(a)	$100	No
§2-30(b)	$100	No
§2-30(c)	$25	No
§2-31(a)	$50-350 and/or suspension up to 30 days	Yes
§2-31(b)	$50-350 and/or suspension up to 30 days	Yes
§2-31(c)	$50-350 and/or suspension up to 30 days	Yes
§2-32(a)	$50-350 and/or suspension up to 30 days	Yes
§2-32(b)	$50	No
§2-32(c)	First violation: $200; Second violation: $300; Third violation: $500; In addition to the penalty payable to the Commission, the administrative law judge may order the driver to pay restitution to the passenger, equal to the excess amount that was charged to the passenger.	Yes
§2-33(a)	$100 if the occupant is a paying passenger$25 if non-paying	No
§2-33(b)	$50	No
§2-33(c)	$100	No
§2-34(a)	*Mandatory penalties as set forth in §2-87	Yes
§2-34(b)	$50-150	Yes
§2-34(c)	$50-150	Yes
§2-34(d)	$50	No
§2-35(a)(1)	$100	No
§2-35(a)(2)	$100	No
§2-35(a)(3)	$25	No
§2-35(a)(4)	$25	No
§2-35(b)(1)	$100	No
§2-35(b)(2)	$25	No
§2-35(b)(3)	$25	No
§2-35(b)(4)	$25	No
§2-39(a)		N/A**
§2-42(a)	$150	No
§2-43(a)	$50	No
§2-43(b)	$75 for a violation involving a person $25 for a violation involving luggage	No
§2-43(c)	$100	No
§2-44(a)	$50	No
§2-44(b)	$100	No
§2-45(a)	$50-150	Yes
§2-45(b)	$50-200	Yes
§2-45(c)	$150-350	Yes
§2-46(a)	$50-100	Yes
§2-46(b)	$25	No
§2-46(c)	$25	No
§2-46(d)	$25	No
§2-47(a)	$100	No
§2-47(b)	$25	No

§2-50(a)	*Mandatory penalties as set forth in §2-87	Yes
§2-50(b)	*Mandatory penalties as set forth in §2-87	Yes
§2-50(c)	*Mandatory penalties as set forth in §2-87	Yes
§2-50(d)	*Mandatory penalties as set forth below	Yes
§2-50(e)		N/A**
§2-52(a)	$25	No
§2-52(b)	$25	No
§2-52(c)	$25	No
§2-52(d)	$75	No
§2-53(a)	$75	No
§2-54(a)	$50	No
§2-54(b)	$50	No
§2-54(c)	$50-200	Yes
§2-55(a)	$100	No
§2-55(b)	$100	No
§2-55(c)	$50	No
§2-56(a)	$100	No
§2-56(b)	$50	No
§2-56(c)	$50	No
§2-56(d)	$50	No
§2-56(e)	$50	No
§2-56(f)	$50	No
§2-57(a)	$50	No
§2-57(b)	$100	No
§2-59(a)	$25	No
§2-59(b)	$50-250	Yes
§2-59(c)	$25	No
§2-60(a)	$350-1,000 and suspension up to 30 days or revocation	Yes
§2-60(b)	$500-1,500 and/or suspension up to 60 days or revocation	Yes
§2-61(a)(1)	$350-1,000 and/or suspension up to 60 days or revocation	Yes
§2-61(a)(2)	$150-350 and/or suspension up to 30 days or revocation	Yes
§2-61(b)	$100-350 and/or suspension up to 30 days	Yes
§2-61(c)	$350-1,000 and/or suspension up to 30 days or revocation	Yes
§2-61(d)	$100-350 and/or suspension up to 30 days	Yes
§2-61(e)	$75-150	Yes
§2-62(a)	Revocation and $10,000	Yes
§2-62(b)	$100	No
§2-62(c)	$50	No
§2-63(a)	$50-250	Yes
§2-65(a)	$50	No
§2-66(a)	$50-350	Yes
§2-66(b)	$200 and suspension until compliance	Yes
§2-66(c)	$500-1,500 and/or suspension up to 60 days or revocation	Yes

**Not Applicable

HISTORICAL NOTE

Section amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record June 26, 1992 eff. July 26, 1992.

Penalty column heading amended City Record Nov. 2, 2006 §8, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§2-03(c) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-08 added City Record Nov. 23, 2007 §7, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

§2-11(a) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-12(b) amended City Record Nov. 2, 2006 §8, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§2-13(a) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-13(b) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§2-13(c) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-14(a) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-14(b) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-15(a) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-15(b) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-16(a) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-19(b)(3) added (Replaces §2-19(b)) City Record Feb. 14, 2006 §2, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

§2-19(b) added (temporarily) City Record Nov. 21, 2005 §2, eff. Nov. 21, 2005 until Mar. 21, 2006 per Charter §1043(h) and 60 day extension notice in City Record Jan. 6, 2006. [See T35 §2-19 Note 2]

§2-20(a) amended twice in City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 3 and T35 §1-86 Note 2]

§2-21(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§2-21(b)(1) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§2-21(b)(1) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-21(b)(2) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§2-21(b)(2) added City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-21(b)(3) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§2-25(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-25 Note 2]

§2-25(c) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §6-18 Note 1]

§2-25(g) added City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-25(h) added City Record May 27, 1999 §3 eff. June 26, 1999. [See T35 §2-25 Note 1]

§2-25(i) added City Record Dec. 1, 1999 §9, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§2-26(e) amended City Record July 12, 1993 eff. Aug. 11, 1993.

§2-26(f)(i) added City Record June 12, 2007 §24, eff. July 12, 2007. [See T35 §1-01 Note 3]

§2-26(f)(ii) added City Record June 12, 2007 §24, eff. July 12, 2007. [See T35 §1-01 Note 3]

§2-26(g) added City Record June 12, 2007 §24, eff. July 12, 2007. [See T35 §1-01 Note 3]

§2-27(a)(6) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-27(d) added City Record Dec. 1, 1999 §9, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§2-28(a)(1-5) amended City Record May 11, 2005 §16, eff. June 10, 2005. [See T35 §3-03 Note 10]

§2-28(a)(1-5) amended City Record Dec. 1, 1999 §9, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§2-28(f) added City Record Dec. 1, 1999 §9, eff. Dec. 31, 1999. [See T35 §1-37 Note 1]

§2-30(b) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-30(c) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-30(d) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-32(c) added City Record June 12, 2007 §24, eff. July 12, 2007. [See T35 §1-01 Note 3]

§2-34(e) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-03(f) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-42(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §6-18 Note 1]

§2-45(c) added City Record June 12, 2007 §24, eff. July 12, 2007. [See T35 §1-01 Note 3]

§2-47(a) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-50(d) amended City Record July 8, 1997 §8, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

§2-50(e) added City Record July 8, 1997 §8, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

§2-52(b) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-52(c) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-52(d) amended City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-52(e) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-52(f) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-60(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§2-60(b) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§2-61(a)(1) amended City Record Aug. 10, 1998 eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

§2-61(a)(2) added City Record Aug. 10, 1998 eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

§2-61(c) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§2-61(e) amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

§2-62(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§2-64(a) repealed City Record Dec. 29, 1995 §44, eff. Jan. 28, 1996. [See T35 §1-01 Note 1]

§2-66(b) amended City Record Dec. 1, 1999 eff. Dec. 31, 1999. [Note 1]

§2-66(b) amended City Record July 12, 1993 eff. Aug. 11, 1993.

§2-66(b) amended City Record Dec. 1, 1999 eff. Dec. 31, 1999. [See Note 1]

§2-66(c) added City Record Jan. 31, 2000 §6, eff. Mar. 1, 2000. [See T35 §1-23 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 1, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of the transportation of persons by licensed vehicles for-hire in the city; under Section 2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under Section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under Section 19-506 of said Code, authorizing the Commission to impose penalties for violation of Commission Rules.

The rules promulgated herein amend the penalties for violation of various rules requiring licensees to comply with TLC directives, such as appearing at the TLC Adjudications Tribunal to answer summonses. The present range of fines are replaced with a set fine of $200. The current range of fines for these Rule violations are: from $75 to $350 for medallion taxicab owners, taxicab drivers, and commuter van operators; from $100 to $250 for for-hire vehicle licensees; and from $50 to $150 for Paratransit Vehicle Owners or Drivers. In addition, the penalty will continue to include suspension of a TLC license until compliance with TLC directives or until the respondent has answered the TLC summons.

These rule violations are cited when a licensee has failed to appear for a scheduled hearing or has failed to comply with a Commission request to supply information, such as a trip sheet, insurance or accident information, or the identity of a driver involved in an incident. Many of these requests directly impact upon passenger safety (such as requests made to an owner to identify a driver involved in an incident). A summons is issued in order to penalize the respondent for non-compliance and to compel the respondent to cooperate with the TLC. The respondent's license is then suspended until the summons is answered either through providing the required information, or in the case of a hearing default, payment of the fine or the filing of a motion to vacate the default.

The Commission is increasing the penalty for these rule violations in order to deter respondents from engaging in this type of misconduct. For example, during 1997, 497 summons were issued to medallion taxicab drivers, 2,947 summons were issued to medallion taxicab owners and approximately 55 summonses were issued to FHV licensees for failure to comply with TLC communications. These statistics do not include charges for failure to appear for a hearing at the TLC Adjudications Tribunal. During 1997 and 1998, approximately twenty (20%) percent of all respondents failed to appear for their scheduled hearings. In most cases, a fine of $75 was imposed upon an adjudication of guilt. By substantially increasing the penalty, the Commission anticipates increased compliance with Commission directives and communications, as well as an increased rate of appearances at hearings.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-87 Penalties Mandated by Local Law.

The following penalties shall apply to those violations committed on or after February 15, 1990.

(a) (1) Any driver who has been found to have violated a provision of §§2-34(a), 2-50(a), 2-50(b), 2-50(c) and 2-50(d) or any combination thereof, shall be fined not less than $200.00 nor more than $350.00. Any driver who has been found in violation of any of the provisions of such rules or any combination thereof, for a second time within a twenty-four month period, shall be fined not less than $350.00 nor more than $500.00, and the Commission may suspend the driver's license of such driver for a period not to exceed thirty days. The Commission shall revoke the driver's license of any driver who has been found to have violated any of the provisions of §§2-34(a), 2-50(a), 2-50(b), 2-50(c) and 2-50(d) or any combination thereof, three times within a thirty-six month period.

Nothing contained herein shall limit or restrict any other authority the Commission may have to suspend or revoke a driver's license.

(2) Notwithstanding the provisions of paragraph (a)(1) above, the Commission shall revoke the driver's license of any person found to have violated §2-34(a) by charging or attempting to charge a fare of ten dollars or more above the approved rate of fare for taxicabs.

(b) The twenty-four and thirty-six month periods referred to above are to be calculated with reference to the dates the violations occurred. The period begins to run from the date of the first violation. No violation committed prior to February 15, 1988 shall be counted as a prior violation.

(c) The Commission shall not issue any license to any person, who has had his taxicab driver's license revoked pursuant to §§2-34(a), 2-50(a), 2-50(b), 2-50(c) and 2-50(d) for a period of one year from the date of such revocation.

HISTORICAL NOTE

Section amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record June 26, 1992 eff. July 26, 1992.

Subd. (a) par (1) amended City Record July 8, 1997 §9, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (c) amended City Record July 8, 1997 §9, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. See Padberg v. McGrath-McKechnie, 2002 WL 826795, N.Y.L.J., May 2, 2002, page 32, col. 1, U.S. Dist.Ct., E.D.N.Y., discussed at note 2 to 35 RCNY 2-61, and Lys v. New York City Taxi and Limousine Commission, N.Y.L.J., Jan. 31, 2002, page 21, col. 4, 2002 WL 338187 (Civ.Ct. New York Co.), discussed at note 3 of 35 RCNY 2-61.

¶ 2. Mandatory penalties for service refusal set forth in Administrative Code section 19-507(b) supersede any general discretionary authority to revoke respondent's license set forth in rule 2-87. **Taxi and Limousine Comm'n v. Baig,** OATH Index No. 1115/00 (Mar. 31, 2000), **modified on penalty,** Comm'n Dec. (July 25, 2000).

¶ 3. Commission has discretion to seek revocation for violations of section 2-28, which are not addressed by mandatory penalties under the Administrative Code. **Taxi and Limousine Comm'n v. Baig,** OATH Index No. 1115/00 (Mar. 31, 2000), **modified on penalty,** Comm'n Dec. (July 25, 2000).

¶ 4. Penalty for first time service refusal under this section is limited to a fine between $200 and $350. Maximum fine of $350 for refusal was recommended where verbal abuse and refusal were found to be egregious. **Taxi & Limousine Comm'n v. Hussein**, OATH Index No. 572/08 (Jan. 14, 2008).

¶ 5. Revocation and fines totaling $1550 were imposed upon a driver found to have verbally harassed a passenger, including use of racially discriminatory language, used a cell phone while driving, and refused to allow the passenger to pay with a credit card. **Taxi & Limousine Comm'n v. Iqbal,** OATH Index No. 457/09 (Oct. 20, 2008), **modified on penalty**, Comm'r/Chair's dec. (Nov. 25, 2008).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 2-88

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 2 TAXICAB DRIVERS RULES

§2-88 Additional Penalties.

Violation of any of these rules may also lead to revocation or suspension of a taxicab driver's license and/or fines in excess of those set forth in the above §§2-86 and 2-87, as provided in the "Procedures In The Event Of A Violation Of Commission Rules." In addition, a driver may be required to obtain a certificate of attendance for the required hours of instruction in taxi related subjects at a school approved by the Commission. In addition to the penalties set forth above, the Commission may require a driver to return to the passenger the amount of any overpayment as determined by the hearing officer.

HISTORICAL NOTE

Section amended City Record Feb. 22, 1993 eff. Mar. 20, 1993.

Section added City Record June 26, 1992 eff. July 26, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Mandatory penalties for service refusal set forth in Administrative Code section 19-507(b) supersede any general discretionary authority to revoke respondent's license set forth in rule 2-88. **Taxi and Limousine Comm'n v. Baig,** OATH Index No. 1115/00 (Mar. 31, 2000), **modified on penalty,** Comm'n Dec. (July 25, 2000).

¶ 2. Commission has discretion to seek revocation for violations of section 2-28, which are not addressed by mandatory penalties under the Administrative Code. **Taxi and Limousine Comm'n v. Baig,** OATH Index No. 1115/00

(Mar. 31, 2000), **modified on penalty,** Comm'n Dec. (July 25, 2000).

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Rules of the City of New York

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35 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-01 Vehicle Hack-Up and Vehicle Transfer.

(a) "Hack-up" means to outfit a vehicle as a taxicab and obtain approval from the Commission for that vehicle to serve as a taxicab, for the first time. Hack-up requires compliance with:

(1) all specifications, outfitting requirements, and other requirements of Rule 3-03;

(2) all vehicle inspection requirements;

(3) all insurance requirements, meter and meter testing requirements, marking specifications, and other requirements of the Owner's Rules, as set forth in Chapter 1 of these Rules; and

(4) the requirements concerning a vehicle's age, as set forth in subdivisions (b) and (c) of this section.

(b) Except as otherwise provided in subsection 3-01 (c)*1 a vehicle may be hacked-up only if it is a new vehicle that meets all of the following requirements:

(1) It is purchased in the first sale from a licensed dealer or a manufacturer. An original of the manufacturer's certificate of origin (MSO) or of the certificate of title must be submitted, in addition to relevant documents of ownership.

(2) The vehicle must be of the latest model year available from the manufacturer or of the model year immediately preceding the latest. When a manufacturer ceases production of a model, then vehicles of the last two model years may only be hacked-up until September 30 of the calendar year two years subsequent to the designated model year. (For

example, if Chevrolet ceases production of the Caprice after the 1996 model, then a new vehicle of the 1996 Chevrolet Caprice may only be hacked-up until September 30, 1998.)

(3) The vehicle must have accumulated fewer than 500 miles traveled, at the time of hack-up.

(c) Upon hack-up, a vehicle may continue in service with the same medallion, so long as the vehicle passes inspection and has not yet met its retirement date, as specified in Rule 3-02.

(d) A vehicle that was hacked-up pursuant to subdivision (b) may be transferred to another medallion, with the approval of the Commission, only if the vehicle passes inspection, has not yet met its retirement date as specified in Rule 3-02, and meets the requirements of either subsection (1), (2), (3), or (4).

(1) **Repossessions.** The title owner at the time of transfer of the vehicle to another medallion has acquired the vehicle pursuant to a repossession sale by the previous owner's purchase money lender, and the repossession occurs within twenty-four months of hack-up.

(2) **Long-term drivers.** The title owner at the time of transfer of the vehicle to another medallion was a long-term driver of the vehicle, as defined in Rule 1-01, for at least five months of its operation under the previous medallion and will be a long-term driver under the new medallion.

(3) **Same medallion owner or agent.** The owner of the medallion or the owner's agent transfers the vehicle to another medallion operated by the same owner or agent.

(4) **Compressed natural gas vehicle.** The owner of a medallion or the owner's agent may transfer a vehicle fueled by Compressed Natural Gas to any other medallion owner or owner's agent.

(e) Upon inspecting a vehicle to authorize its transfer to another medallion pursuant to subdivision (f) (a "re-hack"), the Commission may charge an inspection fee of $50 as well as a $25 fee pursuant to Rule 1-06.

(f) Notwithstanding the foregoing, an Independent Taxicab Owner or a long-term driver, who is also the owner of a vehicle may apply to the Chairperson or his/her designee for an extension of the scheduled retirement date of said vehicle, for a period not to exceed twelve (12) months from the original retirement date. Such application shall comply with each of the following conditions:

(1) The vehicle owner shall submit a request in writing, together with any supporting documentation, to the Chairperson or his/her designee, at least thirty (30) days prior to the scheduled retirement date. This thirty (30) day requirement may be waived by the Chairperson or his/her designee upon a showing of a significant change in the vehicle owner's circumstances that occurred within thirty (30) days of the scheduled retirement date, or for other good cause demonstrated to the Chairperson.

(2) The vehicle owner must demonstrate an economic or other personal hardship which the Chairperson or his/her designee determines would create an undue burden upon the owner if the extension were not granted.

The Chairperson, or his/her designee, may grant an extension of up to twelve months from the original retirement date. The vehicle must continue to meet all safety and emissions requirements of the Commission. The Chairperson or his/her designee shall withdraw any such extension granted in the event the subject vehicle is determined by the Commission at any time to be unsafe for operation.

HISTORICAL NOTE

Section repealed and added City Record Jan. 30, 1996 eff. Mar. 1, 1996. Note internal relettering

by Law Department per Charter §1045(b). [See Note 3]

Subd. (c) relettered City Record Jan. 29, 2002 eff. Feb. 28, 2002. Formerly Subd. (d)

Subd. (d) relettered City Record Jan. 29, 2002 eff. Feb. 28, 2002. [See Note 1] Formerly Subd. (e) amended City Record June 1, 2000 and June 5, 2000 eff. July 1, 2000 [See Note 2]. Formerly Subd. (f) repealed & added City Record Dec. 2, 1996 eff. Jan. 1, 1997 [See T35 §1-78 Note 1], amended City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 4]

Subd. (e) relettered City Record Jan. 29, 2002 eff. Feb. 28, 2002. [See Note 1] Formerly Subd. (g) added City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See T35 §1-78 Note 1]

Subd. (f) added City Record Jan. 29, 2002 §2, eff. Feb. 28, 2002. [See Note 1]

DERIVATION

Section repealed and added City Record Mar. 20, 1992 eff. Apr. 19, 1992.

Section in original publication July 1, 1991.

Subd. (c) repealed City Record Jan. 29, 2002, eff. Feb. 28, 2002. [See Note 1]

Subd. (c) par (4) added City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See T35 §1-78 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 29, 2002:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York ("Charter"), empowering the TLC to regulate and supervise the business and industry of transporting passengers by licensed vehicles for-hire in the City; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §2303(b)(6) of such Charter, authorizing the TLC to establish requirements for safety, design and comfort of vehicles; and under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter.

The existing vehicle retirement rules, adopted by the Commission for vehicles placed in service after March 1, 1996, require that taxicabs be retired within thirty-six (36) months of hack-up if double-shifted and not driven exclusively by long-term drivers, and within sixty (60) months if not double-shifted, or if driven exclusively by long-term drivers. This regulation grants to the Chairperson of the TLC, or his/her designee the discretion to extend the time for which an Independent Taxicab Owner (defined in the Rules of the Commission as an individual, partnership or corporation owning one taxicab), or long-term driver who is also the owner of the vehicle (commonly referred to as a driver-owned vehicle, or "DOV"), may operate his vehicle, for up to twelve (12) months.

The purpose of the vehicle retirement provisions is to ensure public safety by requiring the regular replacement of taxicabs. Vehicles that are operated by Independent Taxicab Owners or by individuals who own their vehicles, but lease their medallions, are generally safer and better maintained than vehicles owned by fleets or minifleets, since these owner/operators have a direct, personal financial interest in the operation of the vehicle. In most cases, the owner drives the vehicle regularly. In addition, many of these vehicles are not double-shifted; fleets and minifleets must double-shift their vehicles. Under this rule, vehicles owned and operated by either Independent Taxicab Owners or long-term drivers become eligible for an additional period of time in which they may operate their vehicle (up to twelve (12) months).

Such vehicles must nonetheless continue to meet all TLC safety and emissions requirements and pass required inspections in order to remain in service.

In order to be considered for this extension the vehicle owner must make a written request to the Chairperson or his/her designee not less than thirty (30) days prior to the scheduled vehicle retirement date. This requirement may be waived for good cause by the Chairperson. The owner must demonstrate a **bona fide** economic or other personal hardship that would create an undue hardship upon the owner if the extension were not granted. If an extension is granted, the owner must continue to pass regular inspections; the Commission also reserves the right to withdraw the extension if the continued operation of the vehicle would create a safety risk to the public.

The Commission also repeals the provision in its rules that permit owners who demonstrate the existence of a unique, unforeseen and unforeseeable hardship to hack-up a vehicle that is up to two model years old. The creation of the new hardship extension permitted by this Rule proposal renders the existing provision obsolete.

This promulgation differs from the original Rule proposal published in the **City Record** on March 23, 2001. A provision requiring that the vehicle has passed each of its previous three inspections without any intervening failures was deleted, since that provision would have disqualified vehicle owners who failed initial inspections for minor defects unrelated to passenger safety and which were subsequently corrected. This change to the previous draft of the Rule was made in response to comments received by the Commission at a public hearing held on April 26, 2001. In addition, the original rule proposal was applicable exclusively to Independent Taxicab Owners. As revised, this rule would also enable long-term owner-drivers, who own their own vehicles but lease the medallion, to also apply for this exemption upon a showing of an economic or other hardship. Like Independent Taxicab Owners, these individuals have a personal interest in maintaining their vehicles safely.

Since the World Trade Center disaster of September 11, 2001, the Commission has received reports for each segment of the for-hire industries it regulates, including the medallion taxicab industry, that there is a decline in the number of passengers transported and revenues received by licensees. Many taxicab and vehicle owners report that their vehicles are being driven fewer miles, and that revenues are declining. Requiring such owners to purchase a new vehicle at this time could create a serious economic hardship, and owners who could demonstrate the existence of such a hardship could apply for a retirement extension. The enactment of this Rule proposal will provide needed financial relief to eligible Independent Taxicab Owners and "DOVs" without compromising public safety.

2. Statement of Basis and Purpose in City Record June 1, 2000: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the City; under §2303(b)(6) of such Charter, which authorizes TLC to set standards for the safety, design, comfort and convenience of vehicles; under §2303(b)(11) of such Charter, which authorizes the TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under §19-503(a) of the Administrative Code of the City of New York, which authorizes the Commission to promulgate rules to further the objectives of the Charter and the Administrative Code. This Rule amends the taxicab specifications that permit the transfer of a vehicle that was previously hacked-up pursuant to TLC rules, to another medallion. On December 16, 1999, the TLC held a public hearing to review the effectiveness of the current CNG vehicle program, which combines incentives, such as special vehicle retirement rules applicable to CNG vehicles, as well as mandates, such as the requirement, since repealed, that fleet maintained Stand-By Vehicles (SBVs) be fueled by CNG. The TLC heard testimony and received written comments from the taxicab industry which indicated that there were problems associated with the CNG program, including the lack of a sufficient number of twenty-four (24) hour fueling sites, the lack of sites in locations near taxicab garages, the extensive amount of time needed to re-fuel CNG vehicles, cost and maintenance issues relating to the vehicles, and the unwillingness of taxicab drivers to lease such vehicles because of the additional time needed to fuel the vehicles. Other persons provided testimony in favor of the CNG program, noting the positive impact such a program has upon the environment. After review of the testimony, the TLC voted to repeal the mandatory CNG vehicle usage for SBVs, while retaining existing provisions in the Rules encouraging the voluntary

use of CNG-powered vehicles. The TLC hereby amends the taxicab specifications to encourage continued voluntary usage of CNG vehicles. The TLC, from a policy standpoint, is committed to encouraging and promoting the voluntary use of CNG vehicles by its licensees. This Rule permits existing owners of vehicles fueled by CNG, which were originally hacked-up as new vehicles, to transfer these vehicles from one medallion owner to another, so long as the vehicle passes the required TLC inspection and meets vehicle retirement requirements. Generally, a medallion owner is required to "hack-up", or equip for service as a taxicab, only new vehicles. Exceptions presently exist in cases where the vehicle is repossessed by a lender, or is being transferred from one medallion operated by an owner or agent to another medallion owned by the same owner or agent. Under this amendment, a vehicle fueled by CNG could be transferred from one medallion owner to another, notwithstanding the fact that the vehicle does not otherwise qualify for a new vehicle "hack-up". This Rule would encourage the use of vehicles fueled by CNG since they could be sold or otherwise transferred to another taxicab owner or agent whose facilities might be more accessible to CNG fueling stations.

3. Statement of Basis and Purpose in City Record Jan. 30, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The new car requirement. The regulation will require that only new vehicles could be put into service as taxicabs. That would be a substantial change from current requirements, which permit used cars up to two years old to be put into service as taxicabs. The regulation will reduce the average age of the taxicab rolling stock in service in New York City. A higher prevalence of new cars would improve taxi service by providing a more comfortable ride, a safer trip, and lower emissions. These improvements reflect the better condition of a new vehicle as compared to a used car, and the improved emissions control systems of new cars. The Commission has documented that new cars in taxicab service pass the TLC inspections much more readily than the used cars now in operation. New cars also have significantly fewer failures of the emissions and the brake tests that are among the most important components of the inspection. The taxicab rolling stock has aged appreciably over the last several years. Taxicab owners have held onto their vehicles longer, making progressively more expensive repairs rather than retiring a vehicle. When they replace a vehicle, they may buy a used car rather than a new car. These make-do measures may be more expensive in the long run, but they may provide better cash flow to owners in the short run. Owners have felt the financial constraints of six years without a fare increase, and without a growth in ridership. They have maximized short run cash flow to the extent permitted by Commission rules. The result is a perceptible decline in taxicab service due to declining vehicle quality. A higher incidence of new vehicles will reduce the strain on the Commission's inspection facility; the strain has been caused in part by the higher failure rate for older cars and their consequent reinspection after further repairs by the owner. The original proposal was revised to clarify the provisions in Section 3-02(b)(2) concerning the Chevrolet Caprice. Additional time was provided to permit Chevrolet dealers to locate unsold Caprices and offer those cars to the New York City taxicab market. The vehicle retirement requirement. The regulation requires that vehicles be replaced after certain lengths of time in service as taxicabs. They would be retired regardless of whether they could still pass inspection. This proposal is a substantial change from the current rules, which permit a vehicle to remain in taxicab service so long at it can pass inspection. The purpose is to reduce the age of the taxicab rolling stock. A lower average age of vehicles would improve taxi service by providing a more comfortable ride, a safer trip, and lower emissions. These improvements reflect the better condition of newer vehicles, and the improved emissions control systems of newer cars. The improvements would be all the more striking, as vehicles that are retired would be replaced by completely new vehicles. Under the new regulation, a vehicle must be retired upon its retirement date, even if the vehicle would pass inspection. The inspection requirements set a minimum standard for vehicles. A vehicle retirement policy reaches beyond the "good enough" standard of passing inspection to reach a standard of excellence. A vehicle that cannot pass inspection must be retired, regardless of whether the retirement date has been reached. **Factors determining retirement** Retirement dates would depend on the following factors: - whether the vehicle is double-shifted or single-shifted. - whether or not the vehicle is driven by the owner of the medallion or vehicle. - participation in a pilot program using compressed natural gas as fuel - for vehicles currently in service, the model year

of the vehicle. - for vehicles currently in service, the inspection history of the vehicle in 1995. - for future vehicles, the number of months in service. **Double-shifted vehicles** All minifleet medallions are required to be double-shifted. Numerous independent medallions are also double-shifted; they are owned by persons who acquired the medallion prior to 1990. (In 1990, the Commission required that new owners of independent medallions must drive the taxicab themselves.) The new requirement for future vehicles is that double-shifted vehicles that are not owned by the driver must be retired within 36 months. This is a longer period than the 30 months first proposed; the six-month extension is intended to provide more time to amortize the expense of a new vehicle, based on numerous comments that the original proposal was too demanding financially. The six-month extension is 20% longer than the originally proposed period. The 36-month requirement would apply particularly to the fleets which own their vehicles and hire drivers on a daily shift basis. Some speakers commented that insomuch as several fleets retire their vehicles after 23 months, at present, this new requirement would work to extend the operation of heavily-used, double-shifted vehicles. They also commented that the proposal imposes no restriction upon the fleets. However, the fleets at present resell the vehicles to other taxicab operators, who hack-up the vehicle within the Commission's present 24 month limit on the age of vehicles at hack-up. The used taxicab, which was double-shifted for nearly two years, then re-enters the rolling stock of the industry and continues to operate for years to come. By retiring double-shifted vehicles after 36 months, the new requirement would in most cases shorten the period of use of heavily double-shifted vehicles. In reducing the resale market for used, fleet taxicabs, the requirement removes a considerable source of revenue from fleet operations. Numerous speakers have commented that a vehicle that is driven by the owner of the vehicle or the medallion is better operated than other vehicles. In respect of this widely and strongly held judgment, the Commission has provided an additional 12 months prior to retirement for those double-shifted vehicles that are driven by the owner. Their retirement date is 48 months. **A good inspection record** Numerous speakers also commented that medallion or vehicle owners who take good care of their cars deserve a longer period before vehicle retirement. In recognition that there is a wide disparity in maintenance and upkeep of vehicles, the Commission has modified the proposal, to provide an additional twelve months of operation to owners who had excellent inspection records in 1995. This record is defined as passing each of the three inspections conducted by TLC in 1995, on the first try, with no reinspection. The industry average is failure at 71% of initial inspections. This is a "grandfather" provision applicable to vehicles on the streets as taxicabs in 1995. It extends the period that current owners with excellent records utilize their current vehicles. There is no attempt to apply the concept to future inspections, out of concern that to do so would raise the stakes too much in TLC vehicle inspections. All parties would know that a discretionary failure on a relatively minor item could have serious financial repercussions for the owner. That situation would be hazardous to the integrity of the process. **CNG fuel** The proposal has been modified to extend the retirement date for certain CNG-fueled vehicles to 60 months, from the originally proposed 48 months. This is intended to preserve the incentive to participate in the CNG program, as the retirement date for gasoline-fueled vehicles is also extended. Retirement of future vehicles For double-shifted vehicles hacked up as taxicabs on or after March 1, 1996, which are not driven by the owner of the medallion or vehicle, the retirement date will begin thirty-six months after hack-up. Retirement will take place no later than the next regularly-scheduled, thrice-annual inspection of the vehicle by the Commission. To inspect each vehicle three times a year, the Commission has a four-month inspection cycle. A vehicle is inspected on a scheduled date within the cycle. The retirement date will average thirty-eight months from hack-up, and may extend as long as forty months, to reach the scheduled inspection date. For single-shifted vehicles driven by the owner of the vehicle or medallion, and hacked up on or after March 1, 1996, the retirement date will begin sixty months after hack-up. The retirement date will average sixty-two months from hack-up, and may extend as long as sixty-four months, to reach the scheduled inspection date. The Commission is currently encouraging taxicab operators to participate in a test of taxicabs powered exclusively by compressed natural gas (CNG). There is some reluctance to operate a vehicle which has relatively few refueling stations. The proposed rule would provide double-shifted, CNG-powered vehicles with a later retirement date, to offer longer utilization of CNG vehicles. That provides a business advantage of participating in the natural gas test. The enhanced usefulness of a vehicle that is participating in the test is the justification for providing a longer retirement date for double-shifted vehicles. The retirement date is not extended for independent medallions, because the sixty month retirement date is considered long enough, and because the CNG test focuses particularly on double-shifted vehicles, which are used so much more intensively and would provide quicker test results. Retirement of vehicles currently in operation as taxicabs. Vehicles in taxicab service as of March 1, 1996 would be retired according to their model year. That is a simpler

measure than ascertaining and applying the hack-up dates of nearly 12,000 cars. The retirement dates which the proposal would permit for current taxicabs extend longer than would be permitted for cars hacked-up after March 1, 1996. One reason for this provision is that a high percentage of the current rolling stock are old vehicles. Most would have to be replaced at once, if the retirement rates for future taxicabs were applied to current taxicabs. The new regulation does not require any vehicle to be retired before November 1, 1996. The purposes of this provision are:

to provide ample advance notice to owners that their vehicles must be replaced with new vehicles, so that they may plan financially for the change; and to provide time for the experiment with standard sedans and minivans (as described below) to proceed and be evaluated in a report of the Chairman, which would be due no later than July 31, 1996. That report would give owners information to help them choose a vehicle.

Beginning on November 1, 1996, all vehicles of model year 1992 or prior model years must be retired at their next scheduled inspection. Double-shifted taxicabs which are not driven by the owner would be replaced with new cars between November 1, 1996 and February 28, 1997. Taxicabs which are single-shifted or which are driven only by an owner of the medallion or vehicle would be replaced with new cars between April 1 and July 31, 1997. A vehicle of model year 1992 may have been purchased in the fall of 1991, and could have been in taxicab service for five years as of the fall of 1996. Earlier models of course may have been in taxi service longer. The number of vehicles which must be retired between November 1, 1996 and August 1, 1997 is quite large. Commission records indicate that some 4,000 vehicles now in service are of model year 1990 or earlier model years. About 1,000 vehicles are in each of the model years 1991 and 1992. The six thousand oldest vehicles-more than half the current taxi rolling stock-would have to be replaced with completely new vehicles by the summer of 1997. The number of vehicles in taxicab service that are more than five years old indicates that vehicle standards must change dramatically; it also indicates that any real change in standards will be dramatic. To field 6,000 completely new taxicabs in place of 6,000 taxicabs that are at least six years old would create substantial service improvement. The new regulation permits the Chairman to extend the retirement date for certain vintage cars. In the Chairman's discretion, that may apply to the four Checker cabs still in operation, which are each more than twenty years old. The purpose is to maintain this aspect of the public's comfort and convenience. It is a rare pleasure to see or ride in a vintage taxicab. Vehicle specifications. The new regulation revises the current vehicle specifications, to simplify and update the requirements. In most respects, the specifications are unchanged; many details can be eliminated, though, because they are superfluous in light of contemporary Federal and State requirements for motor vehicles. The new regulation continues to require that only heavy duty vehicles manufactured for taxicab, police or fleet service could be put into operation as taxicabs. However, the proposal would also authorize an experiment with standard sedans and minivans that meet certain minimum standards for interior space in the passenger compartment. The Chairman has initiated such an experiment pursuant to the Chairman's authority under current rules. By publishing the specific requirements of the present experiment, under authority of the Commission, it is intended to provide clear guidelines to the taxi industry. The proposal would require the Chairman to report to the Commission concerning the experiment no later than July 31, 1996, at least three months before owners must begin to replace the oldest taxicabs now in service. Establishing a maximum horsepower for new taxicabs. The new regulation establishes a maximum of 220 horsepower, for vehicles put into operation as taxicabs for the first time on or after February 1, 1996. The purpose is to improve public safety by reducing the ability of taxicabs to accelerate rapidly. This would inhibit the pattern of accelerating until braking, by which some taxi drivers seem to drive. It would inhibit the pattern of weaving in and out of lanes of traffic through sudden acceleration, which some drivers use to move faster than the flow of traffic. These patterns of driving are believed to cause accidents, and they alarm riders. These observations are based upon the Commission's considerable experience of passenger complaints. Unsafe driving has become the most frequent passenger complaint. Inhibiting these poor driving habits will improve passenger comfort and safety. The current models of the Chevrolet Caprice and the Ford Crown Victoria are available with standard engines that meet the proposed maximum of 220 horsepower. The requirement therefore does not constrain the industry's choice among vehicle models. The present ability of the taxi industry to outfit used police cars as taxicabs has in numerous instances resulted in the hack-up of powerful pursuit vehicles that were specially equipped for law enforcement emergency action. Taxi drivers do not need the same engine power as police officers. The Commission, working with the New York Police Department, is enhancing enforcement activity against driving violations by taxi drivers. The

proposal would complement the enforcement activities. Interior space requirements. The original proposal has been modified, to restore certain minimum dimensions of leg room, head room and seat width which are found in the current regulations. Public comment established that the EPA interior volume measurement of the passenger compartment was subject to too many variables to make it a sole and sufficient criterion of passenger comfort. The minimum dimensions set forth in the new regulation are found in the current regulations, along with numerous other requirements which have been deleted. The new regulation sets the minimum interior volume at 107 cubic feet. Among the vehicles that would meet that standard are the industry workhorses, the Chevrolet Caprice and the Ford Crown Victoria. The Commission is reluctant to authorize vehicles for service that are less roomy than the Caprice and the Crown Victoria, but the expected end to manufacture of those models necessitates consideration of alternatives. Among the standard sedans that would meet the interior volume standard are the Oldsmobile 88 and 98, and the Buick LeSabre. Those models, however, have not yet been brought forward for participation in the experiment with standard vehicles. Among the vehicles that would not meet the interior volume standard are the Chevrolet Lumina taxi package (100 cubic feet), and the Chrysler Concorde fleet package (104 cubic feet). Evaluation of a Lumina currently in operation pursuant to an experiment indicated that the Lumina was too small, in the judgment of TLC staff, when outfitted with the required partition. At a public hearing on November 9, 1995, representatives of Chevrolet were encouraged by the Chairman to outfit a Lumina with a less bulky partition, for further evaluation. The Concorde has not been made available yet for testing. The proposal would authorize the Chairman to experiment with the Concorde and with the Lumina, equipped with less bulky partitions, along with other vehicles. The Honda Odyssey minivan and the Ford Explorer sport/utility vehicle are also presently participating in an experiment. They meet the new standard for interior volume. Deletion of superfluous specifications. The current specifications were established early in the 1970's. Since then, automotive standards have advanced in many respects. Standard vehicles now have federally mandated safety features which make certain TLC requirements superfluous. In actual practice, TLC has in the past approved only the "taxi package" models that provide adequate head room and leg room. The Chevrolet Caprice and the Ford Crown Victoria have for a number of years been the only qualified vehicles. Certain obsolete specifications, such as that requiring a vent window in the driver's door, have remained on the books but have not been operative. Among the other provisions proposed for deletion are: - Dimensions for sun visors and rear view mirrors; - Requiring windshield wipers to have an intermittent mode; - Detailed specifications for turn signals; and - A ban on cloth upholstery. The current specifications contain detailed provisions concerning automotive emissions, which date from 1979. Those provisions require taxicabs to be equipped with the "California emissions package." That requirement is obsolete, in view of the New York State emissions package requirements for all new vehicles to be registered in the State. The "California package" is now essentially also a "New York State package." Detailed TLC specifications as to emission packages are superfluous in this context and are therefore omitted. TLC will inspect taxicabs to enforce the applicable State standards.

4. Statement of Basis and Purpose in City Record July 1, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The rulemaking refines certain details of the Commission's recently adopted rule, which requires that vehicles must be retired after stated periods of taxi service. The rulemaking defines who would be a "driver who owns the vehicle", and thereby eligible for a longer period of vehicle operation than are other taxicab owners. The use of the term "driver owned vehicle" or "DOV" by taxicab lease managers in public discussions applies much more widely than to the number of drivers who actually hold title to taxicab vehicles. Many drivers are making installment payments to purchase the vehicle from the title holder. The title holder in many cases is an affiliate of the lease manager. The Commission's rulemaking provides drivers who are making installment payments with the extended period of vehicle operation. Under the rulemaking, the Commission will not recognize conditional sales of taxicab vehicles, under which a driver who fails to make a payment may lose all rights in a vehicle, as situations in which a driver may be said in any way "to own the vehicle". A driver with only a conditional interest in the vehicle has not been shown to take the same care with maintenance and operation of the vehicle, as does a true owner. The rulemaking extends by four months the

period of time for operation of model years 1991 and 1992 vehicles which are driven by the owners. Instead of beginning on April 1, 1997, the retirement period for those vehicles would begin on August 1, 1997. The purpose of this extension is to spread out vehicle replacement over a slightly longer period of time, to promote an orderly replacement of taxicab rolling stock. Those two model years contain a total of nearly 2,000 vehicles. The rulemaking clarifies that the option to "re-hack" a vehicle by moving it from one medallion to another, under certain procedures, is available for cars in service prior to March 1, 1996 as well as new vehicles.

FOOTNOTES

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[Footnote 1]: * Note: This subd. (c) was repealed in City Record Jan. 29, 2002 eff. Feb. 28, 2002. It dealt with an exception to subd. (b) for ". . . extreme personal financial hardship . . ., such as a catastrophic illness . . ."

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-02 Vehicle Retirement.

(a) The following requirements shall apply to all vehicles hacked-up on or after March 1, 1996:

(1) A vehicle which is double-shifted and not driven by at least one long-term driver, as defined in §1-01 of this title, for any period of time on or after March 1, 1997, and is not in service solely as an authorized stand-by vehicle from the time the vehicle is hacked-up, must be retired from taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring 36 months after the vehicle was hacked-up.

(2) All other vehicles must be retired from taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring 60 months after the vehicle was hacked-up.

(3) Notwithstanding the foregoing provisions of this subdivision 3-02(a), any vehicle hacked-up on or after March 1, 1996 and before April 17, 2007 which, no later than six months after hack-up, is dedicated to operate on compressed natural gas (with a maximum reserve gas tank of five gallons) and which remains so dedicated thereafter, throughout its operation, has an extension of its retirement date by twenty-four additional months of taxicab service.

(4) Notwithstanding the foregoing provisions of this subdivision 3-02(a), the retirement date of any vehicle hacked-up on or after March 1, 1996 and before April 17, 2007, which is a minivan approved for use as a taxicab by the Commission, is extended by:

(i) twelve additional months of taxicab service if doubled-shifted and not driven by at least one long-term driver, as defined in Rule 1-01; or

(ii) eighteen additional months of taxicab service if not subject to subparagraph (i) of this paragraph. A taxicab whose retirement date has been extended in accordance with the provisions of this paragraph is not eligible for the extended vehicle lifetime provided for clean air and accessible taxicabs pursuant to paragraphs five through seven of this subdivision.

(5) Notwithstanding the foregoing provisions of this subdivision 3-02(a), the retirement date of any vehicle that is a level one or level two clean air taxicab as defined in §3-03.3 of this chapter or an accessible taxicab as defined in §3-03.2 of this chapter, and that is otherwise required under paragraph (1) of this subdivision)*2 to be retired from taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring thirty-six months after the vehicle was hacked-up, is extended by twelve months.

(6) Notwithstanding the foregoing provisions of this subdivision 3-02(a), the retirement date of any vehicle that is a level one clean air taxicab as defined in §3-03.3 of this chapter or an accessible taxicab as defined in §3-03.2 of this chapter, and that is otherwise required under paragraph (2) of this subdivision to be retired from taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring sixty months after the vehicle was hacked-up, is extended by twenty-four months.

(7) Notwithstanding the foregoing provisions of this subdivision 3-02(a), the retirement date of any vehicle that is a level two clean air taxicab as defined in §3-03.3 of this chapter and that is otherwise required under paragraph (2) of this subdivision to be retired from taxicab service and replaced no later than the first scheduled inspection of the vehicle occurring sixty months after the vehicle was hacked-up, is extended by twelve months.

(b) A vehicle which cannot pass inspection must be replaced, regardless of whether its retirement date has been reached. A vehicle which has reached its retirement date, including any extensions provided for in this section, must be retired, regardless of whether it may still pass inspection.

HISTORICAL NOTE

Section amended City Record Mar. 16, 2007 §1, eff. Apr. 15, 2007. [See Note 5]

Section repealed and added City Record Dec. 2, 1996 eff. Jan. 1, 1997. [See T35 §1-78 Note 1]

Subd. (a) par (1) amended City Record Nov. 22, 2006, eff. Dec. 22, 2006. [See Note 4]

Subd. (a) par (4) amended City Record Arp. 3, 2009 §1, eff. May 3, 2009. [See Note 6]

Subd. (a) par (4) added City Record May 27, 1999 eff. June 26, 1999.[See Note 1]

Subd. (a) pars (5), (6), (7) amended City Record Apr. 3, 2009 §1, eff. May 3, 2009. [See Note 6]

Subd. (b) relettered (former subd. (c)) City Record Apr. 3, 2009 §1, eff. May 3, 2009. [See Note 6]

Subd. (b) repealed City Record Apr. 3, 2009 §1, eff. May 3, 2009. [See Note 6]

DERIVATION

Section repealed and added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §3-01 Note 3]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 2]

Subd. (c) amended City Record July 1, 1996 eff. Aug. 1, 1996. [See T35 §3-01 Note 4]

Subd. (e) amended City Record Aug. 30, 1996 eff. Oct. 1, 1996. [See Note 3]

Subd. (e) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 2]

Subd. (f) par (5) repealed and added City Record Feb. 8, 1994 eff. Mar. 6, 1994.

Subd. (f) par (5) amended City Record Apr. 30, 1992 eff. May 30, 1992.

Subd. (f) par (10) added City Record June 7, 1994 eff. July 7, 1994.

Subd. (i) added City Record July 1, 1996 eff. Aug. 1, 1996. [See T35 §3-01 Note 4]

NOTE

1. Statement of Basis and Purpose in City Record May 27, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §2303(b)(6) of such Charter, authorizing the TLC to establish requirements for safety, design and comfort of vehicles; and under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter.

Present vehicle retirement rules adopted by the Commission for vehicles placed in service after March 1, 1996, require that taxicabs be retired within thirty-six (36) months if double-shifted, and within sixty (60) months if not double-shifted. This regulation extends the time for which a minivan may be used in taxicab service by twelve (12) months if double-shifted, and by eighteen (18) months if not double-shifted.

The overall reaction of the public to the minivans approved by the Commission has been overwhelmingly positive. Information and correspondence from the public indicates consumer satisfaction in terms of comfort, convenience and design.

The purpose of the amendment promulgated herein is to encourage the continued purchase and use of minivans as taxicabs by reducing the cost of operation. By extending the period of time that a minivan may remain in taxicab service, the cost of ownership is reduced, thereby creating a financial incentive for taxicab owners to purchase minivans.

2. Statement of Basis and Purpose in City Record Mar. 29, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The purpose of amendments is to make several technical changes to the Taxicab Specifications adopted by the Commission on January 25, 1996. The technical changes involve the retirement of vehicles which operate on compressed natural gas. Vehicles operating on compressed natural gas may have a reserve gas tank of five gallons. In addition, 1995 and 1996 vehicles which are converted to compressed natural gas may operate until July 1, 2001.

3. Statement of Basis and Purpose in City Record Aug. 30, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed

vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The rulemaking extends the date that vehicles of 1995 and 1996 model years could be converted to operate on compressed natural gas, and receive an extension of their mandatory retirement date. This rulemaking provides an opportunity to those vehicle owners who did not take advantage of this program by the cut-off date of July 1, 1996. Such owners now have until November 1, 1996. The purpose of this rulemaking is to further encourage the use of compressed natural gas. Based upon public comment, the rule proposal was amended to allow vehicles of 1995 and 1996 model years to continue in service until July 1, 2002.

4. Statement of Basis and Purpose in City Record Nov. 22, 2006: The rule amends existing rules to provide that the vehicle retirement deadline for a stand-by vehicle is 60 months, instead of 36 months. As provided in §§1-01 and 1-59 of the rules of the Taxi and Limousine Commission (TLC), a stand-by vehicle is a vehicle that is hacked-up as a taxicab, and is used by fleets as a replacement vehicle when a taxicab is unavailable for use-for instance, due to repairs or inspection. The reason for the rulemaking is that TLC inspection data over the past several years shows that a stand-by vehicle accrues significantly less mileage and aging than a regular fleet taxicab. Therefore, a 60-month retirement deadline is more appropriate to the actual taxicab usage of a stand-by vehicle. The rule is intended to apply to stand-by vehicles that are in service as of the effective date of the rule, as well as to stand-by vehicles that are hacked-up on or after the effective date of the rule. However, only vehicles which are or have been hacked-up as a stand-by vehicle when new will be assigned a 60-month retirement deadline.

5. Statement of Basis and Purpose in City Record Mar. 16, 2007: The rulemaking amends existing taxicab specification rules to comply with Local Law 52 of 2006, by providing vehicle retirement extensions for eligible clean air and accessible taxicabs. The rule would apply to taxicabs hacked up on or after April 17, 2007, as well as clean air and accessible taxicabs in service as of that date. As mandated by Local Law 52 of 2006, the new rules create incentives for taxicab owners to use accessible and clean air taxicabs. In addition, in order to increase the value and maximize the impact of these incentives on the taxicab industry, the new rules repeal retirement extensions for other types of vehicles. The rules eliminate the extensions for CNG-powered vehicles and minivans hacked up on or after April 17, 2007. The CNG extension had been established ten years ago to encourage the use of clean air vehicles as taxicabs. The new rules are much more effective by targeting incentives based upon actual vehicle cleanliness, rather than simply fuel type. CNG vehicles currently in use as taxicabs would not qualify as Level 1 or Level 2 clean air taxicabs as defined by Local Law 52 and these new rules. The minivan extension had been established to encourage the use of a new type of vehicle as a taxicab. Minivans now make up more than ten percent of the taxicab fleet and therefore these incentives are no longer required. Finally, sections regarding taxicabs that are no longer in service would be deleted as obsolete.

6. Statement of Basis and Purpose in City Record Apr. 3, 2009: This rulemaking eliminated the requirement in TLC's rules that in order for accessible and clean air taxicabs to qualify for an additional twelve to twenty-four months, such vehicles must pass at least two of the inspections, not including reinspections, conducted at the Commission's inspection facility pursuant to §19-504 of the New York City Administrative Code during the twelve-month period immediately preceding the time at which such vehicle would otherwise be required to be retired pursuant to §3-02(a) of the TLC rules. In light of two years' experience with that rule, the TLC found that such a requirement is unnecessarily restrictive: a vehicle should not be forced into retirement because of minor inspection failures (broken headlight; seatbelt not properly affixed; etc.) that can easily be remedied for a follow-up inspection. The adopted rule does of course retain the requirement that a vehicle must pass inspections to remain on the road, regardless of its scheduled retirement date.

FOOTNOTES

2

[Footnote 2]: * No opening parenthesis.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-03 Taxicab Specifications.

(a) **Applicability.**

(1) These specifications shall apply to every motor vehicle which is to be outfitted as a taxicab and approved by TLC for service; on or after March 1, 1996.

(b) **General Requirements for Review of Vehicle Models.**

(1) The taxi shall conform to all applicable federal and New York State motor vehicle standards and requirements. Such standards include: seat belts for each seating position and shoulder belts for each outboard seating position; front disk brakes; and the vehicle emissions package requirements of New York State.

(2) The sponsor, either the manufacturer or his authorized sales agent, shall certify item by item that the candidate taxi meets all criteria herein. Where minimum or maximum is specified, the actual values of the taxi candidate must be given. The sponsor shall provide the Commission with a Motor Vehicle Manufacturer Association (MVMA) specifications form; a complete listing of interior dimensions on TLC form J-303 as measured on a bona fide example of the candidate vehicle; a complete listing of heavy duty equipment for the taxi vehicle; a list indicating the significance of characters in the Vehicle Identification Number (VIN); the manufacturer's repair shop manual for each candidate vehicle; and, upon request, full size layout drawings of the candidate vehicle. The sponsor shall provide an EPA Certificate of Conformity pertaining to the candidate taxi. The sponsor shall at his own expense, submit a bona fide example of the candidate vehicle for road testing and detailed measurements by Commission personnel or their authorized agents for the purpose of making objective judgments of the candidate vehicle model's conformance to these

specifications.

(3) After a model has been approved and examples of it are in service, the TLC reserves the right to require measurements of vehicles to ensure conformity with the model specifications. The cost of all tests shall be borne by the sponsor.

(4) The sponsor shall make provisions to immediately notify the commission of any vehicle safety recalls. In addition, the sponsor shall make provisions to have the Commission placed upon the mailing list for service bulletins and recalls.

(5) The manufacturer shall provide to the Chairman information as to the location of the confidential VINs for such model, pursuant to the manufacturer's confidentiality requirements for the provision of such information to law enforcement organizations.

(6) Experimental equipment designed to exceed existing safety standards is encouraged, but the Commission's Safety and Emissions Unit shall be kept fully informed of all such projects involving New York City taxicabs from inception to completion.

(7) The TLC reserves the right to approve limited quantities of vehicles which fail any of these specific rules provided only that the sponsor's vehicle is already purpose-built for taxi service, and therefore, substantially exceeds other criteria, or in the case where the sponsor wishes to demonstrate certain outstanding virtues that deserve to be tested in actual taxi service. The TLC further reserves the right to require detail changes to make a vehicle more suitable for New York City taxi service.

(c) **Vehicle Specifications.**

(1) The vehicle shall be manufctured with heavy-duty equipment for taxicab, police or fleet service, except as provided in paragraph (7). There shall be a term in the VIN or in a body tag, which distinguishes the taxicab, police or fleet package from the standard sedan on which it is based.

(2) The vehicle shall have EPA passenger compartment interior volume index of at least 107 cubic feet.

(3) The rear compartment of any sedan approved for use as a taxicab shall meet the following dimensions as defined by the Society of Automotive Engineers:

(i) Minimum effective legroom (L51) must be at least 43 inches.

(ii) Effective headroom (H63) must be at least 37.5 inches.

(iii) The seat depth (L16) must be at least 18 inches.

(4) The front compartment of any sedan approved for use as a taxicab shall meet the following dimensions:

(i) Effective headroom (H61) must be at least 37.5 inches.

(ii) Maximum effective legroom (L34) must be at least 42 inches.

(iii) Total legroom (the sum of L34 and L51) must be at least 85 inches.

(5) The vehicle shall be equipped with a factory installed air conditioning system. If the vehicle model has available air conditioning outlets for the rear seat area, then the vehicle shall be equipped with such outlets.

(6) The vehicle may not be equipped with an engine in which the maximum horsepower exceeds 220.

(7) The vehicle may be a sedan, which meets the requirements of paragraphs 2 through 6 of this subdivision, and of paragraph (1) of subdivision (d), or a minivan which has been approved by the Chairperson after a determination that the vehicle provides adequate safety and comfort to passengers, and which also meets the requirements of paragraphs 5 and 6 of this subdivision. If the Federal government or the Commission determines that any of such vehicles must be wheelchair accessible, then such vehicles shall be wheelchair accessible to the extent of such Federal or Commission determination and requirements.

(8) All windows of the vehicle must have a light transmittance of seventy (70) percent or more, with the exception of the uppermost six (6) inches of the front windshield.

(9) Beginning on October 1, 2008, a vehicle may be fueled only by Compressed Natural Gas if such vehicle is an originally manufactured vehicle and meets with the requirements of paragraphs (5) and (6) of this subdivision.

(10) Notwithstanding the foregoing provisions of this subdivision 3-03(c), a vehicle may be hacked up as a taxicab if the vehicle is powered by diesel fuel, and the vehicle otherwise meets the vehicle specifications provided in section 3-03.1(c) of this chapter, whether or not the taxicab is a hybrid electric vehicle.

(11) Repealed.

(d) **Experimental Vehicle Specifications.** Due to the limited production plans for "taxi package" vehicles, as well as an interest in testing features of standard production vehicles, including minivans, which are not "taxi package," the Chairman may conduct an experiment with vehicles meeting the following minimum specifications. The Chairman may, at his or her discretion, limit the number of vehicles participating in the experiment. The Chairman may, at his or her discretion, waive any particular requirement, if in his judgment the experiment may demonstrate certain outstanding virtues that deserve to be tested in actual taxi service. The Chairman shall report to the Commission concerning the experiment, no later than July 31, 1996.

(1) The vehicle shall be either a full size or larger four door sedan or a minivan equipped with at least four doors. Except for vehicles which are designed to be handicapped accessible, all doors shall open outward on hinges (not sliding doors), and the vehicle must be capable of carrying three passengers seated behind the driver. Any space which would otherwise be available to seat more than three passengers shall be used instead to provide luggage space.

(2) The vehicle shall have EPA passenger compartment interior volume index of at least 107 cubic feet.

(3) If the vehicle is equipped with shock absorbers, the rear shock absorbers must be of the heavy duty variety.

(4) The vehicle shall be equipped with a factory installed air conditioning system. If the vehicle model has available air conditioning outlets for the rear seat area, then the vehicle shall be equipped with such outlets.

(5) The vehicle may not be equipped with an engine in which the maximum horsepower exceeds 220.

(e) **Vehicle Modifications for Taxicab Service.**

(1) **Paint and Finish.**

(i) The exterior shall be painted taxi yellow, except for trim. Samples of paint color and code are to be submitted to the Commission for approval.

(ii) The front of the taxi, and especially the bumper, should be designed with strong emphasis on reducing injury to pedestrians. There shall be no unnecessary projections such as rigid hood ornaments.

(iii) The vehicle shall be provided with signs in conformance with the marking specifications, §1-36 of these rules.

(2) **Roof Light, Meter and Seals.**

(i) Provision shall be made for installing and adequately wiring a roof light of approved design on top of the roof.

(ii) Suitable wiring shall be provided for a pair of auxiliary turn signal lamps to be located adjacent to the roof light. These lamps shall not be activated with the brake lights.

(iii) A taximeter approved pursuant to Rule 3-04 shall be installed in a location which facilitates the driver's operation of it and any passenger's reading of the fare without interfering with the driver's safe operation of the taxi or the passenger's safety and comfort.

(iv) The taximeter shall be sealed with tamper resistant seals. The Commission will designate the type of seal, and will apprise the industry of the required locations for each taximeter approved pursuant to §3-04 of these rules.

(v) If the vehicle is equipped with a pinion gear, such pinion gear shall be sealed. The Commission will designate the type of tamper resistant seal to prevent removal or change of the pinion gear.

(3) **Security.**

(i) An owner shall install a partition that isolates the driver from the rear seat passengers or all passengers of the vehicle, in accordance with section 1-17 of this title. The purpose of the partition shall be to provide protection to the driver while ensuring passenger safety and enabling rear seat passengers to enjoy a clear and unobstructed view of the taxicab driver's license, rate card and front windshield.

(A) The partition shall consist of a transparent portion that shall extend from the ceiling to a point, as recommended by the Chairperson and approved by the Commission, based upon the make and model of the vehicle in service, that will provide passengers and drivers with maximum visibility. The transparent portion of the partition shall be constructed of a bullet-resistant material, recommended by the Chairperson and approved by the Commission, which is also clear and scratch-resistant.

(B) A protective plate shall join the transparent portion of the partition and extend from the lowest point of the transparent portion of the partition downward to the floor of the vehicle. The plate shall be constructed of a bullet-resistant material recommended by the Chairperson and approved by the Commission.

(C) Notwithstanding the provisions of clause (A) of this subparagraph, all taxicabs, except those that are exempt pursuant to section 1-17 of this title, when an existing partition is required to be replaced or when a partition is installed (including, but not limited to, at hack-up), shall be equipped with a partition, the transparent portion of which shall be constructed, at a minimum, of a mar-resistant polycarbonate and shall be not less than 0.375 inches thick, that will provide passengers and drivers with maximum visibility.

(1) For a flat partition and a partition for a taxicab with factory installed curtain airbags, the transparent portion shall extend from the ceiling to join or overlap with the protective plate of the partition.

(2) For an L shaped partition, on the side that is behind the driver, the transparent portion of the partition shall extend from the ceiling to join or overlap with the protective plate of the partition, and on the side that extends forward to back between the two front seats, the transparent portion of the partition shall extend from the ceiling to join or overlap with the protective plate of the partition on the right side of the center console located between the two front seats.

(3) The protective plate shall join or be overlapped by the transparent portion of the partition and shall extend from the point that the protective plate joins, or if overlapped by the transparent portion of the partition, the point that would be the point of joinder with the transparent portion of the partition, downward to the floor of the taxicab. The protective

plate shall be constructed of a 0.085 inch thick plate of ballistic steel or its equivalent installed inside and covering the entire back seat rest of the front seat which is exposed to the passenger compartment and, for an L shaped partition, on the right side of center console between the two front seats.

(4) Each partition shall have sufficient padding for the entire protective plate of the partition to prevent injury to any rear-seat passenger in case of an accident or sudden stopping and all surfaces shall be free of sharp and rough edges.

(5) There shall be no opening or gap between the partition and the body of the vehicle larger than one inch, except as set forth in section 1-17(c) of this title.

(6) No partition shall be installed unless it shall have the following features which do not compromise passenger or driver safety:

(A) A means for passengers and drivers to communicate with each other.

(B) The capacity for the passenger(s) to pay fares, either by cash, or by credit card if the taxicab is capable of accepting credit card payments, and for the passenger(s) to receive receipts for payments and transactions, while the passenger is in the rear passenger compartment.

(ii) No vehicle, other than a vehicle which is exempt from the partition requirements set forth in section 1-17 of these rules, may be hacked-up unless a new partition has been installed which complies with these specifications.

(iii) An owner shall equip all taxicabs with a help or distress signaling light system in accordance with the following specifications:

(A) The help or distress signaling light system shall consist of two turn signal type "lollipop" lights.

(B) One light shall be mounted on the front center of the vehicle, either on top of the bumper or forward or behind the grill. A second light shall be mounted on top of the rear bumper, to the left of the license plate.

(C) Each light shall be three to four inches in diameter, have a total rated output of thirty-two candle power and shall be the color amber or have an amber colored lens so that the light output of the device is the color amber at thirty-two candle power.

(D) The activator shall be installed within easy reach of the driver, shall be silent when operating, and shall be fully solid-state.

(E) The lights shall flash between 60 and 120 times per minute.

(F) The wiring shall not affect or interfere directly or otherwise with any wiring or circuitry used by the meter for measuring time or distance.

(iv) A door ajar notification light shall be provided which is located in front of the driver. This light shall turn on only when any door is not fully latched.

(v) When an existing in-vehicle camera system ("IVCS") is required to be replaced or when such system is installed (including, but not limited to, at hack-up), no such system shall be installed in any taxicab unless it meets the following specifications:

(A) The IVCS shall be connected to the vehicle battery, and the fuse for such connection shall be concealed in tamper-resistant housing.

(B) Wiring between the recording unit and camera head shall use registered jack (RJ) style connectors at either end

which shall be tamper-resistant.

(C) All electrical connections and wiring shall be protected from spike and dips in vehicle voltage.

(D) The camera head housing and brackets shall be tamper-proof and securely mounted to the right of the rear view mirror. The installation shall provide unobstructed vision for the driver.

(E) The camera's field of view shall include the full face of all occupants seated in passenger seats and facing forward.

(F) Images shall be recorded and stored in a unit separate from the camera head.

(G) The recording unit shall be concealed from view and fastened securely with tamper-resistant hardware.

(H) The IVCS shall provide a visual indication of system status that is located on the lower left portion of the dashboard, and is visible to the driver and law enforcement personnel inspecting the vehicle from outside of the driver door.

(I) The IVCS and components shall be sufficiently shock-resistant to withstand typical vehicle movement and collisions.

(J) The IVCS shall have a RS-232 connection or other means for secure image retrieval.

(K) Images shall be sharp, undistorted and enable the viewer to identify all passengers under all lighting conditions; for example, but not limited to, dark and bright light, daylight and backlight.

(L) Sensor resolution shall be, at a minimum, 510 by 480 pixels.

(M) Storage capacity shall be, at a minimum, 7000 images in an encrypted format, and all access to the storage unit shall result in the storage of an electronic "tag" including the installer identification number and date of the event.

(N) The IVCS shall have connection ports for a minimum of two (2) cameras.

(O) The IVCS shall have an event flag or panic button accessible to driver and located in an inconspicuous location.

(P) The IVCS shall record images and the following information for each image:

(a) Date and time;

(b) Taxicab medallion number;

(c) IVCS serial number; and

(d) IVCS indicator for event flags.

(Q) Image capture shall be linked to the following events: vehicle door openings and closings, meter engagement, event flag button activation and event flag in the test mode when the image(s) is/are recorded for inspection and test purposes. In the event of a panic button activation, systems shall record to protected memory a total of three (3) events that include, at a minimum, the previous 2.5 and subsequent 2.5 minutes immediately prior and subsequent to the button activation, at one frame per second.

(R) Image access shall be provided only to law-enforcement agencies including but not limited to the New York City Police Department;

(S) If the IVCS has a physical port for secure image retrieval it shall be located on the right side of the dashboard or in the trunk in an inconspicuous manner that is accessible to law enforcement personnel.

(T) When memory storage capacity is reached, the IVCS shall overwrite the oldest images as new images are recorded in sequence.

(U) Installations and repairs of IVCS may be done only by authorized installers approved by the manufacturer that are businesses currently licensed by the Department of Consumer Affairs or are taximeter businesses currently licensed by the Commission pursuant to chapter 15 of this title.

(V) Within fourteen (14) calendar days after installation, repair or modification, a notarized affidavit signed by a manufacturer's authorized installer attesting to the proper functionality of the IVCS shall be provided to the Commission by the authorized installer.

(W) A similar affidavit shall be provided annually by the authorized installer to the Commission and upon any repair to or change of the IVCS.

(4) **Credential Holders.**

(i) A credential holder shall be mounted on the right side of the dashboard, unless in the judgment of the Chairman, a dashboard mounting would be hazardous in a particular model of automobile. A model equipped with dual air bags is a model in which a dashboard mounting would be hazardous, unless in the judgment of the Chairman there is an alternative solution to the requirements of subdivision (ii).

(ii) A vehicle in which a dashboard mounting would be hazardous shall be equipped with a transparent partition and a protective plate, in accordance with §3-02(e)(3)(i), and shall have a TLC-approved credential holder frame mounted on the driver's side of the clear portion of the partition by either rivet and/or screw at least two inches above the frame supporting the clear portion of the partition and centered on the vehicle's steering column and/or the headrest on the driver's seat facing the rear passenger's compartment. The frame shall have a drop-in or slide-in slot accessible only from the driver's compartment for the rate card and the driver's license. The frame shall have sufficient illumination pursuant to Owners Rule 1-12(a). The frame shall be sufficiently padded so as not to cause injury to the driver.

(5) **Occupant accommodation.**

(i) There shall be a hold-open device on each door.

(ii) There shall be a door pull on each rear door. Assist straps shall be mounted either on each B-pillar or upon the partition. Both the door pulls and assist straps shall meet the impact requirements of federal MVSS 201. There shall be no coathook on the right-hand side.

(iii) There shall be an outboard armrest located appropriately for the driver and each outboard passenger.

(iv) The upholstery and trim shall be vinyl, shall meet or exceed all federal (MVSS) standards for vehicle seating including flame resistance. Notwithstanding the provision of this subparagraph, on the seats of a taxicab that are equipped with an occupant classification system as defined in §2-01 of this title, and on the seats of a taxicab that are equipped with side airbags, the upholstery shall be as provided by the original equipment manufacturer.

(v) A taxicab may not be equipped with power adjusted seats. A taxicab may be equipped with either bucket or bench seats, provided that the seats do not interfere with the partition and do meet all the requirements of the TLC. All replacement seats must be designed by the manufacturer for installation in the model and year of the vehicle in which the seats are installed.

(6) **Definitions.**

Taxicab technology service provider. A "taxicab technology service provider" is a vendor who has contracted with the Commission to install and maintain the taxicab technology system in taxicabs.

Taxicab technology system. The "taxicab technology system" is hardware and software that provides the following four core services (collectively "four core services"): (i) credit, debit and prepaid card payment required by section 3-03(e)(7) of this chapter, (ii) text messaging required by section 3-03(e)(8) of this chapter, (iii) trip data collection and transmission required by section 3-06 of this chapter, and (iv) data transmission with the passenger information monitor required by section 3-07 of this chapter.

(7) **Credit Card Acceptance Capability.** Each taxicab that is required to be equipped with the taxicab technology system as defined in section 3-03 of this chapter must be capable of accepting all major credit and debit cards which are accepted by such taxicab technology system as payment for fares. This specification shall be implemented no later than the compliance date set forth in section 1-01 of this title.

(8) **Text Messaging Equipment.** Each taxicab that is required to be equipped with the taxicab technology system as defined in section 3-03 of this chapter must be equipped with text messaging equipment enabling the driver to receive and send text messages. No text messaging equipment shall be installed unless it has been provided by a taxicab technology service provider and the equipment conforms with specifications set forth herein, meets appropriate safety standards, and fulfills the intended purposes for such equipment. No text messaging equipment shall be used in contravention of TLC Rules or for dispatch purposes. This specification shall be implemented no later than the compliance date set forth in section 1-01 of this title.

HISTORICAL NOTE

Section added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §3-01 Note 3]

Section heading amended City Record Apr. 1, 2009 §6, eff. May 1, 2009. [See T35 §1-78 Note 4]

Subd. (c) amended City Record Jan. 29, 2002 eff. Feb. 28, 2002. [See Note 1] Editor overlooked

changes which were not in brackets or italics which were determined to be inadvertent errors.

Subd. (c) amended City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 6]

Subd. (c) par (7) added City Record June 15, 1998 eff. July 15, 1998. [See Note 7]

Subd. (c) par (7) amended City Record July 8, 1997 eff. Aug. 11, 1997. [See Note 5]

Subd. (c) par (7) added City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 6]

Subd. (c) par (9) added City Record Dec. 18, 2007 §3, eff. Jan. 17, 2008. [See T35 §1-17 Note 5]

Subd. (c) par (10) amended City Record Apr. 1, 2009 §7, eff. May 1, 2009. [See T35 §1-78 Note 4]

Subd. (c) par (10) added City Record Dec. 18, 2007 §3, eff. Jan. 17, 2008. [See T35 §1-17 Note 5]

Subd. (c) par (11) repealed City Record Apr. 1, 2009 §7, eff. May 1, 2009. [See T35 §1-78 Note 4]

Subd. (c) par (11) added City Record Dec. 18, 2007 §3, eff. Jan. 17, 2008. [See T35 §1-17 Note 5]

Subd. (d) par (1) amended City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 6]

Subd. (e) par (3) amended City Record Apr. 23, 2007 §4, eff. May 23, 2007. [See T35 §1-17 Note 4]

Subd. (e) par (3) amended City Record Apr. 14, 2004 §§1, 2, eff. May 14, 2004. [See Note 9] All of paragraph (3) is laid out in supplement for consistency.

Subd. (e) par (3) subpar (i) clause (C) open par amended City Record Dec. 18, 2007 §2, eff. Jan. 17, 2008. [See T35 §1-17 Note 5]

Subd. (e) par (3) subpar (i) clause (C) open par amended City Record Dec. 18, 2007 §2, eff. Jan. 17, 2008. [See T35 §1-17 Note 5]

Subd. (e) par (5) subpar (iv) amended City Record Oct. 1, 2008 §3, eff. Oct. 1, 2008 per City Record notice. [See T35 §2-26 Note 1]

Subd. (e) par (5) subpar (iv) amended City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 6]

Subd. (e) par (5) subpar (vi) repealed City Record June 3, 1998 eff. July 3, 1998. [See T35 §3-05 Note 1]

Subd. (e) par (5) subpar (vi) added City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See Note 3]

Subd. (e) par (6) added City Record June 12, 2007 §25, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (e) par (6) repealed City Record Apr. 8, 2003 §2, eff. May 8, 2003. [See T35 §1-19 Note 1]

Subd. (e) par (6) amended City Record Apr. 29, 1997 eff. June 1, 1997. [See Note 4]

Subd. (e) par (6) added City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 2]

Subd. (e) pars (7), (8) amended City Record June 12, 2007 §25, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (e) pars (7), (8) amended City Record May 11, 2005 §1, eff. June 10, 2005. [See Note 10]

Subd. (e) pars (7), (8) added City Record Apr. 14, 2004 §1, eff. May 14, 2004. [See Note 8]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 29, 2002:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York ("Charter"), empowering the TLC to regulate and supervise the business and industry of transporting passengers by licensed vehicles for-hire in the City; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §2303(b)(6) of such Charter, authorizing the TLC to establish requirements for safety, design and comfort of vehicles; and under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter.

These regulations amend the taxicab specifications to increase the minimum front and rear compartment legroom

requirements for sedans approved for use as taxicabs. The regulations also authorize the TLC Chair to approve minivans that may be used as taxicabs.

The Society of Automotive Engineers (SAE) has developed uniform interior and exterior measurements for motor vehicles. These SAE measurements are relied upon to ensure that vehicle dimensions of different vehicle models can be compared. The SAE has developed uniform measurements to determine both front and rear compartment passenger legroom, headroom and seat depth. These measurements are an indicator of vehicle size and passenger comfort. Minimum dimensions for headroom, legroom, and rear seat depth have been part of the TLC Specifications for taxicabs, and vehicles that do not meet these minimum size dimensions cannot be approved for use as taxicabs without specific approval from the TLC Chair.

These amendments to the Taxicab Specifications increase the interior front and rear passenger compartment legroom requirements. Front compartment minimum legroom dimensions are increased from 40 to 42 inches. Rear compartment minimum legroom requirements are increased from 37 to 43 inches.

The purpose of these amendments is to ensure that sedans authorized for use as taxicabs meet minimum standards for passenger comfort. There are currently available several sedan models available and suitable as taxicabs which meet these proposed minimum specifications for interior compartment legroom. These vehicles would provide a greater degree of passenger comfort than smaller sedans currently authorized for use as taxicabs provide. Vehicles with greater legroom are more comfortable, and provide ease in ingress and egress not available in smaller vehicles.

Additionally, these amendments authorize the TLC Chair to approve specific minivan models for use as taxicabs, after a determination that the vehicle meets reasonable safety and passenger comfort standards. Presently, the rules of the Commission, enacted in 1996, authorize three specific minivan/sport utility vehicle models to be used as taxicabs. The models that were approved in 1996 are no longer manufactured. Changes to these specific models have been made by their respective manufacturers, and these models are no longer suitable for use as taxicabs because of design changes.

There are other, newer minivan models that may be suitable for taxicab use. This regulation gives the TLC Chair the authority to approve specific models, after determining that these vehicles are safe and provide for adequate passenger comfort. Furthermore, the Chair could also disapprove models, previously suitable for use as taxicabs, that are no longer suitable for such use.

Minivans are exempted from the minimum headroom and legroom requirements set forth in subsections (3) and (4) of §3-03 of the Taxicab Specifications. SAE measurements for sedans are generally not comparable to minivans since minivans are generally built higher from the ground than sedans, have an open trunk compartment, and lack a transmission "hump". Accordingly, this rule provides the Chair with greater discretion in approving specific models that provide adequate passenger comfort and meet the Commission's safety requirements, even if these vehicles do not meet the specific headroom and legroom requirements applicable to sedans.

The Rule authorizing specific enumerated minivan models to be used as taxicabs was first approved by the Commission in 1996. Since the adoption of this Rule, there have been significant design changes made to these approved models, and they may no longer be suitable for use as taxicabs. Each year, manufacturers introduce new minivan models, change designs on existing models, and make other alterations which cause such models to be either more or less suitable for use as taxicabs. This Rule amendment authorizes the TLC Chair to approve those models which are best suited for use as taxicabs, and to remove from approval models that have been altered and are no longer suitable for taxicab use. Pursuant to authority conferred upon the TLC in the New York City Charter and the Rules of the Commission, the Chair may authorize the testing of new vehicles and equipment pursuant to pilot programs. If such a pilot program is successfully completed, the Chair could approve a vehicle for use as a taxicab. This amendment empowers the Chair to approve such models without separate rulemaking specific to manu- facturers or models.

2. Statement of Basis and Purpose in City Record Mar. 29, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The promulgated regulations require taxicabs to be equipped with an audible electronic device which will remind passengers to ask for a receipt and to take their belongings with them when they exit the vehicle. The purpose of the regulations is to reduce the large number of instances of lost property left in taxicabs. Every month, the TLC receives several thousand lost property inquiries. TLC believes a "talking taxi" reminder at the end of the trip will help reduce the number of instances of lost property. Based on public comments, the proposal was modified to permit operators an additional thirty days to install the device, until June 1, 1996. In addition, a nonfunctioning device was made a correctable condition which carries no penalty, but only requires compliance with a notice to correct.

3. Statement of Basis and Purpose in City Record Jan. 30, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. Commission regulations currently state that taxicabs must be equipped with air conditioning. The adopted further provide that the air conditioning actually reach the rear passenger compartment. The safety partitions installed in taxicabs in 1994 pursuant to Commission regulations have impeded the flow of air conditioning from the outlets in the front dashboard toward the rear passenger compartment. The amendments provide several options for taxicab owners to overcome this impediment to air flow. The proposal was amended in order to allow the Commission the opportunity to explore alternative mechanisms to permit air conditioning to reach the rear passenger compartment. A list of approved mechanisms will be established by April 1, 1996 and each owner with a taxicab equipped with a partition must install one of the approved mechanisms by May 15, 1996. The purpose of the regulations is to provide passengers with a more comfortable ride.

4. Statement of Basis and Purpose in City Record Apr. 29, 1997: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. Current regulations require that taxicabs be equipped with an audible electronic device which reminds passengers to ask for a receipt and to take their belongings with them when they exit the vehicle. The promulgated regulations require that the audible electronic device also be activated at the beginning of the trip to remind passengers to fasten their safety belts. The purpose of the regulations is to promote awareness that safety belts are available in taxicabs and should be worn by passengers. Based on public comment, the effective date for the requirement that all taxicab vehicles be equipped with the dual message device was extended until August 1, 1997. This provides the industry with over 100 days to come into compliance.

5. Statement of Basis and Purpose in City Record July 8, 1997: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the

Charter. The purpose of the amendments is to permit the Isuzu Oasis wagon to become a taxi. TLC organized an experimental operation of the vehicle model, and it was found to be a suitable taxi. The Isuzu Oasis meets the TLC's standards for interior volume, and enhances passenger comfort. The Isuzu Oasis is essentially the same vehicle, from the same assembly line, as the Honda Odyssey. The Odyssey was approved last year, after appropriate in-service testing. The TLC staff advises that the Isuzu Oasis has also passed a period of in-service testing. At present, there are approximately one hundred and thirty Odysseys and Isuzus in service as taxicabs.

6. Statement of Basis and Purpose in City Record July 1, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The purpose of the amendments is to permit two non-traditional taxi vehicles, the Honda Odyssey wagon and the Ford Explorer sport/utility vehicle, to become taxis. The present regulations provide full approval only to heavy-duty vehicles manufactured for police or taxi service. TLC organized an experimental operation of the two vehicle models, and both were found to be suitable taxis. They meet the standards for interior volume, and enhance passenger comfort. The Americans With Disabilities Act of 1990 ("ADA") provides that an entity providing transportation services, including a taxi service, when it acquires any "new van with a seating capacity of less than eight passengers including the driver," must ensure that such vehicle is fully accessible to persons with disabilities. 42 United States Code Sec. 12184(b)(3), (5). The term "van" is not defined for purposes of the above-quoted provision, and the United States Department of Transportation, the agency charged with implementing the transportation requirements of the ADA, has not yet determined whether the Honda Odyssey and the Ford Explorer are subject to that provision. In the event that these vehicles are determined to be "vans" for purposes of the ADA, they will be required to be made fully accessible to persons with disabilities, including persons in wheelchairs.

7. Statement of Basis and Purpose in City Record June 15, 1998: The regulation promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The regulation prohibits taxicabs from having more than a thirty (30) percent tint on any window in the vehicle with the exception of the uppermost six (6) inches of the front windshield which may have a tint greater than thirty (30) percent. The regulation is similar to New York State Vehicle and Traffic Law ("VTL") section 375, which states that no motor vehicle which operates upon any public highway, road or street shall have a light transmittance of less than seventy (70) percent on its front windshield or front side windows. The VTL allows a light transmittance of less than seventy (70) percent on the rear side windows of certain types of vehicles, and on the rear window of all motor vehicles if they are equipped with side mirrors giving the driver a clear and full view of the road and traffic conditions behind the vehicle. The regulation promulgated herein goes further than the VTL in that under no circumstance would a taxicab be allowed to have a light transmittance of less than seventy (70) percent on its rear side windows or its rear window. The purpose of the regulation is to promote the safety of drivers, passengers and the general public, by ensuring that taxicab drivers do not have their visibility impaired by excessive tint on the windows of their vehicles. The regulation also promotes the safety of police officers and TLC inspectors involved in taxicab enforcement by allowing them to see what activity is taking place within a stopped taxicab. Lastly, the regulation would make it more difficult for any criminal activity taking place within the taxicab to go unnoticed.

8. Statement of Basis and Purpose in City Record Apr. 14, 2004: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by

licensed vehicles for-hire in the City, under §2303(b)(6) of such Charter, authorizing the TLC to adopt regulations relating to taxicab safety, design and comfort; and §19-503(a) of the Administrative Code, authorizing the TLC to promulgate regulations necessary to exercise the authority conferred upon it under the Charter. The TLC amends the Taxicab Specifications to require that each taxicab be equipped with equipment which would enable the TLC to receive and collect trip data electronically from a taxicab. In addition, each taxicab is required to be capable of accepting major credit and debit cards from customers as an acceptable means of payment. These rules also require that each taxicab be equipped with a device to enable drivers to receive text messages, as well as a display map which would convey route and trip location information to passengers. Such technology will provide a number of advantages to the City, the industry and the riding public. This technology will enable the TLC to locate each taxicab at a given time and will assist in the recovery of lost property. The TLC receives, on average, more than 1,000 lost property reports each month. Currently, the TLC has no real-time method of communicating with the drivers of vehicles in which property was lost. A system that enables the TLC to promptly identify the vehicle in which the property was lost, and communicate quickly with the driver, will improve the chances that such property would be recovered. Technology is available to replace the hand-written trip sheets with an automatic data collection system. An automated collection of trip information, such as the date, time and location of each passenger pick-up and discharge, the number of passengers as well as the metered fare paid will provide a valuable resource for statistical purposes. The potential benefits of centralized data can include complex analysis of taxicab activity in the five boroughs for policy purposes, as well as the additional benefit of aiding in the recovery of lost property. In addition, a passenger monitor located in the rear of the taxicab will enable passengers to follow their route on a map. The rules also require that each taxicab have credit and debt card acceptance capabilities. Most major cities throughout the world permit the payment of taxicab fares by credit and/or debit cards. At this time, no more than 600 of the more than 12,000 New York City taxicabs are equipped with taximeters that accept credit cards. Mandating credit/debit card acceptance will provide convenience to passengers by providing a cashless method of payment. Since a period of time is needed to customize the technology necessary to equip each taxicab with the aforementioned enhancements this rule apples to vehicles placed into service or inspected after November 1, 2005. Because of the evolving nature of these technologies, it is necessary to allow the Commission some flexibility to approve the best systems and devices to implement the changes contemplated by these rules. Accordingly, the Commission has requested that the Chair present suggestions for approval to facilitate development and implementation of these technologies. The rule promulgated by the Commission was amended in light of comments received and testimony heard at the public hearing held on March 30th to clarify and expand the role of the TLC Board of Commissioners with respect to approving new equipment design and specifications for the manufacture and installation of equipment. Under these rules, the TLC Chair will make recommendations to the Commission with respect to the approval of taximeters and other technology systems that meet TLC specifications compatible with TLC internal software to ensure the uniform collection and processing of data, and the usability of transmitted data by the TLC.

9. Statement of Basis and Purpose in City Record Apr. 14, 2004: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under Section 2303(b)(6) of such Charter, authorizing the TLC to establish standards for vehicle safety, design and comfort; and under Section 19-503(a) of the Administrative Code, authorizing the TLC to promulgate regulations necessary to exercise the authority conferred upon it in the Charter. Section 1-17 of the Taxicab Owners' Rules requires each taxicab to be equipped with a partition that meets TLC Specifications, except for taxicabs operated exclusively by an owner-driver. These vehicles may be equipped with either a partition or an approved in-vehicle security camera. Section 3-03(e)(3)(i) sets forth the specifications for such a partition. The rules presently require that a partition by made of lexan, margard or another polycarbonate material. Lexan and margard are the trade names for bullet-resistant polycarbonate materials manufactured by General Electric. While these materials are durable and provide safety to the driver, lexan has the tendency to scratch and become opaque after a period of use. As the partition is no longer clear, the passenger's view of the driver's hack license and rate card, the meter, and the road through the front windshield could become compromised. Furthermore, the driver's view of the rear passenger compartment as well as his view through the rear view mirror, may likewise be affected. While margard, lexan product

treated with a scratch-resistant finish, represents an improvement over lexan, newer technologies may be developed in the future which would be superior with respect to both safety and clarity over the products presently on the market. In addition, there are other manufacturers who have developed suitable products that may be tested by the TLC. The TLC hereby repeals a portion of existing Rule 3-03(e)(3)(i) and replaces it with a rule to require an interior partition that is more durable and resistant to scratching, fading and clouding. The Chairperson is empowered to review partition design and make recommendations to the Commission for approval of partitions that meet functional specifications. This provides a better approach than listing specific approved products that may be used in partition manufacture and allows the Commission to more quickly adapt to evolving technology. Each taxicab is required to replace its existing partition with a new one that meets these specifications. In order to provide time for the industry to comply with this new requirement, it will not take effect until November 1, 2005. After that date, each owner hacking-up a new vehicle will be required to install a new partition that meets these specifications and is approved by the Commission. The rule promulgated by the Commission was amended in light of comments received and testimony heard at the public hearing held on March 30th to clarify and expand the role of the TLC Board of Commissioners with respect to approving new equipment design and specifications for the manufacture and installation of equipment.

10. Statement of Basis and Purpose in City Record May 11, 2005: The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under §2303(b)(6) of such Charter, to adopt rules relating to taxicab safety, design and comfort; and §19-503(a) of the Administrative Code, to promulgate rules necessary to exercise the authority conferred upon it under the Charter. On March 30, 2004, the TLC promulgated rules which amended the Taxicab Specifications to require that each taxicab be provided with equipment 1) enabling the TLC to receive and collect trip data electronically, 2) allowing drivers to accept major credit and debit cards from customers as a means of payment, 3) enabling drivers to receive text messages, and 4) equipping each taxicab with a monitor capable of displaying a map providing route and trip location information to passengers. Since the TLC recognized that a period of time would be necessary to customize the technology necessary to equip each taxicab with the aforementioned enhancements, these rules became applicable to vehicles placed into service or inspected after November 1, 2005. Also, upon promulgation of these rules, the Commission requested that the Chair present suggestions to facilitate development and implementation of these technologies. Accordingly, TLC staff conducted an extensive information gathering process including: the issuance of a Request for Information on June 21, 2004, an Informational Exchange Conference with potential vendors and taxicab industry leaders, passenger and driver focus groups and meetings with industry groups. On March 2, 2005, the TLC issued a Request for Proposal for NYC Medallion Taxicab Technology Enhancements to implement the promulgated rules. The due date for proposal submission was May 10, 2005 with an anticipated contract start date of August 1, 2005. The final rules would allow taxicab drivers to receive as well as send text messages provided that the text messaging not be used in contravention of TLC rules and not be used for dispatch purposes. The final rules make conforming changes to TLC rules to reflect electronic trip sheet data collection in lieu of written record keeping. The actual implementation date of these enhancements cannot be determined in advance, and therefore these final rules remove references to a deadline of November 1, 2005 and substantiate references to a deadline to be fixed by the Commission. The TLC recognizes the evolving nature of the technological improvements and the possibility that these improvements will offer previously unrealized revenue opportunities for medallion taxicab owners while improving the quality of service to the riding public. This revenue potential might also offset the costs of installing and maintaining the new equipment contemplated by the service enhancement rules. The TLC therefore desires to allow some flexibility in approving the best systems and devices to implement the changes contemplated by the service enhancement rules and the final rules revise the implementation date to a date that is agreed upon between the TLC and the authorized contractor(s). While the March 30, 2004 rules are silent on revenue enhancement as a criterion for selection of the newly mandated technologies, the TLC has determined that the unrealized revenue opportunities for medallion taxicab owners to be derived from the Passenger Information Monitor should be explored. The final rules therefore revise the service enhancement rules to authorize the display of TLC Public Service Announcements and limited commercial advertising and commercial sponsorships on the Passenger Information Monitor to offset costs and/or provide additional sources of revenue. The final rules include two additional clauses in Rule §3-07(e)(4) in §3. These additions were adopted to

clarify that it would be at the medallion owner's discretion to run advertising or media content. Adoption of these revisions do not require further notice and comment pursuant to §1043 of the New York City Charter, based on the consideration of relevant agency or public comments.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 3-03.1

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-03.1 Hybrid Electric Taxicab Specifications.

(a) The purpose of this section is to implement §19-533 of the Administrative Code, as enacted by local law 72 of 2005.

(b) As used in this section, the term "hybrid electric vehicle" shall mean a commercially available mass production vehicle originally equipped by the manufacturer with a combustion engine system together with an electric propulsion system that operates in an integrated manner.

(c) Any hybrid electric vehicle manufactured for the general consumer market shall be approved for hack-up, as that term is defined in §3-01(a) of this chapter, provided that such vehicle is presented for hack-up on or after the effective date of this rule, and provided that such vehicle meets all requirements for vehicle hack-up except the following:

(1) The hybrid electric vehicle shall not be required to be manufactured with heavy-duty equipment for taxicab, police or fleet service, notwithstanding the provisions of §3-03(c)(1) of this chapter;

(2) Minimum interior volume index shall be 101.5 cubic feet, notwithstanding the provisions of §3-03(c)(2) of this chapter;

(3) Minimum effective rear compartment legroom (L51) shall be 34.6 inches, notwithstanding the provisions of §3-03(c)(3)(i) of this chapter;

(4) Minimum effective rear compartment headroom (H63) shall be 37.1 inches, notwithstanding the provisions of §3-03(c)(3)(ii) of this chapter;

(5) Minimum effective front compartment legroom (L34) shall be 41.6 inches, notwithstanding the provisions of §3-03(c)(4)(ii) of this chapter;

(6) Minimum total legroom (the sum of L34 plus L51) shall be 76.2 inches, notwithstanding the provisions of §3-03(c)(4)(iii) of this chapter;

(7) The maximum horsepower shall be 268, notwithstanding the provisions of §3-03(c)(6) of this chapter;

(8) The hybrid electric vehicle shall have at least four doors, and shall be a minivan, a compact or larger sedan, or a sport utility vehicle, notwithstanding the provisions of §3-03(c)(7) and (d)(1) of this chapter; provided that a hybrid electric vehicle designated a sport utility vehicle by either the vehicle's manufacturer or by the National Highway Traffic Safety Administration must be equipped with running boards;

(9) A hybrid electric vehicle designated a sport utility vehicle by either the vehicle's manufacturer or by the National Highway Traffic Safety Administration shall have a rear window and left and right rear side windows with the greatest degree of light transmittance available from the manufacturer or by dealer option, but in no event less than 20 percent light transmittance, notwithstanding the provisions of §3-03(c)(8) of this chapter; and

(10) Repealed.

HISTORICAL NOTE

Section added City Record Sept. 16, 2005 eff. Oct. 16, 2005. [See Note 1]

Subd. (c) par (10) repealed City Record Dec. 18, 2007 §4, eff. Jan. 17, 2008. [See T35 §1-17 Note 5]

Subd. (c) par (10) amended City Record Apr. 23, 2007 §5, eff. May 23, 2007. [See T35 §1-17

Note 4]

Subd. (d) repealed City Record Mar. 16, 2007 §2, eff. Apr. 15, 2007. [See T35 §3-02 Note 5]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 16, 2005:

This rule is intended to implement §19-533 of the Administrative Code of the City of New York, as enacted by Local Law 72 of 2005. That law requires that the Taxi and Limousine Commission ("TLC") approve one or more hybrid electric vehicle models for use as taxicabs.

The TLC recognizes the great importance of hybrid electric vehicle technology, as described in §1 of Local Law 72 of 2005. The benefits of hybrid electric vehicle technology include economic, because of the recent escalation in the retail price of gasoline; environmental, because of the pollutants created by comparatively low-mileage gasoline-burning vehicles; and public health, because of the adverse consequences of those pollutants.

TLC Commissioners and TLC staff extensively reviewed available hybrid electric vehicle models with four or more doors, culminating in an on-site inspection of samples of those models on July 26, 2005. None of the hybrid electric vehicle models available for sale to consumers in the United States complies with all of the taxicab vehicle specifications stated in Chapter 3 of the TLC's rules (Title 35, Rules of the City of New York). Non-compliances include passenger and driver comfort specifications, most importantly legroom; safety specifications, such as untinted

windows and maximum horsepower; and durability specifications such as heavy-duty construction. Existing specifications must be modified to comply with the mandate of Local Law 72 of 2005. Therefore, realization of the economic, environmental, and public health benefits of hybrid electric technology requires tradeoffs with the other interests served by the TLC's vehicle specifications.

TLC staff identified only six hybrid electric vehicle models with four doors or more that are available on the consumer market in the United States: the Ford Escape/Mercury Mariner, the Honda Accord, the Honda Civic, the Lexus RX400H, the Toyota Highlander, and the Toyota Prius. The rule permits the hack-up of any of these six models. TLC staff research indicates that the number of available hybrid electric vehicle models will likely double in the 2007 model year.

TLC staff will monitor the implementation of this rule and recommend any amendments that might be warranted by experience with those vehicles in actual taxicab usage.

The final rule differs from the proposed rule in that §3-03.1(c)(2) was revised based upon consideration of a public comment.

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35 RCNY 3-03.2

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-03.2 Accessible Taxicab Specifications.

(a) Definitions. For purposes of this section:

(1) The term "accessible taxicab" shall refer to a taxicab that complies with federal regulations promulgated pursuant to the Americans with Disabilities Act applicable to vans under 22 feet in length, by the federal Department of Transportation, in Code of Federal Regulations, title 49, parts 37 and 38, and by the federal Architectural and Transportation Barriers Compliance Board, in Code of Federal Regulations, title 36, sections 1192.23 et seq., and the Federal Motor Vehicle Safety Standards, Code of Federal Regulations, title 49, part 571, that is hacked-up, as that term is defined in §3-01(a) of this chapter, to an accessible medallion or any other medallion on or after June 25, 2006.

(2) The term "OEM" shall refer to the original equipment manufacturer of the accessible taxicab who either manufactures the accessible taxicab in compliance with the specifications in subdivisions (c) and (d) of this section or manufactures the accessible taxicab such that the chassis complies with the specifications in subdivision (c) of this section and approves a second-stage manufacturer who modifies the vehicle to comply with the specifications of subdivision (d) and, to the extent applicable, of subdivision (e) of this section.

(b) An accessible taxicab shall be approved for hack-up if:

(1) It is a vehicle other than a van the chassis for which as originally manufactured is designed to seat eight or more persons, a bus, or a minibus;

(2) It is capable of transporting at least one passenger using a common wheelchair as defined in Code of Federal

Regulations, title 49, §37.3;

(3) As presented for hack-up, it does not seat more than five passengers in all; and

(4) It complies with the requirements stated in subdivisions (c) and (d) of this section, and all other requirements for hack-up that are not inconsistent with the provisions of this section; provided, however, that an accessible taxicab that is also a hybrid electric vehicle must also comply with the requirements stated in §3-03.1 of this chapter.

(c) The chassis of the accessible taxicab as originally manufactured must meet the following general OEM specifications:

(1) The maximum horsepower shall be 240;

(2) The suspension shall utilize the OEM's suspension and steering components; and

(3) No bumper modifications are allowed, except as provided in subdivisions (e) and (f) of this section.

(d) The accessible taxicab as manufactured by the OEM or as modified by an OEM-approved second-stage manufacturer must meet the following specifications:

(1) The minimum ground clearance (measured from frame, loaded to gross vehicle weight rating (GVWR)) shall be 5 inches;

(2) The minimum passenger compartment length (measured from rear of driver's seat base to rear seat base) shall be 56 inches;

(3) The OEM floor of the accessible taxicab, if lowered, shall be lowered from the base of the firewall to the area immediately in front of the rear axle;

(4) If a lowered floor assembly is used in the accessible taxicab, it shall be stainless steel (16 gauge minimum), and shall meet or exceed the 1000 hour salt spray rating;

(5) If a lowered floor assembly is used in the accessible taxicab, a vapor-insulating barrier of $^1/_2$ inch marine grade plywood shall be applied over the lowered metal floor and thoroughly secured;

(6) The wheelchair ramp shall not block any part of the door or glass while in the stowed position;

(7) The wheelchair securement system shall be provided to hold a wheelchair or wheelchairs and shall be the system known as Q straint QRT Standard or equal;

(8) No anchor points shall project more than $^1/_8$ of an inch above the finished floor;

(9) If the accessible taxicab has a middle fold-up passenger seat, it shall have a folding mechanism and base plate and shall meet the requirements of the Federal Motor Vehicle Safety Standard No. 207, Code of Federal Regulations, title 49, §571.207;

(10) Any modifications to the rear air conditioning must be approved by the OEM;

(11) Any and all electrical wiring in the accessible taxicab, other than as provided by OEM who manufactured the chassis, shall be PVC or better insulated and color coded for positive identification; and

(12) The back-up alarm in the accessible taxicab shall be an electrically operated device that produces an intermittent audible signal when the accessible taxicab's transmission is shifted to reverse.

(e) A vehicle that complies with this section, except that the rear bumper has been cut or otherwise modified to allow the installation of a rear-entry ramp for wheelchair access, shall nonetheless be approved for hack-up as an accessible taxicab if:

(1) The rear bumper is reinforced and the rear bumper modification is approved by the OEM;

(2) The vehicle modifications meet or exceed any applicable Federal Motor Vehicle Safety Standards crash testing requirements;

(3) If the rear door lock mechanism of the vehicle is modified, the modification must meet or exceed Federal Motor Vehicle Safety Standards and the lock mechanism must be affixed to the vehicle chassis, not the ramp assembly, unless a secondary lock is provided that is affixed to the vehicle chassis.

(f) A vehicle that complies with subdivision (e) above, except that the second-stage manufacturer does not perform the rear bumper modification pursuant to OEM approval shall nonetheless be approved for hack-up as an accessible taxicab if the modifier retains a licensed professional engineer who has either a bachelor's degree or higher in mechanical engineering or has a bachelor's degree or higher in electrical engineering and at least three years' experience in automotive manufacturing, who separately certifies for each vehicle that the vehicle was modified in conformance with the design as tested pursuant to paragraph (e)(2) above and such certification is presented to the Commission upon presentation of the vehicle for certification and hack-up as an accessible taxicab.

HISTORICAL NOTE

Section added City Record May 26, 2006 eff. June 25, 2006. [See Note 1]

Subd. (a) par (2) amended City Record June 17, 2008 §1, eff. July 17, 2008. [See Note 2]

Subd. (c) par (3) amended City Record June 17, 2008 §1, eff. July 17, 2008. [See Note 2]

Subd. (e) added City Record June 17, 2008 §2, eff. July 17, 2008. [See Note 2]

Subd. (e) repealed City Record Mar. 16, 2007 §3, eff. Apr. 15, 2007. [See T35 §3-02 Note 5]

Subd. (f) added City Record June 17, 2008 §2, eff. July 17, 2008. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record May 26, 2006:

The rules provide specifications for taxicabs to be used with accessible medallions pursuant to §19-532(b) of the Administrative Code of the City of New York. The specifications are applicable to taxicabs that are hacked-up for use with accessible and other medallions on or after June 25, 2006. The specifications incorporate federal regulations promulgated pursuant to the Americans with Disabilities Act of 1990 ("ADA") applicable to vans under 22 feet in length, by the federal Department of Transportation, Code of Federal Regulations, title 49, parts 37 and 38, and by the federal Architectural and Transportation Barriers Compliance Board, Code of Federal Regulations, title 36, sections 1192.23 **et seq.** The purpose of the rules is to ensure that accessible taxicabs are accessible to passengers who use wheelchairs.

The rules require that an accessible taxicab be a vehicle other than a van the chassis for which as originally manufactured is designed to seat eight or more persons, a bus, or a minibus. The vehicle must meet the specifications either after original manufacture or after modification by a second-stage manufacturer that is approved by the original manufacturer. The Taxi and Limousine Commission staff has identified two vehicles currently in production that meet the specifications-the Chevrolet Uplander, as modified by Eldorado National and sold as the American PT, and as

modified by the Braun Corporation and sold as the Braun Entervan.

2. Statement of Basis and Purpose in City Record June 17, 2008: The promulgated rule expands the specifications for accessible taxicabs to allow the use of rear-entry vehicles that have been successfully tested in two pilot programs subsequent to the adoption of the current accessible taxicab specifications in March 2007. Specifically, the promulgated rule permits the use of accessible taxicabs that have been modified by the cutting of the rear bumper to allow the installation of rear entry wheelchair ramps. The two pilot programs involved ADA-compliant minivans, modified after original manufacture to allow for rear entry rather than side entry as is the case with previously approved accessible taxicabs. The rear-entry vehicles proved during the pilot programs to be widely popular with taxicab drivers and passengers who use wheelchairs, and were found to reduce substantially the wheelchair-using passengers' "loading time." Despite that success, the Taxi and Limousine Commission maintains its paramount concern with vehicle safety, which in the case of these vehicles focused on two points. First, the Commission insists on assurances that the alteration of the rear bumper would not compromise the crash worthiness of the accessible taxicab. The promulgated rule sets forth the requirements imposed to provide those assurances: reinforcement of the rear bumper; compliance with applicable Federal Motor Vehicle Safety Standards crash testing requirements; and modification, if any, of the rear door lock mechanism pursuant to applicable federal standards. Second, because both pilot programs involved second-stage modifications performed without the sponsorship and approval of the original vehicle manufacturer, the Commission insisted on assurances that each vehicle would be modified in conformance with the design as tested. The promulgated rule requires the second-stage modifier to retain a licensed professional engineer who has a bachelor's degree or higher in mechanical engineering or has such a degree in electrical engineering together with at least three years' demonstrable experience in automotive vehicle manufacturing to certify that each vehicle is so modified. At present, Commission staff is aware of two post-manufacture modifications of the Toyota Sienna that would meet the specifications in the promulgated rule. In addition, Commission staff is aware that a second-stage modification of the Dodge Caravan that would meet the specifications of the promulgated rule is under consideration.

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35 RCNY 3-03.3

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-03.3 Clean Air Taxicab Specifications.

As used in this chapter, the term "clean air taxicab" shall mean any vehicle that is either a level one or a level two clean air taxicab, as follows:

(a) "Level one clean air taxicab" shall mean any vehicle approved for use by the Commission as a taxicab that receives an air pollution score of 9.5 or higher from the United States Environmental Protection Agency ("EPA") or its successor agency and is estimated to emit 5.0 tons or less of equivalent carbon dioxide per year by the United States Department of Energy ("DOE") or its successor agency; provided that such vehicle is powered by the fuel for which such vehicle meets the above-specified standards.

(b) "Level two clean air taxicab" shall mean any vehicle approved for use by the Commission as a taxicab that receives an air pollution score of 9.0 or higher from the EPA or its successor agency and is estimated to emit 6.4 tons or less of equivalent carbon dioxide per year by the DOE or its successor agency and that does not meet the definition of a level one clean air taxicab; provided that such vehicle is powered by the fuel for which such vehicle meets the above-specified standards.

(c) As used in this section and in Chapter 1 of this title, the term "clean air taxicab" shall mean any taxicab licensed by the Commission that receives an air pollution score of 9.0 or higher from the United States Environmental Protection Agency or its successor agency and is estimated to emit 6.4 tons or less of equivalent carbon dioxide per year by the United States Department of Energy or its successor agency; provided that such vehicle is powered by the fuel for which such vehicle meets the above-specified standards.

HISTORICAL NOTE

Section added City Record Mar. 16, 2007 §4, eff. Apr. 15, 2007. [See T35 §3-02 Note 5]

Subd. (c) added (as §3-03.3) City Record May 23, 2007 §5, eff. June 22, 2007. [See T35 §1-35 Note 1] [Note redesignated by the Law Department per Charter §1045(b)]

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35 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-04 Taximeter Specifications.

(a) The Unit must:

(1) be fully electronic.

(2) have all access points sealed by a licensed N.Y.C. taxi meter shop.

(3) have casing made of hard impenetrable plastic or metal.

(4) be capable of operating within a temperature range of -20F and +120F.

(5) automatically produce a printed receipt for passengers which indicates date, time, medallion number, fare paid, extras, and Commission telephone complaint number. This receipt shall have all readouts in a minimum of five figures including decimals eg. 000.00.

(6) be capable of releasing a printed receipt within 10 seconds.

(7) be capable of producing a printed receipt for Commission personnel which shows total mileage, total paid mileage, total trips and total units, and total extras. All these readouts must show a minimum of six digits exclusive of decimals eg. 999,999. This function shall be operated by a separate button or switch.

(8) have all seals indicating on the sealed surface the licensed meter shop by name and license number. If an adjustment can be made to any component affecting the performance of the printer, then provision shall be made for

applying a seal in a manner which requires the seal to be broken before an adjustment can be made.

(9) have an auxiliary power source which operates independently of the vehicle's electrical system contained in the unit and it shall operate the memory at its full capacity for a minimum of 2 years.

(10) have a memory which shall be non-erasable. Upon reaching the limits of any display, the unit shall be capable of turning over.

(11) have a fully programmable fare structure with low cost rate change capability.

(12) for 2 piece units, have a printer capable of interfacing with and recording information from a fully approved electronic taximeter.

(13) for 2 piece units, have all connections between display meter and the unit permanently sealed and tamper-proof by use of approved tubing or electrical conduits. The display unit must be unable to function if disconnected from the memory unit.

(14) be capable of automatically making meter display inoperable if printer paper is not available in the printing unit.

(15) have model and serial numbers appearing on the face of the unit. For 2 piece units, model and serial numbers must appear on the display unit and the printer unit.

(16) all operating buttons and/or switches related to passenger functions must appear on the face of the unit, must be properly illuminated, and must indicate its function.

(17) extras shall appear separately on the display as well as the receipt for passengers. Extra indicator must be illuminated when in operation.

(18) fare display shall remain on a total of 15 seconds from time the printer begins to print the customers receipt at the completion of the ride.

(19) fare display shall be clearly visible.

(20) receipt disposal unit must be visible to the passenger.

(21) all illuminated indicators must be of sufficient candlepower to be visible to the passenger.

(22) be permanently affixed to the vehicle in a location approved by the Commission.

(23) the rooflight must be controlled by the engaging of the meter.

(24) be capable of calculating and displaying the regular metered rate of fare required by section 1-70 of this title, the flat rate of fare for a trip from Kennedy Airport to Manhattan or from Manhattan to Kennedy Airport, as required by section 1-69(a) of this title, the rate of fare for a trip to or from Newark Airport, as required by section 1-73(c) of this title, the rate of fare for trips to Nassau and Westchester counties, as required by section 1-73(b) of this title, the negotiated flat fares to points outside New York City other than the Newark Airport and Westchester and Nassau counties, as required by section 1-73(b) of this title, and the flat fares per person for group rides, as required by section 1-71 of this title.

(25) for any taxicab required to be equipped with the taxicab technology system as defined in section 3-03 of this chapter, be capable of transferring data to the taxicab technology systems of all taxicab technology service providers which have chosen such taximeter, in order to allow credit and debit card payment required by section 3-03(e)(7) of this

chapter, text messaging required by section 3-03(e)(8) of this chapter, trip data collection and transmission required by section 3-06 of this chapter and communication with the passenger information monitor required by section 3-07 of this chapter. This specification, unless the taxicab is exempt pursuant to section 1-11(g) of this title, shall be implemented no later than the compliance date set forth in section 1-01 of this title.

(26) use switches, wiring and wire caps in all connections to the taximeter harness, roof light wires and pulse wires that meet specifications of the Society of Automotive Engineers, where such specifications are applicable. All of the taxicab technology system ports and peripheral connections shall be physically secured from tampering that could disrupt the functionality or compromise the integrity of the taximeter.

(b) In addition, taxi meters shall meet the specifications and tolerances published in the National Bureau of Standards Handbook 44.

(c) In addition to fulfilling the requirements of subsections 3-03(a) and (b), each unit must be approved by the State of New York Department of Agriculture and Markets.

(d) Each such unit submitted to the Commission for approval will be subject to the Commission's normal testing period of three months minimum.

HISTORICAL NOTE

Section heading amended City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §3-01 Note 3]

Section renumbered (formerly 3-03) City Record Jan. 30, 1996 eff. Mar. 1, 1996. [See T35 §3-01 Note 3]

Subd. (a) par (5) amended City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See T35 §2-46 Note 1]

Subd. (a) par (24) amended City Record June 12, 2007 §26, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) par (24) added City Record July 1, 1996 eff. Aug. 1, 1996. [See T35 §1-69 Note 3]

Subd. (a) par (25) added City Record June 12, 2007 §26, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) par (26) added City Record June 12, 2007 §26, eff. July 12, 2007. [See T35 §1-01 Note 3]

Rules of the City of New York

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35 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-05 Air Conditioning Specifications.

(a) All vehicles shall be equipped with an air conditioner. The air conditioner must be in good working condition from May 1st through September 30th each year. In vehicles equipped with a partition, the air conditioner shall include either an Auxiliary Unit or a Patch Unit, as required for various classifications of vehicles by this section.

(b) An Auxiliary Unit has controls which passengers may operate in the rear passenger area. It either:

(1) was built into the vehicle by the vehicle manufacturer; or

(2) operates off the vehicle's compressor and by means of a secondary evaporator core placed in a location approved by the Commission, and outlets from that evaporator core to provide cool air directly to the rear passenger compartment; or

(3) is a unit approved by the Chairperson, based upon a finding in his or her sole discretion, as to the unit's equivalence to items (1) and (2) above in the delivery of cool air to the rear passenger compartment; its effects on driver and passenger safety; its noise; and its effect upon passenger comfort and convenience. The Chairperson may, in his or her sole discretion, permit the trial operation of units in a limited number of taxicabs, in order to make such a finding. The Chairperson may terminate the trial and direct the removal of units used in the trial.

(4) The Chairperson may attach further conditions and specifications for any Auxiliary Unit. The Chairperson may require the refitting of taxicabs equipped with a previously approved Auxiliary Unit, only if such refitting either: (a) would cost less than $100; or (b) is based upon the Chairperson's finding as to a safety hazard.

(c) A Patch Unit has a conduit from one or more air conditioner vents in the dashboard into the rear passenger compartment. A Patch Unit must be approved by the Chairperson, based upon a finding, in the Chairperson's sole discretion, as to the unit's effects on driver and passenger safety, its sufficiency in the delivery of cool air, its noise, and other effects upon passenger comfort and convenience. Without limiting the authority of the Chairperson to approve other units, or to withdraw or modify the approval of a unit, there are three currently approved Patch Units:

(1) The Overhead Patch Unit consists of a commercially available extension outlet, which is fixed to the vehicle above the partition.

(2) The Center Patch Unit consists of a duct with an outlet in the metal portion of the partition. Effective July 3, 1998, this unit shall not include a fan in the partition outlet, because such a fan may create air pressure conditions within the duct which adversely affect the delivery of cool air.

(3) The Side Patch Unit reroutes the hose(s) to provide cool air conditioning to vents under the two front seats. The cool air then flows via a duct to the extreme left and right sides of the partition with an outlet discharging cool air into the rear passenger compartment.

(4) The Chairperson may withdraw approval or attach further conditions, and may require the refitting of taxicabs fitted with the unit for which approval was withdrawn or further conditioned. Such determination shall be based upon a finding, in the Chairperson's sole discretion, as to the foregoing factors of safety, comfort and convenience. The Chairperson must provide owners with sixty days notice of any such refitting requirement and shall report the determination to the Commission.

(d) All vehicles hacked-up or re-hacked on or after July 3, 1998, and equipped with a partition shall be equipped with an Auxiliary Unit.

(e) All vehicles hacked-up prior to July 3, 1998 and equipped with a partition shall be equipped with either an Auxiliary Unit or a Patch Unit.

HISTORICAL NOTE

Section added City Record June 3, 1998 eff. July 3, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 3, 1998:

The regulations adopted by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

This rule establishes new specifications for air conditioning in all taxicabs equipped with a partition. All taxicabs hacked-up on or after July 3, 1998 are required to have an Auxiliary Unit, which would provide cool air to the rear compartment, either by means of a secondary evaporator core in a location approved by the Commission, or alternatively from rear outlets factory produced by the original vehicle manufacturer. The rule includes a mechanism for the Chairperson to approve other Auxiliary Units besides those specified.

Vehicles hacked-up before July 3, 1998 are required to have either an Auxiliary Unit or a Patch Unit. A patch unit may be an overhead extension outlet, a center duct with an outlet in the metal portion of the partition, or rerouted hosing

in certain models.

The rule does not require the refitting of any taxicab now in service except as it requires the removal of any fans from the partition outlets in the Center Patch Unit. A fan is not permitted in the partition outlet, based upon operational experience. When it operates at a different speed than the dashboard-controlled fan, an additional fan in the partition may increase the air pressure within the duct and impede the delivery of cool air. Fans that are currently installed in the Center Patch Units must be removed by July 3, 1998. Removing the fan would be a low cost modification.

The purpose of this rule is to provide an efficient and effective method of providing air conditioning to the rear passenger compartment.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-06 Specifications for the Collection and Transmission of Required Trip Data.

(a) All vehicles, except as provided in section 1-11(g) of this title, shall comply with the data collection and transmission requirements of this section. This specification shall be implemented no later than the compliance date set forth in section 1-01 of this title.

(b) Each taxicab shall be capable of transmitting data to the Commission or its designated repository at pre-determined intervals established by the Chairperson. All transmissions shall be in a format and manner approved by the Chairperson. The data to be transmitted shall include the taxicab license number; the taxicab driver's license number; the location of trip initiation; the time of trip initiation; the number of passengers; the location of trip termination; the time of trip termination; the metered fare for the trip; and the distance of the trip. All data transmitted to TLC will be sent in a secure format as approved by the Chairperson.

(c) To the extent necessary to facilitate data transfer, the Commission may mandate that each taxicab be equipped with external antennas.

(d) No equipment designed to comply with the provisions of this section shall be installed unless it has been approved by the Commission, based upon a determination that the unit and equipment conforms with the specifications as set forth herein, is safe, and fulfills the intended purposes for such equipment.

HISTORICAL NOTE

Section added City Record Apr. 14, 2004 §2, eff. May 14, 2004. [See T35 §3-03 Note 8]

Subd. (a) amended City Record June 12, 2007 §27, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) amended City Record May 11, 2005 §2, eff. June 10, 2005. [See T35 §3-03 Note 10]

Subd. (b) amended City Record May 11, 2005 §2, eff. June 10, 2005. [See T35 §3-03 Note 10]

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35 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 3 TAXICAB SPECIFICATIONS

§3-07 Passenger Information Monitor.

(a) All vehicles, except as provided in section 1-11(g) of this title, shall be equipped with a passenger information monitor which meets all the requirements of this section. This specification shall be implemented no later than the compliance date set forth in section 1-01 of this title.

(b) The passenger information monitor shall have the following minimum specifications or capabilities:

(i) Provide the passenger sitting in the rear of the vehicle with an unobstructed view of the monitor;

(ii) Be provided with a screen that is no less than ten (10) inches measured diagonally and placed in the rear passenger compartment of the taxicab; provided, however, for hybrid electric vehicles and other small clean air or low emission vehicles without a partition, licensed by the Commission for use as taxicabs, the screen size may be less than ten (10) inches but not less than five and one-half ($5^1/_2$) inches measured diagonally;

(iii) Display a map that indicates the current location of the vehicle as well as the route the vehicle has traveled from the point of trip initiation to the point of trip destination or termination;

(iv) Display without limitation the following: TLC Public Service Announcements (PSAs) including but not limited to the Passenger Bill of Rights, the Flat Fare Notice and any other TLC PSAs as designated by the Chairperson and, at the medallion owner's option, limited media content, which may include commercial advertising and commercial sponsorships as enumerated in the contract(s) between the TLC and taxicab technology service provider(s);

(v) Display itemized metered fare information at destination or termination of trip;

(vi) The capability for the passenger to turn off the monitor to a blank screen without illumination, after any TLC Public Service Announcements or any such other required information as designated by the Chairperson, which may remain visible or illuminated for all or a portion of the passenger trip. The monitor must also have the capability to re-illuminate upon disengagement of the meter to further display any additional TLC PSAs upon the passenger(s) leaving the taxicab. The monitor must also contain the capability for the passenger to control and/or mute the volume of content after any TLC Public Service Announcements or any such other required information as designated by the Chairperson.

(c) No passenger information monitor or related equipment shall be installed unless it has been provided by an authorized taxicab technology service provider on or before the compliance date set forth in section 1-01 of this title.

(d) If the credit/debit card acceptance equipment is not operational, but the passenger information monitor is operational, the passenger information monitor shall display the message, "Credit Card System Currently Not Available."

HISTORICAL NOTE

Section amended City Record May 11, 2005 §3, eff. June 10, 2005. [See T35 §3-03 Note 10]

Section added City Record Apr. 14, 2004 §4, eff. May 14, 2004. [See T35 §3-03 Note 8]

Subd. (a) amended City Record June 12, 2007 §28, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (b) open par amended City Record June 12, 2007 §28, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (b) pars (ii)-(v) amended City Record June 12, 2007 §28, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (c) amended City Record June 12, 2007 §28, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (d) added City Record June 12, 2007 §28, eff. July 12, 2007. [See T35 §1-01 Note 3]

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35 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-01 Definitions.

Applicant. An applicant is an individual applying for an original or renewal license for a paratransit vehicle and/or to operate such vehicle and/or to operate a paratransit base.

Base. A base is a central facility approved by the Commission which manages, organizes and/or dispatches a licensed vehicle or vehicles. This location should also be the official location on record with the New York State Department of Transportation.

Base Owner. A base owner is any individual, partnership or corporation licensed by the Commission to own and operate a base.

Chauffeur's license. Chauffeur's license means a valid New York State Chauffeur's license or its equivalent from another state of which the licensee is a resident.

Commission. Commission shall refer to the New York City Taxi and Limousine Commission.

Common carrier. A common carrier is a vehicle licensed by the state for public use in the conveyance of persons or property within New York State.

Dispatch of a paratransit vehicle. Dispatch of a paratransit vehicle is a dispatcher's instruction to a paratransit driver (usually by radio) directing the driver to provide service to a prospective passenger on a prearranged basis.

Driver. A driver is a person licensed by the Commission to drive a paratransit vehicle in the City of New York.

Fastening devices. A fastening device is a device, as approved by the New York State Department of Transportation, which will securely hold wheelchairs in position in a paratransit vehicle and will not cause a tripping hazard.

Electronic Trip Record System. The "electronic trip record system" is hardware and software that collects and stores the electronic trip record data required by section 4-09(gg). The specific locations and times of pick-up and drop-off and any other data that may be collected in the vehicle must be done contemporaneously with the trip.

Lease card. A lease card is a card issued to a lessee of a paratransit vehicle by the Commission, setting forth the name and address of the lessee, the period of the lease and any other information prescribed by the Commission.

Licensed vehicle. A licensed vehicle is a paratransit vehicle or ambulette authorized by the Commission to transport, by prearrangement and for hire, any person with a disability.

Mailing address. A mailing address is the address designated by the paratransit vehicle owner, base owner or driver for the receipt of all notices and correspondence from the Commission and for the receipt of service of summonses by the Commission. In the case of the base owner, the mailing address shall be the base address. In the case of the driver, it shall be the home address of the driver. In the case of the paratransit vehicle owner, an individual shall designate the home address of such individual or, if a partnership, of one of the partners and a corporation shall designate the address of the secretary of the corporation. However, the licensee may also designate a U.S. post office box number as a mailing address. Any notice from the Commission shall be deemed sufficient if sent to the address last furnished to the Commission by the paratransit vehicle owner, base owner or driver.

Owner. An owner is any individual, partnership, association, organization (including non-profit), or corporation licensed by the Commission to own a paratransit vehicle. Accordingly, under these rules, the term includes an agent or employee of such owner having authority to act on behalf of the owner, including a lessee of a paratransit vehicle.

Paratransit driver's license. A paratransit driver's license is a license issued by the Commission to persons who meet Commission qualifications as paratransit vehicle drivers.

Paratransit service. A paratransit service is a transportation service for persons with disabilities, including all ambulette services.

Paratransit vehicle. A paratransit vehicle is a wheelchair accessible van. For the purposes of these rules, this term shall include all ambulettes (whether wheelchair accessible or not).

Paratransit vehicle license. A paratransit vehicle license is a license issued by the Commission to an owner of a paratransit vehicle which displays the vehicle's license number and other data prescribed by the Commission which serves as evidence that the vehicle is licensed to operate in New York City.

Passenger. A passenger is any individual carried in a paratransit vehicle for travel for hire to a given destination.

Person with a disability. A person with a disability is an individual with a physical or mental impairment, including any person with a mobility impairment who uses a wheelchair, three-wheeled motorized scooter or other mobility aid, or is semi-ambulatory, and who cannot board, ride or disembark from a vehicle without the assistance of a wheelchair lift or other boarding assistance device.

Portable or hands-free electronic device. A "portable or hands-free electronic device" is any electronic device able to:

1. make a wireless telephone call

2. send or receive a text message

3. allow its user to speak on the telephone hands-free or operate a device by voice command, even when otherwise allowed by New York State law

4. act as a personal assistant (PDA)

5. send and or receive data from the internet or from a wireless network

6. act as a laptop computer or portable computer

7. receive or send pages

8. allow two-way communications between different people or parties

9. play electronic games

10. play music or video; or

11. make or display images; or

12. any combination of the above

This definition is to be liberally construed in light of its purpose to minimize the distraction of drivers, and in recognition of the rapid development of electronic technologies and proliferation of electronic devices that may be made available in the future that similarly transfer digital images, sounds or messages.

"Portable or hands-free electronic device" does not include: (1) any device the use of which while driving is specifically authorized by TLC rules, or (2) the use of a global positioning navigation system ("GPS") which uses voice functions to convey directions, so long as the driver is not inputting data unless legally standing or parked and the GPS is not capable of being used as a cell phone or other portable or hands-free electronic device.

Service Animal. A service animal is a guide dog, signal dog or any other animal trained specifically to work or to perform tasks for an individual with a disability, including, but not limited to, guiding individuals with visual impairments, alerting individuals with hearing impairments to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or retrieving dropped items.

Trip Record. A trip record, also known as a trip sheet, is a written document or data in electronic form setting forth or containing the origin and destination of each trip as well as other information required by the Commission pursuant to section 4-09(gg) of this chapter. Written trip records, when permitted by section 4-10(m) of this chapter, must be carried by the paratransit vehicle driver.

Weapon. A weapon is any instrument or thing whether real or simulated, capable of inflicting or threatening bodily harm.

Wheelchair accessible van (also known as paratransit vehicle). A wheelchair accessible van is any motor vehicle, equipped with a hydraulic lift or ramp(s) designed for the purpose of transporting persons who use wheelchairs or containing any other devices designed to permit access to and the transportation of a person with a disability.

HISTORICAL NOTE

Section amended City Record Aug. 17, 2007 §1, eff. Sept. 16, 2007. [See Note 2]

Section amended City Record July 8, 1997 §11, eff. Aug. 11, 1997. [See Note 1]

Section in original publication July 1, 1991.

Portable or hands-free electronic device added City Record Dec. 30, 2009 §6, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 8, 1997:

The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the of New York City Charter, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in New York City; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

Discrimination against persons with disabilities by providers of transportation for hire is clearly prohibited under New York City, New York State and federal law. Such providers may not deny to a disabled person, or offer on different terms, a service which is available to other members of the public and which such person, with reasonable accommodation, is able to use. This requirement of law applies to all vehicles licensed by TLC.

Certain requirements regarding taxicab service for persons with disabilities are set forth in TLC's Taxicab Drivers Rules, chapter 2 of Title 35 of the Rules of the City of New York. Therefore, if a person with a disability is unlawfully denied service or discriminated against in any other way by a taxicab driver, such person may, in addition to invoking the remedies otherwise available under federal, State and local law, file a complaint against the driver with the TLC Tribunal. No comparable requirement, however, was set forth in the rules applicable to other vehicles licensed by TLC. A person with a disability who is unlawfully denied service or otherwise discriminated against with regard to transportation in a for-hire vehicle, a paratransit vehicle or a commuter van thus had no basis for seeking recourse from this agency. The purpose of the rulemaking promulgated herein is to make more detailed and explicit the current requirements regarding taxicab service for people with disabilities and to establish comparable requirements applicable to other vehicles licensed by TLC.

2. Statement of Basis and Purpose in City Record Aug. 17, 2007: The rules amend existing Commission rules relating to paratransit vehicles and paratransit services in three respects. First, the rules govern the age of paratransit vehicles for the first time. Beginning on January 1, 2008, newly licensed paratransit vehicles and qualified replacement paratransit vehicles are required to have been driven less than 100,000 miles. There will be a phase in period annually reducing the permissible mileage on the paratransit vehicles to 50,000, 25,000 and on and after January 1, 2011, to less than 500 miles. To verify the mileage, the Commission at licensing will confirm that the paratransit vehicle's mileage indicated on the New York State Department of Transportation Form MC300, dated not more than one month prior to the Commission licensing, is in accord with the qualified replacement vehicle requirements of §4-18(j). Also, after a phase-in period ending January 1, 2012, paratransit vehicles are required to be retired no later than seven years after the vehicle was first licensed. The Commission may grant a retirement extension to the owner of a paratransit vehicle who demonstrates that a replacement vehicle is unavailable and a shipment date that is not more than sixty (60) days from the retirement date. The purposes of these rules are to enhance the safety of paratransit vehicles and to reduce the volume of pollutants created by those vehicles. Newer vehicles generally operate more safely and efficiently, and more recently manufactured vehicles are generally equipped with more recent safety and air quality technologies. Second, the rules require the conversion from written to electronic trip records by July 1, 2008. The purposes of these rules are to enhance the accountability of paratransit drivers to paratransit vehicle owners and paratransit bases, and to enhance the accountability of the paratransit industry as a whole to its customers and to the Commission, by creating a more accurate and reliable record of the paratransit vehicle's operations. The rules require a vehicle owner and a base owner to transmit electronic trip records to the Commission once a month. Third, the rules clarify the responsibilities of paratransit bases and paratransit vehicle owners. Existing rules specify the responsibilities of paratransit vehicle owners (§§4-09 to 4-11), and assume that the paratransit base owner and the paratransit vehicle owner are identical-which is

usually, but not always, the case. Therefore, the rules separately state the obligations of paratransit bases and paratransit vehicle owners. The rules also provide that service of notice from the Commission to a paratransit base is sufficient if sent to the last mailing address furnished to the Commission by the base owner and also that the Commission may deny a base owner's renewal application or suspend or revoke the base owner's license should the Commission become aware of information that the base owner no longer meets the requirements for a base license.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-02 Term of Licenses.

(a) The term of every driver license and every base license issued by the Taxi and Limousine Commission under the Paratransit Services Rules shall be as follows:

(1) A license issued to a new applicant shall expire two years subsequent to the date the license was issued.

(2) A license issued to a renewing applicant shall expire two years from the date on which the previous license expired.

(b) A license issued to a new applicant for a vehicle license issued by the Taxi and Limousine Commission under the Paratransit Services Rules shall expire two years subsequent to the day the license was issued. A license issued to a renewal applicant for a vehicle license issued by the Taxi and Limousine Commission under the Paratransit Services Rules shall expire two years from the day on which the previous license expired. The Commission may, in its discretion, extend the expiration date of such license by up to an additional thirty-one days.

(c) A renewing applicant must file a completed renewal application on or before the expiration date of the license.

(d) A person who engages in a licensed activity after the expiration date of a license and before the issuance of a renewal license may be subject to penalties pursuant to applicable statutes and regulations.

HISTORICAL NOTE

Section amended City Record Mar. 1, 1999 §3, eff. Mar. 31, 1999. [See T35 §2-10 Note 1]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-03 Paratransit Driver's License.

(a) An applicant for a paratransit driver's license:

(1) must be at least 18 years of age;

(2) if an applicant for an original license, must provide to the Commission proof of identity in the form of

(i) A valid form of photo identification issued by the United States, any state or territory thereof, or any political subdivision of such state or territory; and

(ii) A valid, original social security card;

(3) must be tested and evince a vision of at least 20/40 in each eye (with corrective lenses if necessary);

(4) must be holder of a valid New York State Motorist License Class A, B, C, or E. For the purposes of these rules, a valid license shall mean a license, issued by the New York State Department of Motor Vehicles, which is neither probationary, suspended, revoked, conditional, nor restricted as to use for violations of traffic laws or regulations.

(5) must be of sound mental and physical condition and fit to safely operate and drive a vehicle for hire as certified to by a licensed physician on forms provided by the Commission. The Commission may direct the applicant or driver to appear before a duly licensed physician designated by the Commission, for an examination of his or her physical or mental condition, should the Commission have cause to believe that an applicant or driver has a physical or mental impairment that renders him or her unfit for the safe operation of a paratransit vehicle. An existing license may be

suspended or revoked if the driver fails to appear as directed,

(6) must not be addicted to drugs or alcohol;

(7) must be of good moral character (a certified court transcript of disposition is required if ever convicted of a crime);

(8) must be fingerprinted and photographed;

(9) must be able to understand, speak, read and write the English language;

(10) must be familiar with New York City geography, streets and traffic regulations, as well as New York State Vehicle and Traffic Law;

(11) must be qualified pursuant to Article 19-A of the New York State Vehicle and Traffic Law to drive a paratransit vehicle.

(b) A Commission application for a paratransit driver's license must be signed and filed by the applicant with the Commission. An applicant for a driver's license shall agree that service of any paper, notice, letter, summons, complaint or legal process of any kind or nature may be made by the City of New York, or any department thereof, upon the person to whom the license is issued by leaving a copy of any such paper, notice, letter, summons, complaint or legal process with any member of his or her family or other person with whom he or she may reside at the address listed as a mailing address in his or her application.

(c) All applicants are required to be fingerprinted and to pass all prescribed tests, administered by the Commission or at its direction.

(d) A member of the New York City Police Department, applying for a paratransit driver's license must satisfy all the requirements herein for such license and provide a letter from his commanding officer approving such application to the Commission.

(e) Material falsification contained in an original or renewal application for a license shall be cause for denial, suspension or revocation of such license, as well as any other sanctions imposed by the Commission.

(f) Failure to notify the Commission of any material change in the information contained in the license application shall be cause for denial, suspension or revocation of such license, as well as any other sanctions imposed by the Commission.

(g) The Commission may deny the renewal application or suspend or revoke the license of any driver who no longer meets the requirements for a paratransit driver's license.

(h) An applicant or any person acting on his behalf shall not offer or give any gift or gratuity to any employee, representative, public servant, or member of the Commission.

(i) An applicant shall immediately report to the Inspector General of the Commission or to the New York City Department of Investigation any request or demand for any gift, or gratuity by any employee, representative, public servant, or member of the Commission.

(j) If the applicant has failed to meet the requirements for a paratransit driver's license, the Commission will deny the license or its renewal and will specify the reason for the denial in writing to the applicant.

(k) If an application for a license or its renewal is denied, the applicant or driver shall be entitled to a hearing before the Commission at which he may be represented by an attorney or a non-attorney representative. However, the

Commission may, for cause, deny a non-attorney representative the opportunity to appear at such hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Section heading amended City Record Aug. 17, 2007 §2, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (a) amended City Record Oct. 31, 2006 §3, eff. Nov. 30, 2006. [See T35 §1-02 Note 2]

Subd. (a) par (4) amended City Record July 15, 1999 §3, eff. Aug. 14, 1999. [See T35 §2-02 Note 1]

Subd. (a) par (10) amended City Record Aug. 17, 2007 §2, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (a) par (11) added City Record Aug. 17, 2007 §2, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (b) amended City Record Aug. 17, 2007 §2, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

35 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-04 Paratransit Vehicle Licensing.

(a)(1) An individual, the members of a partnership, or the officers and shareholders of a corporation applying for an original paratransit vehicle license must provide to the Commission proof of identity in the form of

(i) A valid form of photo identification issued by the United States, any state or territory thereof, or any political subdivision of such state or territory; and

(ii) A valid, original social security card.

(2) An individual, the members of a partnership or the officers and shareholders of a corporation applying for a paratransit vehicle license or its renewal must

(i) have ownership in a wheelchair accessible vehicle;

(ii) be at least 18 years of age;

(iii) be of good moral character (a certified court transcript of disposition is required if ever convicted of a crime);

(iv) operate from a base that is licensed;

(v) have a valid certificate of Operating Authority for the City of New York issued by the New York State Department of Transportation.

(b) The applicant must also:

(1) complete required Commission application forms;

(2) be qualified to assume the duties and obligations of an owner of a paratransit vehicle license, thereby rendering him "fit" as determined by the Commission; criminal records, driving records, medical conditions, mental health, as well as prior or current drug or alcohol use will be scrutinized in determining fitness.

(3) demonstrate that the vehicle is in safe operating condition and meets all requirements of the Commission and all other governmental agencies having concurrent jurisdiction;

(4) prove that he has the required liability insurance coverage by bond or policy as determined by the State of New York;

(5) provide the certificate of title or a copy thereof and the certificate of registration, both of which must be in the applicant's name unless title is retained by a lessor or conditional vendor; provided, however, in addition to the terms set forth in this paragraph (b)(5), on and after January 1, 2008, the applicant must provide (i) the certificate of title or a copy thereof and (ii) the certificate of registration that evidences that the paratransit vehicle is of a model year that is not excluded by section 4-18 of this chapter and will not be required to be retired prior to the expiration of the two-year term of licensing.

(6) provide a copy of the motor vehicle tax stamp receipt, a current rate schedule and a New York State Department of Transportation inspection checklist and

(7) demonstrate that the vehicle will be dispatched from a place of business approved by the Commission as a base, unless the applicant has been exempted from this requirement by the Commission.

(c) Fingerprinting shall be required of all individuals, the members a partnership, and officers and shareholders of a corporation applying for or holding an owner's license. Also, any individual, members of a partnership and officers and shareholders of a corporation who provide funds to an owner shall be fingerprinted unless such provider is a licensed bank or loan company. The Commission has the discretionary right to waive any requirements of this subdivision (c).

(d) If the paratransit vehicle is leased, a copy of the leasing agreement must be filed with the license application.

(e) A partnership shall file a certified copy of the partnership certification from the County Clerk, with its license application.

(f) A corporation, shall file a certified copy of its certificate of incorporation, with its license application. The applicant shall also furnish a list of its shareholders and current officers.

(g) A corporate or trade name which is similar to a name already in use by another owner will not be accepted by the Commission.

(h) The Commission will deny the paratransit vehicle license or its renewal if it determines that the applicant has failed to meet the requirements, and will specify in writing to the applicant the reason for such denial.

(i) The Commission may deny an owner's renewal application or suspend or revoke the owner's paratransit vehicle license should the Commission become aware of information that the owner no longer meets the requirements for a paratransit vehicle owner's license.

(j) Failure to notify the Commission of any material change in the information contained in the paratransit vehicle license or any attempt by an owner or applicant to conceal the identity of a party having an interest in the ownership of a paratransit vehicle or another material falsification contained in an application shall be cause for denial of such

application or revocation or suspension of such license, in addition to any other sanctions imposed by the Commission.

(k) If an application for a paratransit vehicle license or its renewal is denied, the applicant or owner shall be entitled to a hearing before the Commission at which the applicant or owner may be represented by an attorney or a non-attorney representative. However, the Commission may, for cause, deny a non-attorney representative the opportunity to appear at such hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Section heading amended City Record Aug. 17, 2007 §3, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (a) amended City Record Oct. 31, 2006 §4, eff. Nov. 30, 2006. [See T35 §1-02 Note 2]

Subd. (b) par (5) amended City Record Aug. 17, 2007 §3, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (d) amended City Record Aug. 17, 2007 §3, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (i) amended City Record Aug. 17, 2007 §3, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (k) amended City Record Aug. 17, 2007 §3, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-05 Base License.

(a) The base must be located on commercial property or within a zone which permits a base operation, unless there are four vehicles or less in which case the base may be maintained at the base owner's residence.

(b) The base operation must be maintained as a separate entity.

(c) The base must maintain outside advertising stating the business name and telephone number and indicating to the public that it is a paratransit base.

(d) The base must maintain records of all paratransit vehicles dispatched.

(e) The applicant for the base license must complete and file the required Commission application form and also submit:

(1) a copy of the New York State Department of Transportation Certificate of public convenience and necessity to operate as a common carrier of passengers by motor vehicle (operating authority);

(2) if the base owner is a corporation, a copy of the filing receipt and the certificate of Incorporation;

(3) if the base owner is a partnership, a copy of the partnership agreement if such agreement exists;

(4) a copy of the current Rate Schedule;

(5) if an applicant for an original license, proof of identity of the owner, its partners if the owner is a partnership, and, if the owner is a corporation, officers and stockholders, in the form of

(i) A valid form of photo identification issued by the United States, any state or territory thereof, or any political subdivision or such state or territory; and

(ii) A valid, original social security card.

(f) Base owners, corporate officers and active stockholders must all be fingerprinted at the Commission.

(g) A base licensing application must be accompanied by at least one paratransit vehicle licensing application. A paratransit base may dispatch only Commission licensed paratransit vehicles.

(h) The Commission may deny a base owner's renewal application or suspend or revoke the base owner's license should the Commission become aware of information that the base owner no longer meets the requirements for a base license.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 17, 2007 §4, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (d) amended City Record Aug. 17, 2007 §4, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (e) amended City Record Oct. 31, 2006 §5, eff. Nov. 30, 2006. [See T35 §1-02 Note 2]

Subd. (e) par (3) amended City Record Aug. 17, 2007 §4, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (h) added City Record Aug. 17, 2007 §4, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-06 Paratransit Driver's Responsibility to the Commission.

PenaltyAll fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.

(a)	A driver shall answer and comply as directed with all questions, communications, directives, restrictions and summonses from the Taxi and Limousine Commission or its representatives. A driver shall produce his or her paratransit driver's license, chauffeur's license, trip records or any other documents when required by the Commission.	$200 and suspension until compliance. Personal Appearance Required.
(b)	A driver shall not operate a paratransit vehicle for hire within the City of New York, unless it is properly licensed by the Taxi and Limousine Commission.	See §4-05 Personal Appearance Required.
(c)	A driver of a New York City paratransit vehicle for hire must be duly licensed as a driver by the Commission.	$100-1st Offense$250-2nd Offense$350-3rd Offense$500-4th or more offensesw/in 12 months-PersonalAppearance Required.
(d)	A driver shall not operate a paratransit vehicle unless: (1) he or she possesses a paratransit driver's license;	(1) $100 Personal Appearance Required.

	(2) he or she possesses a valid New York State chauffeur's license or appropriate valid license of similar class of the state of which he or she is a resident;	(2) $100-$350 and/or suspension up to 30 days; summary suspension until compliance pursuant to§8-17(b) of this title.
	(3) the vehicle is adequately insured in accordance with New York State Law.	(3) $100 Personal Appearance Required.
(e)	A driver shall not operate a paratransit vehicle in New York City while his paratransit driver's license is revoked, suspended or expired.	$100-1st Offense$250-2nd Offense$350-3rd Offense4 or more offenseswithin 12 months-OATHPersonal Appearance Required.
(f)	A driver shall immediately report the suspension or revocation of his state chauffeur's license (or its equivalent) to the Commission, at which time he shall also surrender his paratransit driver's license to the Commission.	$15-$150 Personal Appearance Required.
(g)	A driver shall notify the Commission within fifteen (15) days if he is convicted of a crime and he shall deliver to the Commission a certified copy of the certificate of disposition issued by the Court clerk within fifteen (15) days of sentencing.	$25-$150 Personal Appearance Required.
(h)	A driver shall safeguard his or her paratransit driver's license and the paratransit vehicle license. Locking the paratransit vehicle with the paratransit driver's license and paratransit vehicle license therein during his or her shift shall be deemed compliance with this rule. However, leaving either or both of them in the paratransit vehicle while another possesses the paratransit vehicle is not deemed compliance.	$25 Personal Appearance Not Required.
(i)	A driver shall notify the Commission in writing, within seventy-two (72) hours, exclusive of weekends and holidays, of the loss, theft or mutilation of his paratransit driver's license.He must report in person when applying for a replacement, and he shall furnish new photographs, and any affidavits required by the Commission.	$25 Personal Appearance Not Required.
(j)	A driver shall not in any way alter, deface, mutilate or obliterate any portion of his paratransit driver's license or the attached photograph so as to make them unreadable or unrecognizable.	$50 Personal Appearance Not Required.
(k)	A driver shall immediately surrender any unreadable, unrecognizable, or mutilated paratransit driver's license to the Commission.	$25 Personal Appearance Not Required.
(l)	A driver's photograph on his or her paratransit driver's license shall accurately reflect his or her appearance, including such details as the wearing of glasses, hearing aid, mustache, beard, etc. Should the driver's appearance change, he or she must, without delay, submit four (4) new photographs to the Commission, and a new paratransit driver's license shall be issued.	$25 Personal Appearance Not Required.
(m)	A driver shall not allow anyone to use his or her paratransit driver's license and he or she shall not use another's paratransit driver's license.	$250 Personal Appearance Required.
(n)	A driver shall notify the Commission of any change of mailing address within 72 hours, exclusive of weekends and holidays, either in person or by registered or certified mail return receipt requested. This also applies to a change in any other information requested on the application. Any notice sent by the Commission shall be deemed sufficient if	$50 Personal Appearance Not Required.

	sent to the last mailing address furnished by the driver.	
(o)	A driver shall not carry a weapon while operating a paratransit vehicle without the Commission's written authorization.	$100 and/or suspension up to thirty (30) days Personal Appearance Required.
(p)	A driver shall not operate a paratransit vehicle or use it at any time to carry passengers unless it is in safe operating condition, and it meets and is operated under all the requirements of New York State and New York City vehicle and traffic laws, and all Commission requirements set forth in Chapter 4 of Title 35 of the Rules of the City of New York.	$50-$150 Personal Appearance Required.
(q)	A driver shall personally inspect and reasonably determine that all equipment, inclusive of brakes, tires, lights, signals, wheelchair ramps and fastening devices are in good working order, before operating such vehicle.	$15-$150 Personal Appearance Required.
(r)	The following items must be present in the paratransit vehicle prior to its operation:(1) the driver's paratransit driver's license;(2) the certification of registration or copy thereof;(3) the paratransit vehicle license or copy thereof;(4) an insurance card or copy thereof;(5) the lease card, if any, or copy thereof;(6) the written trip record;(7) any notices required to be posted in theparatransit vehicle. (8) Notwithstanding any provision of this subdivision and any other provision of these rules, on and after July 1, 2008, an electronic trip record system required by section 4-10(n), in lieu of the written trip record set forth in section 4-06(r)(6); however, if such system malfunctions, the malfunction is timely reported and the paratransit vehicle is operated for hire not more than three (3) business days before being repaired a written trip record shall be used.	(1-7) $15 for each violation of this rule. Personal Appearance Not Required. (8) $250 Personal Appearance Required.
(s)	A driver shall maintain all written trip records as follows:(1) all entries must be in ink and the trip record must be current;(2) at the beginning of each work shift the driver shall sign and certify on the trip record that the paratransit vehicle and its equipment are in good working condition and that all required items are present. One entry for an owner/driver will be deemed sufficient.(3) the trip record shall contain the trip record entries required by section 4-09(gg) of this chapter.Note: The Commission has discretionary power to waive any of these requirements upon showing by the owner that the required information is maintained and is readily accessible to the Commission.Notwithstanding the provisions of this subdivision and any other provision of these rules, the driver shall make all system entries that must be collected contemporaneously with the trip, such as the location and date and time of pick-up and drop-off. All other entries required by section 4-09(gg) may be provided by the dispatching base.	$50 for each violation of this rule; however no fine for a violation of this rule shall exceed $100 for each vehicle stop. Personal Appearance Not Required.
(t)	At any time, a driver shall correct in a written trip record wrong entries by drawing a single line through the incorrect written entry and initialing the correction. Also, a driver shall not make erasures or obliterations or leave any blank lines between entries on a written trip record. Electronic trip record data collected in the paratransit vehicle shall not be erased, deleted, altered, changed or obliterated. A driver shall report all necessary corrections to the base owner.	$30 Personal Appearance Not Required.
(u)	A driver shall attempt to procure comparable transportation for the balance of a passenger's trip, if the paratransit vehicle becomes inoperable while a passenger is in the vehicle. This does not apply if the passenger desires to find his own transportation.	$50-$150 Personal Appearance Required.
(v)	The driver shall not cause or permit the engine of his paratransit vehicle to idle unnecessarily for longer than three minutes and will adhere to the New York City Air Pollution Control Code.	$25 Personal Appearance Not Required.

(w)	A driver or any person acting as his representative shall not offer or give any gift, gratuity or thing of value to any Commission member, employee, or representative or any public servant.	$1,000 up to Revocation Personal Appearance Required.
(x)	A driver shall immediately report to the Commission any request or demand for a gift, gratuity or thing of value from him or his representative by any Commission member, employee, or representative or any public servant.	$1,000 up to Revocation Personal Appearance Required.
(y)	A driver shall submit an application for renewal of his license prior to its expiration date, unless the Commission extends the date.	$25 Personal Appearance Not Required.
(z) (1)	A driver shall not use a portable or hands-free electronic device while operating a paratransit vehicle, unless such paratransit vehicle shall be lawfully standing or parked. "Use" of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver's ear.A driver may offer as an affirmative defense that he or she was using a portable or hands-free electronic device while operating a paratransit vehicle for the sole purpose of communicating with an emergency response operator that there exists an imminent threat to life or property, and that it was impossible for the driver to safely stop the vehicle before placing the call. The driver must provide documentary proof that the electronic communication was to an emergency response operator.(2) Additional penalties for use of a portable or hands-free electronic device while operating a paratransit vehicle.For purposes of this paragraph (z)(2), "portable or hands-free electronic device violation" shall mean a violation of §4-06(z)(1) of this chapter or a violation of any state law or rule prohibiting or restricting the use of a portable or hands-free electronic device while driving, such violation having been adjudicated by a court or other tribunal having jurisdiction over such violations.Any paratransit driver who commits a portable or hands-free electronic device violation is required to attend and satisfactorily complete an authorized course of training in the dangers of driving while distracted by portable or hands-free electronic devices. The course shall be a minimum of one hour and shall include a review of the rules governing the use of portable or hands-free devices, and the dangers of driving while distracted. The course must be completed and verification of course completion provided by the designated school within sixty days of TLC's issuance of a directive to the paratransit driver that he or she is required to take such course.	$200 Personal Appearance not Required.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Penalty column heading amended City Record Nov. 2, 2006 §9, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (a) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (a) amended City Record Dec. 1, 1999 §6, eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

Subd. (c) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (d) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

(Note: This amendment inadvertently overlooked City Record Nov. 2, 2006 amendment)

Subd. (d) amended City Record Nov. 2, 2006 §9, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (h) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (l) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (m) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (p) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (r) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (s) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (t) amended City Record Aug. 17, 2007 §5, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (z) amended City Record Dec. 30, 2009 §7, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Subd. (z) added City Record May 27, 1999 §7, eff. June 26, 1999. [See T35 §2-25 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-07 Driver's Responsibilities When Operating the Vehicle.

		Penalty
(a)	(1) A paratransit driver shall not operate his vehicle in such manner at a speed which unreasonable endangers others or their property.	(1) $25-$250 and/or suspen- sion up to or thirty (30) days or revocation if driver is found guilty of having violated this rule more than 3 times in a twelve month period. Personal Appearance Required.
	(2) A paratransit driver shall stop and identify himself if he has cause to know that personal injury has been caused to another person or to another's property due to an accident or to deliberate act involving the paratransit vehicle. Before leaving the place of occurrence the paratransit driver shall stop, exhibit to such person or to a police officer on the scene his chauffeur's license, para-transit driver's license and insurance card (or copy thereof) and he will give to such person his name residence address, paratransit driver's number, paratransit vehicle identification number as well as	(2) $25-$250 and/or suspension up to thirty (30) days or revocation if driver is found guilty of having violated this rule more than three (3) times within a twelve (12)

	the name of the vehicle's insurance carrier and the insurance policynumber.	month period. Personal Appearance Required.
	(3) A driver shall operate his paratransit vehicle in full compliance with all New York State and City traffic laws, rules and regulations, as well as all applicable New York and New Jersey Port Authority and Triboro Bridge and Tunnel Authority rules and regulations and any other regulatory body or government agency having jurisdiction over motor vehicles.	(3) $25-$250 and/or suspension up to thirty (30) days or revocation if driver is found guilty of having violated this rule more than three (3)times within a twelve(12) month period.Personal Appearance Required.
	(4) A driver shall immediately report to the owner any accidents in which the driver and the paratransit vehicle are involved and shall notify his or her employer of any traffic infraction, accident or conviction(s) as required in section 509-i of Article 19A of the New York State Vehicle and Traffic Law.	(4) $25-$250 and/or suspension up to 30 days. Personal Appearance Required.
(b)	When operating a paratransit vehicle, a driver shall cooperate with all law enforcement officers and authorized representatives of the Commission, and upon request shall provide his name, paratransit driver's license number, the vehicle identification card, trip record and any documents required to be in his possession.	$15-$150 Personal Appearance Required.
(c)	A driver shall not operate a paratransit vehicle if his driving ability is impaired by either alcoholor or drugs, nor will he consume alcoholicbeverages or illegal drugs while occupying such vehicle.	$50-$300 and/or suspension or revocation. Personal Appearance Required.
(d)	A driver shall not permit any individual who is not currently licensed by the Taxi and Limousine Commission to operate the vehicle in which he or she is dispatched, unless directed to do so by the owner or his or her agents.	See §4-13 Personal Appearance Required.
(e)	A driver shall not operate a paratransit vehicle if he has been working for more than twelve (12) consecutive hours, however if a driver has accepted a passenger prior to the conclusion of the twelfth hour he may continue providing service to that passenger if he is alert enough to not unreasonably endanger himself or others.	$25 Personal Appearance Not Required.
(f)	A driver shall never carry more passengers than the capacity of the vehicle as determined by the State Department of Transportation.	$25 Personal Appearance Not Required.
(g)	A driver shall not commit or accept to commit, alone or in concert with another, any act of fraud, misrepresentation, larceny, or perform any willful act of omission or commission which is against the interest or the public, while performing his duties and responsibilities as a paratransit driver.	$25-$350 and/or suspension up to 30 days. Personal Appearance Required.
(h)	A driver shall not use or permit another person to use his paratransit vehicle for any unlawful purpose and shall immediately report to the police any criminal use or attempt thereof involving the vehicle.	$25-$350 and/or suspension up to 30 days. Personal Appearance Required.
(i)	A driver shall not put any unauthorized equipment, devices or signs on or in a paratransit vehicle during his workshift (excluding mobility devices, such as grab bars, or non-slip flooring). This includes all items not specifically enumerated in these rules, unless there is written authorization by the Commission.	$25-$200 and/or suspension up to 30 days. Personal Appearance Required.
(j)	(1) A driver shall be clean and neat in appearance when operating a paratransit vehicle for hire.	(1) $25 Personal Appearance Not Required.
	(2) A driver shall keep the paratransit vehicle clean and of good appearance during his workshift.	(2) $25 Personal Appearance Not Required.
(k)	A driver shall use written trip records while the electronic trip record system is not functioning and the vehicle is permitted to operate.	$250 Personal Appearance Not Required.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (4) amended City Record Aug. 17, 2007 §6, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (d) amended City Record Aug. 17, 2007 §6, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (k) added City Record Aug. 17, 2007 §6, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-08 Driver's Responsibilities to the Passengers.

		Penalty
(a)	(1) A driver shall be courteous to the public. (2) A driver shall comply with all lawful and reasonable requests of passengers, including but not limited to giving upon request his or her name, his or her paratransit driver's license number and the paratransit vehicle's license number.	(1) $25 Personal Appearance Not Required. (2) $50-$100 Personal Appearance Required.
(b)	A driver shall not threaten, harass or abuse any passenger, Commission representative, or any other person while performing his or her duties and responsibilities as a driver. A driver shall not distract or attempt to distract a service animal that is accompanying a person with a disability.	$50-$350 and/or suspension up to 30 days. Personal Appearance Required.
(c)	A driver shall not use or attempt to use any physical force against a passenger, Commission representative or any other person while performing his or her duties and responsibilities as a driver. A driver shall not harm or use physical force against or attempt to harm or to use physical force against a service animal that is accompanying a person with a disability.	$25-$350 and/or suspension up to 30 days or possible revocation (OATH) Personal Appearance Required.
(d)	A driver shall comply with a passenger's reasonable request to change his destination or terminate the trip unless it is impossible or unsafe for the driver to comply with such request in a non-emergency situation any such change or termination is contrary to the best interest of the other passengers.	$25-$150 Personal Appearance Required.
(e)	A driver shall provide all necessary and reasonable assistance to all passengers whether	$100-$350 and/or sus-

	ambulatory, or using a wheelchair or other mobility aid, to board the vehicle, to be secured therein, to depart from the vehicle and to be delivered to his destination. Such assistance also shall include ensuring that a service animal has boarded and exited the vehicle. (The driver is not required to assist passengers up or down the steps).	pension up to 30 days and possible revocation (OATH) Personal Appearance Required.
(f)	A driver shall only use wheelchair ramps and fastening devices which are functioning properly and are secure.	$25-$250 and/or suspension up to 30 days. Personal Appearance Required.
(g)	A driver shall not refuse, by words, gestures or any other means, without justifiable grounds as set forth in section 4-09(h) herein to provide transportation, when dispatched, for a person who has prearranged the trip and the destination is within the City of New York. This includes a passenger accompanied by a service animal.	See §4-13 Personal Appearance Required.
(h)	The following are justifiable grounds for conduct otherwise prohibited under section 4-09(g) of this chapter:(1) the passenger possesses a weapon, an article, package, case or container which the driver may reasonably believe will cause injuries to others or cause damage to the interior of the paratransit vehicle, impair its efficient operation, or cause it to become stained or foul smelling;(2) the passenger is intoxicated or disorderly. Provided, however, that a driver shall not refuse to provide service to a person with a disability solely because such person's disability results in an appearance or involuntary behavior that may offend, annoy, or inconvenience the driver or other employees of the paratransit service.(3) the passenger is accompanied by an animal which is not properly or adequately secured in a kennel case or other suitable container. This provision shall not apply to service animals accompanying people with disabilities.(4) the passenger is in need of emergency medical assistance.	No penalty applicable.
(i)	(1) A driver shall not refuse to transport a passenger's wheelchair, crutches, or other property.	(1) See §4-13 Personal Appearance Required.
	(2) When necessary or upon the passenger's request, the driver shall load or unload such property, within reason, in or from the paratransit vehicle.	(2) $50-$100 Personal Appearance Required.
(j)	A driver shall be diligent and reasonably punctual in picking up and transporting passengers.	$25 Personal Appearance Not Required.
(k)	A driver shall turn the radio on or off at the passenger's request. The passenger has the right to select the radio station, however, the radio volume shall be played at a reasonable level only, and the driver shall adhere to all noise ordinances.	$25 Personal Appearance Not Required.
(l)	A driver shall turn the air conditioning or heating device in a paratransit vehicle on or off at a passenger's request.	$25 Personal Appearance Not Required.
(m)	A driver shall not smoke when transporting a passenger, or while assisting him or out of the vehicle.	Personal Appearance Not Required.
(n)	A driver shall not charge or attempt to charge a fare above the approved rate of fare established by the owner and filed with the Commission. A driver shall not impose or attempt to impose any additional charge for transporting a person with a disability, a service animal accompanying a person with a disability or a wheelchair or other mobility aid.	See §4-13 Personal Appearance Required.
(o)	(1) A driver shall give a passenger who has paid the fare, the correct change.	(1) $25-$150 Personal Appearance Required.
	(2) A driver must always be capable of making change of a $20 bill, when providing service on a cash basis.	(2) $25 Personal Appearance Not Required.
(p)	A driver shall not ask or in any way indicate to a passenger that a tip is expected or required.	$50 Personal Appearance Not Required.
(q)	A driver shall give a passenger a receipt for payment of the fare at the end of the trip, when requested to do so by the passenger. Such report shall legibly state the date, time,	$25 Personal Appearance Not Required.

	paratransit vehicle plate number, name of the base, fare paid, extras and the Commission Complaint Department telephone number.	
(r)	A driver shall not sell, or advertise any service or merchandise to the passengers without prior written approval from the Commission.	$50 Personal Appearance Not Required.
(s)	A driver shall take passengers to their destination by the most reasonable route unless the driver or passenger requests a different route and it is consented to by all of the other passengers.	$25-$150 Personal Appearance Required.
(t)	A driver shall only pick up passengers on a prearrangement basis, he shall not solicit or respond to hails.	See §4-14 Personal Appearance Required.
(u)	(1) The driver shall inspect the interior of the paratransit vehicle after each trip and any property found shall be returned to the passenger if possible; otherwise it shall be taken immediately to the police precinct closest to where the passenger was discharged. (2) The driver shall promptly inform the Commission of any property found and the police precinct where it is held, if the property is not returned to the passenger.	(1) $50-$250 Personal Appearance Required. (2) $25 Personal Appearance Not Required.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (b) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (b) amended City Record July 8, 1997 §12, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (c) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (c) amended City Record July 8, 1997 §12, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (e) amended City Record July 8, 1997 §12, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (g) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (g) amended City Record July 8, 1997 §12, eff. Aug. 11, 1997.

Subd. (h) amended City Record July 8, 1997 §12, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (h) open par amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (h) par (2) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (i) par (1) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (n) amended City Record Aug. 17, 2007 §7, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (n) amended City Record July 8, 1997 §12, eff. Aug. 11, 1997.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 4-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-09 Paratransit Vehicle Owner's and Base Owner's Responsibilities to the Commission.

PenaltyAn owner and a base owner shall each be separately responsible for compliance with and liable for violations of subdi-visions (a), (b), (c) and (d) and paragraph (k)(2).

(a)	An owner shall not allow to be dispatched, a base owner shall not dispatch and neither shall permit the operation of a paratransit vehicle for hire that is not currently licensed by the Commission as a paratransit vehicle.	See §4-13 Personal Appearance Required.
(b)	An owner shall only allow a paratransit vehicle to be dispatched and a base owner shall only dispatch a driver with a current paratransit driver's license.	See §4-13 Personal Appearance Required.
(c)	An owner shall not knowingly permit to operate and a base owner shall not dispatch a driver who does not have a current and valid state driver's license and neither shall employ a driver without complying with qualification procedures set forth in Section 509-d of Article 19-A of the New York State Vehicle and Traffic Law.	See §4-13 Personal Appearance Required.
(d)	An owner shall allow to be dispatched and a base owner shall dispatch a paratransit vehicle only from a base currently approved by the Commission, unless exempted by the New York State Department of Transportation.	$150 Personal Appearance Not Required.
(e)	A base owner must notify and get prior approval from the Commission before the base owner transfers, sells or assigns the base to another. The prospective new base owner must file the appropriate base license application form with the Commission. Should the Commission approve the sale of a base to another, the Commission will permit the transfer of the entire fleet to the new base as long as the vehicles meet the age/ retirement requirements set forth in section 4-18 of this chapter and the owner shall	$100 Personal Appearance Not Required.

	pay the paratransit affiliation fee to the TLC, if any is required.	
(f)	An owner and a base owner shall report any pertinent changes, including any changes regarding finances, ownership or title and registration, and for a base owner, a change in the base address, to the Commission within 72 hours. (Any notice or summons from the Commission shall be deemed sufficient if sent to the address last furnished by the owner and the base owner, respectively.)	$50 Personal Appearance Not Required.
(g)	A base owner shall maintain signage at the base, stating the base name and indicating to the public that it is a base.	$50 Personal Appearance Not Required.
(h)	An owner without a current paratransit vehicle license shall not advertise or hold the owner out as "having Paratransit Service" or comparable designation.	See §4-13 Personal Appearance Required.
(i)	A base owner shall not dispatch a paratransit vehicle unless the rate of fares for such vehicle has been filed with the Commission including minimum fare, different fares for different types of paratransit services, portal time, tolls and extra charges, if any.	$50 Personal Appearance Not Required.
(j)	A base owner shall file with Commission annually or whenever there is any change, the schedule of the rate of fare at least (ten) 10 days prior to the effective date.	$50 Personal Appearance Not Required.
(k)	(1) An owner shall comply with the Commission's Paratransit Vehicle Specifications and all other pertinent laws, rules or regulations governing owners.(2) An owner and a base owner shall comply with the Markings Specifications for paratransit vehicles.	$50 Personal Appearance Not Required.
(l)	A base owner operating a two-way radio service shall instruct the drivers and other employees on the rules of the Federal Communications Commission.	$50-$250 Personal Appearance Required.
(m)	An owner and a base owner shall each cooperate with all Commission enforcement officers and authorized representatives and shall comply with all their reasonable requests, including, but not limited to giving, upon request, the owner's or the base owner's name, the base license number and trip records, the paratransit vehicle license number and, for an owner the owner's paratransit vehicle license, and for a base owner the base license, and any other documents required to be maintained by the owner and base owner.	$15-$150 Personal Appearance Required.
(n)	An owner, applicant for a paratransit vehicle license, a base owner, or applicant for a base license shall not offer or give any gift or gratuity to any employee, representative or member of the Commission, or any public servant.	$1,000 up to revocation. Personal Appearance Required.
(o)	An owner or a base owner shall immediately report to the Commission any request or demand for a gift, gratuity, or thing of value from the owner or the base owner or a representative by any Commission member, employee, representative or any public servent.	$1,000 up to revocation. Personal Appearance Required.
(p)	An owner or a base owner shall not commit or attempt to commit, alone or in concert with another, any act of fraud, misrepresentation or larceny, perform any willful act of omission or commission which is against the best interests of the public while performing the owner's or base owner's respective duties and responsibilities as an owner or base owner.	$25-$350 and/or suspension up to 30 days. Personal Appearance Required.
(q)	An owner shall not use or permit another person to use his paratransit vehicle or garage for any unlawful purpose and shall immediately report to the police any criminal use or attempt thereof involving the vehicle or base.	$25-$350 and/or suspension up to 30 days. Personal Appearance Required.
(r)	An owner or a base owner, including a member of a partnership or any officer or shareholder of a corporation, shall notify the Commission within fifteen (15) days if he or she is convicted of a crime, and he or she shall deliver to the Commission a certified copy of the certificate of disposition issued by the court clerk within fifteen (15) days of the disposition.	$50-$250 Personal Appearance Required.
(s)	An owner and a base owner shall promptly answer and comply with all communications, directives, restrictions and summonses to each of them, respectively, from the	$200 and suspension until compliance. Per-

	Commission or its representatives.	sonal Appearance Required
(t)	A base owner shall be responsible for bringing to the attention of drivers and other employees, all rules governing the conduct of drivers while performing their duty as drivers and amendments thereof, and any other notices from the Commission. Also, a base owner shall be responsible for maintaining at the base a current copy of the Commission rules for the information of drivers and employees.	$50 Personal Appearance Not Required.
(u)	An owner shall be deemed to have designated every driver who operates his paratransit vehicle as his agent for accepting service by Commission personnel of notices to correct vehicle defects. Also, delivery of such notice to a driver shall be deemed proper service of the notice on the vehicle's owner.	No penalty applicable.
(v)	An owner shall surrender the owner's paratransit vehicle license to the Commission within forty-eight (48) hours, should such license be suspended or revoked.	$100 Personal Appearance Not Required.
(w)	An owner shall not make any unauthorized entry on a paratransit vehicle license or change, deface, conceal, obliterate or render unreadable any entry thereon.	See §4-13 Personal Appearance Required.
(x)	An owner shall immediately surrender an unreadable paratransit vehicle license to the Commission and will obtain a legible replacement.	$25 Personal Appearance Not Required.
(y)	An owner shall notify the Commission and the Police Department within forty-eight (48) hours exclusive of weekends and holidays of the theft, loss or destruction of a paratransit vehicle license or New York State license plates. The owner shall also furnish such affidavit or information as may be required including the police receipt number and a substitute paratransit vehicle license will be issued by the Commission.	$50 Personal Appearance Not Required.
(z)	An owner shall also report to the Commission the replacement of any New York State license plates within 48 hours, exclusive of weekends and holidays, after obtaining the new plates.	$50 Personal Appearance Not Required.
(aa)	An owner or a base owner shall submit an application for renewal of the owner's or the base owner's respective license prior to the expiration date of the license, unless the time to do so is extended by the Commission.	$25 Personal Appearance Not Required.
(bb)	A base owner shall only authorize the drivers the base owner dispatches to pick up passengers with a paratransit vehicle on a prearrangement basis and shall not allow them to solicit or respond to hails.	See §4-13 Personal Appearance Required.
(cc)	A base owner shall not require a driver to operate one or more paratransit vehicles more than twelve(12) consecutive hours; however, if a driver has accepted a passenger prior to the conclusion of the twelfth hour he or she may continue providing service to that passenger, if the driver is alert enough to not reasonably endanger himself, herself or others.	$50 Personal Appearance Not Required.
(dd)	(1) An owner shall maintain liability insurance for all paratransit vehicles and shall comply with all New York State Law regarding this coverage and will maintain at least the minimum amount prescribed by the New York State Department of Transportation. (2) An owner shall submit proof of liability insurance coverage to the Commission on or before the fifteenth (15th) day of January of each year, including the name and address of the carrier and the insurance policy number for each paratransit vehicle owned by him.	(2) $50 Personal Appearance Not Required.
(ee)	An owner shall notify the Commission in writing, within seventy-two (72) hours of receipt of notice, of a cancellation of the required liability insurance or a change of insurance carrier or the insurance policy number.	$100 Personal Appearance Not Required.
(ff)	An owner shall surrender the owner's paratransit vehicle license to the Commission prior to or on the termination date of the liability insurance, unless the owner is not notified or obtains new insurance which is effective on the termination date of the old	$100 Personal Appearance Not Required.

	policy.	
(gg)	An owner or the owner's specified agent shall only allow a paratransit vehicle to be dispatched after signing the owner's or agent's name to the written trip record.All trip records shall contain the following information:(1) the driver's paratransit driver's license number;(2) the paratransit vehicle's state license plate number;(3) the date and time of pick-up of passengers;(4) the date and time of drop-off of passengers;(5) the locations of pick-ups and drop-offs;(6) any other entries required by the Commission and local, state or federal law.	$50 for each violation of this rule; however no violation of this rule shall exceed $100 for each vehicle stop. Personal Appearance Not Required.
(hh)	When using written trip records the owner or the owner's agent shall examine the trip record, and shall enter, in ink, the date and time at the end of the driver's workshift. The owner or owner's agent shall also enter and sign a statement indicating that the driver's entries have been examined.	$25 Personal Appearance Not Required.
(ii)	(1) The owner shall correct wrong entries on a written trip record or other written records which the owner is required to maintain by drawing a single line through the incorrect entry and initialing the correction. Also, an owner shall not make erasures or obliterations or omit any essential information. On and after July 1, 2008, the owner and base owner shall make all necessary correction entries and addition entries that need to be made to the electronic trip record. The electronic trip record data collected in the paratransit vehicle shall not be erased, deleted, altered, changed or obliterated.	(1) $30 Personal Appearance Not Required.
	(2) An owner shall not rewrite a trip record in whole or in part, unless he has obtained prior Commission authorization.	(2) $75-$300 and/or suspension up to 30 days.
(jj)	An owner shall maintain and make available for inspection complete financial and other operational records for a period of three (3) years, including the following records:(1) vehicle liability insurance coverage; and(2) any other documents specifically prepared in conjunction with the operation of a paratransit service.A base shall maintain and make available for Commission inspection complete financial and other operational records for a period of three (3) years, including the following:	
	(1) the driver's trip records;(2) any workers' compensation insurance coverage; and(3) any other documents created or maintained in conjunction with the operation of a base.	$50 for violation of each subdivision hereof. Personal Appearance Not Required.
(kk)	An owner shall make any records which the owner is required to maintain, and a base owner shall make any records which the base is required to maintain, or photocopies thereof, available to a driver should the driver be required to present such documents to the Commission or any other governmental agency.	$50 Personal Appearance Not Required.
(ll)	A base owner shall comply with all provisions of the New York State Workers' Compensation Law and regulations promulgated thereunder with respect to the provision of coverage and benefits to eligible persons.	$25 for each day of non-compliance and either suspension until compliance or license revocation. Personal Appearance Required.
(mm)	(1) An owner and a base owner shall each maintain on file with the Commission a current telephone number (which must be connected to an answering machine or recording device), pager number, answering service number or similar means of telephone contact, so that the owner and base owner may each be reached by the Commission on a twenty-four hour basis.	$100 Personal Appearance Not Required.
	(2) An owner and a base owner must each respond to any telephone or pager contact from the Commission within forty-eight hours, seven days a week.	$500 Personal Appearance Not Required.
(nn)	On July 1, 2008, and thereafter, owners and base owners shall transmit electronically	For a violation that oc-

on a monthly basis to the Commission the electronic trip record data required by §4-09(gg).	curs on or before December 31, 2008, $250; otherwise $250 and suspension until compliance.Personal Appearance Not Required.

HISTORICAL NOTE

Section heading amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

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Penalty column heading amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (a) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (b) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (c) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (d) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (e) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (f) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (g) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (h) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (i) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (j) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (k) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (l) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (m) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (n) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (o) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (p) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (r) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (s) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (s) amended City Record Dec. 1, 1999 §7, eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

Subd. (t) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (v) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (w) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (x) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (y) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (aa) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (bb) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (cc) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (ff) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (gg) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (hh) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (ii) par (1) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (jj) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (kk) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (ll) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (ll) added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

Subd. (mm) amended City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (mm) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

Subd. (nn) added City Record Aug. 17, 2007 §8, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 4-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-10 Owner's and Base Owner's Responsibilities for Paratransit Vehicle and Equipment.

PenaltyAn owner and a base owner shall be separately responsible for compliance with and liable for viola- tions of subdivisions (j), (k), (l) and (m) of this section.

(a)	An owner shall keep all for-hire vehicles clean, well-painted and of good appearance.	$25 Personal Appearance Not Required.
(b)	A base owner shall only dispatch a paratransit vehicle after the base owner inspects and reasonably determines that all equipment, including brakes, tires, lights, signals, wheelchair ramps, fastening devices, and heating and ventilation units are in good working order and meet all requirements of the New York State Vehicle and Traffic Law and these Commission rules. The owner shall be responsible for all repairs.	$50-$500 Personal Appearance Not Required.
(c)	An owner shall only allow paratransit vehicles to be dispatched which have been inspected and approved by the New York State Department of Transportation.	$100-$500 Personal Appearance Not Required.
(d)	An owner shall comply with the New York State Department of Transportation regulations and inspection requirements and schedules.	$100 Personal Appearance Not Required.
(e)	An owner shall make all repairs or alterations that the New York State Department of Transportation may require to meet their specifications or to maintain proper standards of safety and comfort. These repairs or alterations shall be made within the time period prescribed at state inspections.	$100 Personal Appearance Not Required.
(f)	An owner shall replace a paratransit vehicle when the New York State Department of Transportation Inspectorial Services determines that the vehicle is unsafe or unfit for	$100-$500 and/or suspension up to 30 days.

	use as a paratransit vehicle for hire and directs the owner to remove it from service immediately. Failure to comply with the order to replace the vehicle within one hundred and twenty (120) days of service thereof, shall be deemed by the Commission as abandonment of the paratransit vehicle license and revocation proceedings may be initiated.	Personal Appearance Required.
(g)	An owner is responsible for removing all official markings, when he sells or disposes of a paratransit vehicle, unless he obtains Commission approval in approved transfers.	$100 Personal Appearance Not Required.
(h)	An owner shall comply with all Commission notices, summons, and directives to correct defects in a paratransit vehicle.	$100 Personal Appearance Not Required.
(i)	An owner shall only allow to be dispatched paratransit vehicles having equipment and devices specifically required by the Vehicle and Traffic Law and the Commission for use of paratransit vehicles unless the owner obtains written authorization from the Commission (excluding mobility devices, such as grab bars or non-slip flooring).	$30-$300 and/or suspension up to 30 days. Personal Appearance Required.
(j)	An owner shall affix and a base owner shall be responsible for confirming that the vehicle has affixed a current New York City commercial use motor vehicle tax stamp to the lower right side of the paratransit vehicle windshield, so as to be plainly visible.	$25 Personal Appearance Not Required.
(k)	Prior to January 1, 2008, the owner shall affix and the base owner shall be responsible for confirming that the owner has affixed to the paratransit vehicle Commission identification stickers (exterior decals), the company name or trade name and other vehicle identification numbers and markings required by the Commission and New York State Law. Notwithstanding the provisions set forth in this subdivision (k), on and after January 1, 2008, the owner and base owner shall be responsible for:	
	(i) when the paratransit vehicle is first licensed by the Commission, having the mileage of the paratransit vehicle verified as being in accord with section 4-18(j) of this chapter, by producing to the Commission at licensing the New York State Department of Transpor- tation Form MC300 dated not more than one month prior to licensing indicating the vehicle mileage and,(ii) when the paratransit vehicle is first licensed by the Commission, its license is being renewed, or when otherwise necessary, having affixed to each paratransit vehicle a valid Commission decal so as to be plainly visible.	$50 Personal Appearance Not Required.
(l)	An owner and a base owner shall not display advertising on the exterior or interior of a paratransit vehicle unless the owner and base owner have first obtained Commission authorization.	$50 Personal Appearance Not Required.
(m)	An owner and a base owner shall only permit the operation and the dispatch of a paratransit vehicle when the following are present in the vehicle:(1) the driver's written trip record;(2) the driver's paratransit license;(3) the registration certificate or a photostat thereof; (4) the paratransit vehicle license or a photostat thereof;(5) the individual vehicle insurance card or photostat thereof; (6) the lease card or agreement, if any, or a photostat thereof;(7) all required notices; and(8) a two-way radio, if the base owner uses a radio system; and.(9) on and after July 1, 2008, an electronic trip record system in lieu of the written trip record set forth in paragraph (1) of this subdivision, unless such system malfunctions, the malfunction is timely reported to the Commission and the paratransit vehicle is operated for hire not more than three (3) business days before being repaired, during which time a written trip record shall be used.	$15 for each violation of this rule. Personal Appearance Not Required.
(n)	On July 1, 2008, and thereafter, owners and base owners shall install in all paratransit vehicles an electronic trip record system that collects electronic trip record data required by subdivision 4-09(gg) during and for each trip.	$250 and suspension until compliance. Personal Appearance Not Required.
(o)	(1) On July 1, 2008, and thereafter, an owner shall not allow to be dispatched and a base	(1) $500 Personal Ap-

owner shall not dispatch a paratransit vehicle unless the electronic trip record system in the paratransit vehicle required by subdivision (n) of this section is in good working order.	pearance Required.
(2) Should such system malfunction, the base owner shall report the malfunction to the Commission's Safety and Emissions Facility within twenty-four (24) hours of the time when the base owner knew or should have known of the malfunction, and the owner shall have the system repaired or replaced within three (3) business days of the report to Safety and Emissions. A paratransit vehicle in which the electronic trip record system is malfunctioning shall not be dispatched more than three (3) business days following the time when the malfunction was reported to Safety and Emissions.	(2) $250 Personal Appearance Required.

HISTORICAL NOTE

Section heading amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Section in original publication July 1, 1991.

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Subd. (c) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (i) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (j) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (k) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (l) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (m) amended City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (n) added City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (o) added City Record Aug. 17, 2007 §9, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-11 Owner's and Base Owner's Responsibilities to the Passengers and Public.

		Penalty
(a)	Owners and base owners shall be courteous toward passengers and the general public, including Commission personnel, while performing the owner's and the base owner's duties and responsibilities as an owner and a base owner.	$25 Personal Appearance Not Required.
(b)	An owner and a base owner shall not threaten, harass, or abuse any passenger, Commission representative, or any other person while performing the owner's and the base owner's duties and responsibilities as an owner and a	

		Penalty
	base owner. An owner and a base owner shall not harm or use physical force against or attempt to harm or use physical force against a service animal that is accompanying a person with a disability.	$50-$350 and/or suspension up to 30 days. Personal Appearance Required.
(c)	An owner and a base owner shall not use or attempt to use any physical force against a passenger, Commission representative, or any other person, while performing the owner's and the base owner's duties and responsibilities as an owner and a base owner. An owner and a base owner shall not harm or use physical force against or attempt to harm or use physical force against a service animal that is accompanying a person with a disability.	$20-$350 and/or suspension up to 30 days possible revocation (OATH) Personal Appearance Required.

(d)	An owner and a base owner shall:(1) Schedule the daily pickups of passengers and the dispatchment of a paratransit vehicle as expeditiously as possible, to prevent and avoid an unreasonably late pickup or no pickup.	(1) $25 Personal Appearance Not Required.
	(2) If such pickup is unreasonably delayed or cancelled, the owner or base owner shall promptly notify the waiting passenger of the delay or cancellation.	(2) $50 Personal Appearance Not Required.
(e)	An owner shall train or arrange for the training of every driver in the knowledge, expertise and skills to properly and safely assist any person with a disability or other passenger in and out of a paratransit vehicle, and how to properly utilize the wheelchair ramp, the fastening devices, and any safety precautions or other devices contained in the vehicle.	$50-$150 Personal Appearance Required.
(f)	An owner and a base owner shall monitor the behavior and conduct of the drivers toward the passengers. An owner and a base owner shall also investigate complaints by a passenger and shall take appropriate and reasonable action.	$50-$250 and/or suspension until a monitoring procedure is devised and/or other appropriate action is taken to the satisfaction of the Commission. Personal Appearance Required.
(g)	An owner shall not charge or attempt to charge a fare above the approved rate of fare currently filed with the Commission. An owner shall not impose or attempt to impose any additional charge for transporting a person with a disability, a service animal accompanying a person with a disability or a wheelchair or other mobility aid.	See §4-13 Personal Appearance Required.
(h)	An owner shall not refuse by words, gestures or any other means, without justifiable grounds to provide transportation to any orderly person, who has prearranged the trip and the destination is within New York City, unless he does not have a vehicle then available for the requested transportation.	See §4-13 Personal Appearance Required.
	Penalty	
(i)	(1) An owner shall inspect the interior of the paratransit vehicle after each workshift and any property found shall be taken without delay to the police precinct where the garage is located unless its rightful owner is known or can be found and is notified within a reasonable time.(2) The owner shall promptly inform the Commission of any property found and taken to a police precinct.	(1) $50-$250 Personal Appearance Not Required.

HISTORICAL NOTE

Section heading amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (b) amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (b) amended City Record July 8, 1997 §13, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (c) City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (c) amended City Record July 8, 1997 §13, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (d) amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (e) amended City Record July 8, 1997 §13, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (f) amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (g) amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

Subd. (g) amended City Record July 8, 1997 §13, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (h) amended City Record Aug. 17, 2007 §10, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-12

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-12 Owners' and Drivers' Responsibilities for the Handling of Passengers with Infectious Diseases.

		Penalty
(a)	Owners and Drivers shall adhere to all Federal, State and City laws, rules and regulations, if any, in regard to the handling of passengers with infectious diseases.	$25-$1,000 Possible suspension or revocation (OATH) Personal Appearance Required.
(b)	Owners shall adhere to all Federal, State and City laws, rules and regulations, if any, in regard to any necessary provisions which must be provided to the drivers or passengers when transporting passengers with infectious diseases (eg. masks, gloves, etc.).	$25-$1,000 Possible suspension or revocation (OATH) Personal Appearance Required.
(c)	(1) Owners and Drivers shall adhere to all Federal, State, and City laws, rules and regulations, if any, in regard to the cleaning of paratransit vehicles after transporting passengers with infectious diseases and the disposal of any contaminated materials. Note: According to the New York City Emergency Medical Service and the New York State Department of Health, the following is an appropriate disinfectant solution: One (1) part sodium hypochlorite solution (bleach) to nine (9) parts water-fill the bucket with water first and then add the solution. *(This solution is incompatible with acids, organic material or reducing agents. Therefore, this solution should never be mixed with hydrogen peroxide, ammonia or any other cleansing agent.) (2) The owner must provide protective clothing, (goggles, gloves, gowns, and masks) to anyone under his employ who disinfects the vehicle.(3) if a stretcher is contaminated,	$25-$1,000 Possible suspension or revoca-

clean/disinfect by wiping, however, if it is saturated then dispose of it in an appropriate manner. Also, dispose of any contaminated linen.Note: Dispose of contaminated material by placing the items in a buff-colored impervious plastic bag and seal the bag and tag it as "contaminated" and dispose of the material in the manner approved at a local hospital.(4) in the case of gross contamination, where the vehicle is saturated or encrusted then the vehicle must be sterilized, through the use of steam gas or liquid agents.	tion (OATH) Personal Appearance Required.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Section title amended City Record July 8, 1997 §14, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (a) amended City Record July 8, 1997 §14, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (b) amended City Record July 8, 1997 §14, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (c) par (1) amended City Record July 8, 1997 §14, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-13 Mandatory Penalties.

(a) Any licensee who has been found to have violated a provision of sections 4-06(b), 4-07(d), 4-08(g), 4-08(i)(1), 4-08(n), 4-08(t), 4-09(a), 4-09(b), 4-09(c), 4-09(h), 4-09(w), 4-09(bb), 4-11(g), 4-11(h) or any combination thereof, shall be fined not less than $100 nor more than $350 for each violation for which a licensee is convicted. Any licensee who has been found in violation of any of the provisions of such rules or any combination thereof, for a second time within a twenty-four month period shall be fined not less than $350 nor more than $500. The Commission shall mandatorily revoke the driver's, the base owner's or the owner's license of any paratransit driver, base owner or owner who has been found to have violated any of the provisions of sections 4-06(b), 4-07(d), 4-08(g), 4-08(i)(1), 4-08(n), 4-08(t), 4-09(a), 4-09(b), 4-09(c), 4-09(h), 4-09(w), 4-09(bb), 4-11(g), 4-11(h) or any combination thereof, three times within a twenty-four month period. Nothing contained herein shall limit or restrict any other authority the Commission may have to suspend or revoke a paratransit driver's license.

(b) The twenty-four month period referred to above shall be calculated with reference to the date of the conviction of the violation.

(c) The Commission will not issue any license to any individual, corporation or partnership who/which has had his/its license revoked for a period of at least one year from the date of such revocation.

Any licensee who has had five (5) or more summonses issued to him that remain open and outstanding for a twelve (12) month period shall have his license automatically revoked at the end of said twelve month period. The twelve month period shall be calculated from the date of the issuance of the summons.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 17, 2007 §11, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-14

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-14 Procedures in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section in original publication July 1, 1991.

Subd. (e) amended City Record May 15, 1995 §5, eff. June 19, 1995. [See T35 §1-85 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 4-15

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-15 Seizure and Forfeiture of Unlicensed Paratransit Vehicles.

(a) **Seizure.** In accordance with §19-506(h) of the Administrative Code of the City of New York, any officer or employee of TLC designated by the Chairperson of TLC, and any police officer may, upon service of a summons for violation of subdivision b or c of §19-506 of the Administrative Code, seize any vehicle which such officer or employee has probable cause to believe is operated or offered to be operated without an appropriate vehicle license in violation of such subdivision b or c. A vehicle seized in accordance with such §19-506(h) shall be removed to a designated secured facility.

(b) **Summons and Notice of Seizure.**

(1) The officer or employee effecting seizure shall serve a summons for violation of subdivision b or c of §19-506 of the Administrative Code upon the owner of the seized vehicle, by service upon the owner or upon a person who uses such vehicle with the permission of the owner, express or implied.

(2) An officer or employee of TLC who effects seizure as described in §4-15(a) shall also deliver to the vehicle owner a notice of seizure, including identification of the seized vehicle and information concerning these regulations and the designated secured facility to which the vehicle was or will be taken. Such notice of seizure may be delivered in the same manner as service of the summons.

(3) An officer or employee of TLC shall also mail a notice of seizure to the owner of the vehicle. Any defect in delivery or mailing of a notice of seizure shall not affect the validity of service of a summons upon the owner as described in §4-15(b)(1) herein.

(c) Expedited hearing concerning a seized vehicle. The summons shall set forth a date and time for a hearing in the administrative tribunal of TLC. Such hearing shall be held within seven calendar days after seizure, or, if the seventh day is a Saturday, Sunday or City government holiday, no later than on the business day next following the seventh day.

(d) **Release of a seized vehicle prior to the scheduled hearing.**

(1) An owner of a vehicle is eligible for release of a seized vehicle prior to the scheduled hearing if the owner meets the following criteria: the owner has not been found in violation two or more times of subdivision b or c of §19-506 of the Administrative Code for acts committed on or after February 20, 1990 and within a thirty-six month period.

(2) An owner meeting the criteria of §4-15(d)(1) herein may obtain the release of the vehicle by appearing at the administrative tribunal with the notice of violation, on or before the scheduled hearing date, either to:

(i) Plead guilty, be determined by TLC staff as having met the criteria of §4-15(d)(1) herein and be assessed a civil penalty by an administrative law judge. TLC staff shall also determine the amount of removal and storage fees. The owner must pay in full the civil penalty and removal and storage fees. Upon such payment, TLC shall issue an order to release the vehicle. The owner or his agent may present the order at the designated secured facility to obtain the vehicle.

(ii) Be determined by TLC staff as having met the criteria of §4-15(d)(1) herein, and post a bond in the amount of the maximum civil penalty, plus removal and storage fees. Upon the posting of such bond, TLC shall issue an order to release the vehicle. The owner or his or her agent may present the order at the designated secured facility to obtain the vehicle.

(3) If the owner does not obtain the vehicle by the date specified in the order of release, the owner shall be responsible for any further storage fees, and payment of such fees shall be made before the release of the vehicle.

(4) A vehicle shall not be released from storage prior to the scheduled hearing if the owner fails to meet the criteria of §4-15(d)(1) herein.

(e) **Decisions at the expedited hearing.**

(1) If the administrative law judge dismisses the summons, the administrative law judge shall issue an order for release of the seized vehicle without removal and storage fees.

(2) If the administrative law judge finds that the owner was in violation and that this was not the third or subsequent violation by the owner of subdivision b or c of §19-506 of the Administrative Code committed on or after February 20, 1990 and within a thirty-six month period, the administrative law judge shall assess a civil penalty as provided in §19-506(e) of the Administrative Code, and TLC staff shall assess removal and storage fees. The owner must pay the civil penalty and removal and storage fees in order to obtain from TLC an order for release of the seized vehicle.

(3) If the administrative law judge finds that the owner was in violation and that this was the third or subsequent violation by the owner of subdivision b or c of §19-506 of the Administrative Code committed on or after February 20, 1990 and within a thirty-six month period, the administrative law judge shall set a civil penalty, as provided in §19-506(e) of the Administrative Code, and shall issue a notice to the owner and to the Chairperson of TLC or his or her designee that the vehicle is subject to forfeiture upon a judicial determination.

(4) **Inquest hearings.** If the owner of the seized vehicle fails to appear for the hearing, an inquest hearing will be held. An administrative law judge shall make a determination pursuant to paragraph (1), (2), or (3) of this subdivision (e). TLC will inform the respondent of the inquest determination by first class mail. The information mailed to the owner shall include the provisions of §4-15(i) herein concerning abandoned vehicles. The respondent may appear at

TLC offices within seven calendar days of such mailing to comply with the inquest determination or to move in the administrative tribunal to vacate such inquest determination. In the event that such inquest determination is vacated, the respondent shall be entitled to a hearing de novo on the original summons. Such hearing shall be scheduled within seven calendar days of the order vacating the inquest determination, or, if the seventh day is a Saturday, Sunday or City government holiday, no later than on the business day next following the seventh day.

(f) **Appeals.** If found in violation of subdivision b or c of §19-506 of the Administrative Code, an owner must pay the civil penalty together with removal and storage fees in order to appeal. However, if the decision to be appealed was made pursuant to §4-15(e)(3), the owner must pay only the civil penalty in order to appeal. If upon appeal the decision is reversed in whole or part, the owner shall receive a refund of the relevant civil penalty and fees.

(g) **Forfeiture.**

(1) In addition to the penalties set forth in §19-506(e) of the Administrative Code, if an owner is convicted in the criminal court or found in the TLC administrative tribunal to be in violation of subdivision b or c of §19-506 of the Administrative Code three or more times, and all of such violations were committed on or after February 20, 1990 and within a thirty-sixth month period, the interest of such owner in any vehicle used to commit such third or subsequent violation shall be subject to forfeiture upon notice and judicial determination.

(2) The Chairperson of the TLC or his or her designee shall determine whether to pursue the remedy of forfeiture. If such person determines not to pursue the remedy of forfeiture, the owner shall be so notified by first class mail. The owner may obtain an order of release of the vehicle by paying the civil penalty determined pursuant to §4-15(e)(3) together with removal and storage fees.

(3) A forfeiture proceeding shall be commenced by proper service upon the owner of a summons and other papers pursuant to the provisions of the civil practice law and rules.

(h) **Public sale pursuant to forfeiture.**

(1) After a judicial determination of forfeiture, but no sooner than thirty days after such determination and upon notice of at least five days, the TLC shall sell such forfeited vehicle at public sale, except as provided in paragraph (2) herein. Such notice of sale shall be published in the City Record or in a newspaper of general circulation, and shall also be mailed to any lienholder or mortgagee shown in the records of the jurisdiction which issued the number license plates on the vehicle.

(2) Any person, other than an owner whose interest is forfeited pursuant to §19-506 of the Administrative Code and these rules, who establishes a right of ownership in a vehicle, including a part ownership or security interest, shall be entitled to delivery of the vehicle if such person:

(i) redeems the ownership interest which was subject to forfeiture by payment to the city of the value thereof;

(ii) pays the reasonable expenses of the safekeeping of the vehicle between the time of seizure and such redemption; and

(iii) either

(A) asserts a claim in the forfeiture proceeding; or

(B) submits a claim in writing to the commission within thirty days after judicial determination of forfeiture.

(3) Notwithstanding paragraphs (1) and (2) of this subdivision (h), establishment of a right of ownership shall not entitle a person to delivery of a vehicle if TLC establishes in the forfeiture proceeding or in a separate administrative adjudication of a claim asserted pursuant to §4-15(h)(2)(iii) herein that the violations of subdivision b or c of §19-506 of

the Administrative Code upon which the forfeiture is predicated were expressly or impliedly permitted by such person.

(4) If a person asserts a claim pursuant to §4-15(h)(2)(iii)(B) herein, the TLC shall schedule an adjudication of such claim in its administrative tribunal. Notice of the hearing shall be mailed to the claimant at least ten business days in advance of the hearing. The administrative law judge shall rule as to whether the violations upon which the forfeiture was predicated were expressly or impliedly permitted by the claimant. If the administrative law judge finds that there was such permission by the claimant, the claim shall be denied.

(i) **Abandoned vehicles.**

(1) If an owner does not assert an interest in a seized vehicle by removing it from storage within the time periods specified in paragraph (2) of this subdivision (i), the vehicle shall be deemed abandoned. A declaration of such abandonment may be made by the deputy commissioner for legal affairs of TLC or his or her designee, without further hearing.

(2) A vehicle shall be deemed abandoned, pursuant to paragraph (1) herein, if an owner:

(i) has not removed the vehicle from storage within five days of obtaining an order of release pursuant to section 4-15(d) or (e) herein; or

(ii) has not paid the civil penalty and removal and storage fees within five days of a hearing determination of violation pursuant to §4-15(e)(2) herein, or within seven days after notice of an inquest determination of violation was mailed to the owner pursuant to §4-15(e)(4) herein; or

(iii) has not obtained an order vacating an inquest determination of violation and setting a hearing de novo, within seven days after notice of such inquest determination was mailed to the owner pursuant to §4-15(e)(4) herein; or

(iv) has not paid the civil penalty and removal and storage fees, within seven days after a notice that the TLC will not pursue the remedy of forfeiture was mailed to the owner pursuant to §4-15(g)(2) herein.

(3) In the event that a vehicle has been deemed abandoned pursuant to paragraphs (1) and (2) of this subdivision (i), TLC shall mail to the owner a notice that the vehicle has been recovered by TLC as an abandoned vehicle and that, if unclaimed, its ownership shall vest in TLC and it will be sold at public auction or by bid after ten days from the date such notice was mailed. Such notice shall also be mailed to any lienholder or mortgagee shown in the records of the jurisdiction which issued the number license plates on the vehicle.

(4) An owner, lienholder or mortgagee may claim the vehicle within ten days from the date that the notice described in paragraph (3) of this subdivision (i) was mailed, by paying the removal and storage fees due and, in the case of an owner, the civil penalty claimed as a lien by TLC on such vehicle.

(5) In the event that an abandoned vehicle is not claimed within ten days after the notice described in paragraph (3) of this subdivision (i) was mailed, ownership of the abandoned vehicle shall vest in TLC. TLC may sell an abandoned vehicle at public auction or by bid. Any proceeds from the sale, less expenses incurred for removal, storage and sale of the vehicle and less the civil penalty claimed as a lien by TLC, shall be held without interest for the benefit of the former owner of the vehicle for one year. If not claimed within such one year period, such proceeds shall be paid into the general fund by TLC.

(j) **Removal and storage fees.**

(1) The removal fee shall be one hundred fifty dollars ($150).

(2) The storage fee shall be ten dollars ($10) per day or such other amount as may be set by the New York City Department of Transportation.

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 29, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-506(h) of such Code, authorizing TLC to seize unlicensed wheelchair accessible vans.

The promulgated regulations implement Section 19-506(h)of the Administrative Code, which provides that unlicensed wheelchair accessible vans may be seized by the Commission and the New York City Police Department. The regulations delineate the procedures for the seizure and release of unlicensed wheelchair accessible vans; establish fees for the removal and storage of such vehicles; and provide for the forfeiture of vehicles which are not redeemed.

The purpose of the regulations is to provide TLC with the enforcement tools needed to combat the public safety problem of wheelchair accessible vans operating without a license.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-16 License Fees.

(a) Pursuant to §19-511 of the Administrative Code of the City of New York, the license fee for the operation of a wheelchair accessible van base is five hundred dollars ($500) annually.

(b) Pursuant to §19-504(b) of the Administrative Code of the City of New York, the license fee for each wheelchair accessible van shall be two hundred seventy-five dollars ($275) annually.

(c) Pursuant to §19-505(j) of the Administrative Code of the City of New York, the fee for a paratransit vehicle driver's license shall be sixty dollars ($60) annually.

(d) The fee for an original license or a renewal thereof shall be paid at the time of filing the applications and shall not be refunded in the event of disapproval of the application.

(e) There shall be an additional fee of twenty-five dollars ($25) for late filing of a license renewal application where such filing is permitted by the Commission.

(f) An additional fee of twenty-five dollars ($25) shall be paid for each license issue to replace a lost or mutilated license.

(g) Pursuant to §19-504(h) of the Administrative Code of the City of New York, a vehicle licensee may change the base with which it is affiliated, subject to the approval of the Commission and upon payment of a fee of twenty-five dollars ($25).

HISTORICAL NOTE

Section renumbered (formerly §4-15) City Record Mar. 29, 1996 eff. Apr. 30, 1996. [See T35 §4-15 Note 1]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-17 Critical Driver Program.

(a) The paratransit driver's license of any driver who, within a period of fifteen months, accumulates six or more points against his license issued by the Department of Motor Vehicles, or an equivalent license issued by the driver's state of residence, unless previously revoked, shall be suspended for thirty days.

(b) The paratransit driver's license of any driver who, within a period of fifteen months, accumulates ten or more points against his license issued by the Department of Motor Vehicles, or an equivalent license issued by the driver's state of residence, shall be revoked.

(c) The Commission may at any time review the fitness of a driver to be licensed by the Commission in view of any moving violation, accident, or other driving related incident. Nothing contained herein shall preclude the imposition by the Commission of additional or more severe penalties, or any other action deemed appropriate, in accordance with the Rules of the Commission.

(d) For the purpose of this Rule, the points assigned by the Department of Motor Vehicles for any violation shall be deemed to have been accumulated as of the date of occurrence of the violation.

(e) The relevant fifteen-month period to be used for calculating any suspension or revocation imposed under subsection (a) or (b) herein shall be calculated from the date of the most recent occurrence which led to a conviction of a violation carrying points; provided however, that no action under subsection (a) or (b) shall be taken with regard to any violation carrying points which occurred prior to the effective date of this Rule.

(f) For the purpose of calculating penalties pursuant to subsection (a) or (b) herein, a driver who has accumulated points for multiple violations arising from a single incident shall be deemed to have accumulated points for the single violation with the highest point total.

(g) Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the Department of Motor Vehicles, and who furnishes the Commission with proof that the course was completed after the effective date of this Rule, shall have two (2) points deducted from the total number of points assessed pursuant to this Rule. No point reduction shall affect any suspension or revocation action taken pursuant to these Rules prior to the completion of the course. No person shall receive a point reduction pursuant to this subdivision more than once in any eighteen-month period, and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

HISTORICAL NOTE

Section added City Record Sept. 20, 1999 §1, eff. Oct. 20, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 20, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-506 of said Code, authorizing the Commission to adopt rules regulating the suspension or revocation of drivers' licenses issued by the Commission; and under §19-507.2 of said Code, setting forth a Critical Driver Program for licensees.

The rules adopt a Critical Driver Program for operators of Commuter Vans and Paratransit Services Vehicles, to conform with the program adopted by the Commission relating to Taxicab and For-Hire Vehicle drivers. This program was modified by changes to the Administrative Code enacted into law on May 26, 1999. A driver who accumulates six (6) or more points on his DMV license within fifteen (15) months shall have his TLC license suspended for thirty (30) days. A driver who accumulates ten (10) or more points within a fifteen month period shall have his TLC license revoked. The rules also provide the opportunity for a licensee to receive a two-point reduction through voluntary attendance at a safety-related course.

The purpose of these amendments is to conform Commission rules and standards applicable to paratransit services drivers and commuter van drivers to the rules presently applicable to Taxicab and For-Hire Vehicle drivers. This regulation protects the riding public by ensuring that drivers who have either multiple or serious convictions on their DMV licenses will not be permitted to transport members of the public for hire.

The regulations promulgated herein are more stringent than those applicable to commuter van drivers, and certain paratransit services drivers, pursuant to Article 19-A of the Vehicle and Traffic law, and will ensure that all licensees of the Commission are treated in the same manner.

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 4 PARATRANSIT SERVICES-TRANSPORTING PEOPLE WITH DISABILITIES*1

§4-18 Vehicle Retirement and First Licensing.

(a) All paratransit vehicles first licensed by the Commission on or after January 1, 2008, shall meet the mileage specifications of a qualified replacement paratransit vehicle set forth in subdivision (j) of this section and shall comply with subdivision (h) of this section unless excepted pursuant to subdivision (i) of this section.

(b) All paratransit vehicles that are of model year 1998 or earlier must be retired from paratransit service no later than the expiration dates of their paratransit vehicle licenses on and after January 1, 2008.

(c) All paratransit vehicles that are of model year 2000 or earlier must be retired from paratransit service no later than the expiration dates of their paratransit vehicle licenses on and after January 1, 2009.

(d) All paratransit vehicles that are of model year 2002 or earlier must be retired from paratransit service no later than the expiration dates of their paratransit vehicle licenses on and after January 1, 2010.

(e) All paratransit vehicles that are of model year 2004 or earlier must be retired from paratransit service no later than the expiration dates of their paratransit vehicle licenses on and after January 1, 2011.

(f) On and after January 1, 2012, all paratransit vehicles shall be retired no later than seven (7) years after the vehicle was first licensed.

(g) A paratransit vehicle that cannot pass the New York State Department of Transportation inspection must be retired, regardless of whether its retirement date has been reached. A paratransit vehicle which has reached its

retirement date must be retired, regardless of whether it may still pass the New York State Department of Transportation inspection.

(h) When the paratransit vehicle is first licensed by the Commission, the Commission shall verify that the mileage on the New York State Department of Transportation Form MC300 for such vehicle, dated not more than one month prior to the paratransit vehicle licensing, accords with the specifications in subdivision (j) of this section.

(i) An owner may request an extension of a vehicle's retirement date no later than two months before that retirement date. The extension request must include documentation demonstrating that a new vehicle has been ordered but will not be delivered until after the retirement date, but no later than 60 days after the retirement date. The Commission's Chairperson, or his or her designee, may confirm the delivery date independently. Should the owner's documentation comply fully with the terms of this section and the compliant delivery date is confirmed, an extension of the vehicle's retirement date to the projected delivery date of the new vehicle shall be granted.

(j)(1) On and after January 1, 2008, all qualified replacement paratransit vehicles shall have been driven less than 100,000 miles;

(2) On and after January 1, 2009, all qualified replacement paratransit vehicles shall have been driven less than 50,000 miles;

(3) On and after January 1, 2010, all qualified replacement paratransit vehicles shall have been driven less than 25,000 miles; and

(4) On and after January 1, 2011, all qualified replacement paratransit vehicles be of the most recent model year or the immediately preceding model year and shall have been driven less than 500 miles.

HISTORICAL NOTE

Section added City Record Aug. 17, 2007 §12, eff. Sept. 16, 2007. [See T35 §4-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter heading amended City Record July 8, 1997 §10, eff. Aug. 11, 1997.

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35 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-01 Definitions.

Applicant. An applicant is an individual, partnership or corporation seeking a license as a taxicab broker.

Broker, taxicab. A taxicab broker is an individual, partnership or corporation, who may hereinafter be referred to as "broker," who, for another and whether or not acting for a fee, commission or other valuable consideration, acts as an agent or intermediary in negotiating the transfer of a taxicab license (medallion) or of stock of or in a corporation which holds a taxi license (medallion), and/or negotiating a loan secured or to be secured by an encumbrance upon or transfer of a taxicab license (medallion), or licensed vehicle.

Commission. Commission means the New York City Taxi and Limousine Com- mission.

Mailing address of broker. Mailing address of broker means the address, maintained by the broker as his principal place of business, and designated by him for the mailing of all notices and correspondence from the Commission and for service of summonses. However, a broker may also designate a post office box number address as a mailing address.

Medallion. A medallion is a plate issued by the Commission as the physical evidence of a taxicab license, and affixed to the outside of such taxicab.

Net listing. Net listing means an agency or other agreement whereby a prospective vendor of a taxicab or an interest therein, lists such taxicab or interest therein for sale with a licensed taxicab broker authorizing the sale thereof at a specified net amount to be paid to the seller and authorizing the broker to retain as commission, compensation, or otherwise, the difference between the price at which the taxicab or interest therein is sold and the specified net amount

to be received by the vendor.

Owner. Owner means an individual, partnership, limited liability company or corporation licensed by the Commission to own and operate a medallion taxicab or taxicabs.

Renewal applicant. Renewal applicant means a broker seeking a renewal of a valid taxicab broker's license.

Taxicab license. Taxicab license means the authority granted by the Commission to an owner to operate a designated vehicle as a taxicab in the City of New York evidenced by a medallion.

Transfer. A transfer is a conveyance of any interest in a taxicab license or stock in a corporation holding a taxicab license, from one party to another.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Owner amended City Record June 20, 2006 §7, eff. July 20, 2006. [See T35 §1-01 Note 2]

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35 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-02 General Provisions for the Licensing of Taxicab Brokers.

(a)(1) An individual, the members of a partnership, or the officers and shareholders of a corporation, applying for a taxicab broker's license must provide proof of identity to the Commission in the form of:

(i) A valid form of photo identification issued by the United States, any state or territory thereof, or any political subdivision of such state or territory; and

(ii) A valid, original social security card.

(2) An individual, the members of a partnership, or the officers and shareholders of a corporation applying for a taxicab broker's license or its renewal:

(i) shall be at least twenty-one (21) years of age;

(ii) shall be of good moral character;

(iii) shall be able to speak, read, write and understand the English language; and

(iv) shall have actively participated in the taxicab brokerage business under the supervision of a licensed taxicab broker for a period of not less than one (1) year, or shall have had the equivalent experience in the general taxicab business for a period of at least two (2) years, the nature of which participation or experience shall be established by affidavit duly sworn to under oath and/or other and further proof as required by the Commission. This requirement may be waived by the Commission in its discretion.

(b) The applicant for a broker's license shall be in such form and detail as the Commission shall prescribe, and shall include the following:

(1) the place or places, with the street and number, where the business is to be conducted;

(2) the business or occupation theretofore engaged in by the applicant, or, if a partnership, by each member thereof, or, if a corporation, by each officer and shareholder thereof, for a period of two years immediately preceding the date of such application, setting forth the place or places where such business or occupation was engaged in and the name or names of employers, if any;

(3) if, in addition to services as a broker, the brokerage or any principal thereof will be acting as a lender, insurance broker or automobile dealer, or has a financial interest in such lender, insurance brokerage firm or automobile dealership, full information as to extent of such interest; and

(4) such further information as the Commission may require in order to determine if the applicant is qualified to assume the duties and obligations of a taxicab broker.

(c) The applicant shall deposit with the Commission a bond, in the penal sum of fifty thousand ($50,000) dollars, containing one or more sureties to be approved by the Commission. Such bond shall be payable to the City of New York and shall be conditioned that the license applicant or licensee will comply with the provisions of the Administrative Code and any rules or regulations of the Commission, and shall pay all fines imposed by the Commission and all judgments awarded for damages occasioned to any person by reason of any such licensee, his agents or employees, while acting within the scope of their employment, made, committed or omitted in the business conducted under such license, or caused by any other violation of Title 19, Chapter 5 of the Administrative Code in carrying on the business for which such license is granted. The term judgment shall include but not be limited to an order of an Administrative Law Judge of the Commission directing restitution to an aggrieved party. The broker is immediately liable for satisfaction upon determination of the fine or award judgment, or, if timely appeal is taken, upon final determination of the appeal.

(d) An individual, the members of a partnership, and officers and shareholders of a corporation, applying for a broker's license, shall be fingerprinted. Fingerprinting shall also be required of new officers and shareholders of such corporation. The Commission must be notified of any new officers or shareholders within five working days of their selection and continued use of the brokerage license may be permitted contingent upon completion of the background investigation. An individual, the members of a partnership and officers and shareholders of a corporation who provide funds for the brokers, shall be fingerprinted, unless such provider is a licensed bank or loan company. The requirements of this subdivision (d) may be waived by the Commission in its discretion.

(e) An attorney, applying for a taxicab broker's license, who demonstrates that he is a member in good standing of the Bar of the State of New York, need not submit proof as herein required by subdivisions (a) and (d) hereof.

(f) If the applicant is a partnership, it shall file with its license application a certificate from the clerk of the county where the principal place of business is located.

(g) No corporate or trade name will be accepted by the Commission which is similar to a name already in use by another taxicab broker.

(h) If the applicant is a corporation, it shall file with its license application a certified copy of its certificate of incorporation. A list of its officers and shareholders and a certified copy of the minutes of the meeting at which the current officers were elected shall also be furnished.

(i) An applicant or renewal applicant shall not offer or give any gifts or gratuity to any employee(s), representative(s) or member(s) of the Commission, any public servant(s) or other person(s) either to a specified

recipient or to a general group and whether or not the donor indicates an expectation of something in return in the course of occupation as a taxicab broker or applicant therefor, and shall immediately report to the Inspector General of the Commission any request or demand for any gift or gratuity by any employee(s), representative(s) or member(s) of the Commission, any public servant(s) or such other person(s).

(j) If the Commission determines that the applicant has failed to meet the requirements for a taxicab broker's license it will within a reasonable time deny the license or its renewal and specify in writing to the applicant the reason for such denial.

(k) Any material falsification contained in an original or renewal application for a license, any failure to notify the Commission of any material change in the information contained therein or any attempt by an applicant or broker to conceal the identity of a party having an interest, direct or indirect, in his business of taxicab brokerage shall be cause for denial of such application or revocation or suspension of such license, in addition to any other sanctions imposed by the Commission.

(l) Taxicab broker's licenses shall be issued as of January first and shall expire on December thirty-first next succeeding, unless sooner suspended or revoked by the Com- mission.

(m) If at any time during the term of the taxicab broker's license the Commission becomes aware of information that the broker no longer meets the requirements for a taxicab broker's license, the Commission may deny his renewal application, or suspend or revoke his license in the manner provided in the Procedures in the Event of a Violation of Commission Rules (§5-08).

(n) A taxicab broker's license issued to an individual may be used after the death of such licensee by his duly appointed administrator or executor in the name of the estate pursuant to authorization granted by the surrogate under the provisions of section two hundred fifteen-a of the surrogate's court act for a period of not more than one hundred twenty days from the date of death of such licensee in order to complete any unfinished taxicab transactions in the process of negotiation by the broker existing prior to his decease. The period of one hundred twenty (120) days may be extended upon application to the Commission, for good cause shown.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Oct. 31, 2006 §6, eff. Nov. 30, 2006. [See T35 §1-02 Note 2]

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35 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-03 Taxicab Broker's License.

(a) An individual, partnership, or corporation shall not engage in the business or occupation of, or hold himself out or act temporarily as a taxicab broker in the City of New York unless currently licensed by the Commission.

(b) A broker shall conspicuously display a license or copy thereof at all times in every place of business maintained by such broker.

(c) A broker shall not display a taxicab broker's license which is expired, suspended, or revoked, but shall surrender same to the Commission immediately.

(d) A broker shall submit an application for renewal of the license no later than the expiration date of the license unless the time to do so is extended by the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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***** Current through December 2009 ****

35 RCNY 5-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-04 Office Procedure.

(a) A broker shall report to the Commission at its main administrative office, Legal Affairs, in person or by registered or certified mail return receipt requested, a change in his mailing address and in the address of any other office where his taxicab brokerage business is conducted, within seventy-two (72) hours, exclusive of weekends and holidays.

(b) A broker

(1) shall not request nor permit a party to sign a Power of Attorney or any other instrument in blank nor accept any such instrument signed in blank;

(2) if the broker shall request any instrument or document to be signed by any interested party and returned to said broker, the broker shall provide said interested party with a duplicate copy of the instrument for the party's own records. If any interested party attends a closing, at which time the interested party is presented with an instrument or other document for signature, the broker shall furnish such interested party with a photocopy of the signed instrument at the closing;

(3) upon completion of a closing, or other transaction, the broker shall, within ten (10) business days of such completion, deliver to the interested party copies of all other documents prepared by the broker or under the broker's supervision on behalf of such party;

(4) the broker shall request the party receiving such papers to acknowledge, in writing, receipt of same.

(c) A broker shall keep and maintain for a period of three (3) years the following records:

(1) the names and addresses of transferor(s), transferee(s), mortgagee(s), or other lien holder(s) if any;

(2) the purchase price;

(3) amount of deposit paid on contract;

(4) amount of commission paid to broker;

(5) expenses of procuring the mortgage loan, if any;

(6) closing statements; and

(7) listing placed with the broker.

(d) (1) A broker shall cooperate with all law enforcement personnel and authorized representatives of the Commission, and shall comply with all their reasonable requests.

(2) A broker shall answer and/or comply with all questions, communications, directives within seventy-two (72) hours of receipt from the Commission or its representatives. An emergency communication shall be answered immediately.

(3) A broker shall answer all summonses from the Commission on the scheduled date as same may be adjourned.

(4) A broker shall, upon demand, furnish to the Commission or its representatives for inspection all records and documents listed in §5-04(c).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) par (2), (3) amended City Record Dec. 18, 1992 eff. Jan. 17, 1993.

Subd. (c) par (6) amended City Record Dec. 18, 1992 eff. Jan. 17, 1993.

Subd. (c) par (7) added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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35 RCNY 5-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-05 Relationship to Parties of a Taxicab Transaction.

(a) (1) A broker shall not offer a taxicab for transfer unless he is authorized to do so by the owner.

(2) An owner may withdraw his authorization by giving written notice of such withdrawal to the broker except where an exclusive has been given for a fixed period.

(b) In all agreements obtained by a broker which provide for an exclusive listing of a taxicab, the broker shall have attached to the listing or printed in boldface type on the listing or printed on the reverse side of the listing and signed or initialed by the owner the following explanation in type size of not less than six point;

An "exclusive right to sell" listing, where the owner has surrendered to a specific broker the owners right to sell, means that if you, the owner of the taxicab medallion, find a buyer for your taxicab, or if another broker finds a buyer, you must pay the agreed commission to the present broker.

(c) A broker shall not be a party to an exclusive listing contract which shall contain an automatic continuation of the period of such listing beyond the fixed termination date set forth therein.

(d) A broker shall not induce any party to a contract for the transfer of a taxicab medallion to break such contract for the purpose of substituting in lieu thereof a new contract with another principal.

(e) A broker shall disclose the fact that in writing to his principals if, in addition to his services as a broker for their medallion transaction, he is acting also as a lender, insurance broker, automobile dealer or in any such other capacity, or

has a financial or other interest in such lender, insurance brokerage firm or automobile dealership.

(f) A broker shall not make or enter into a net listing contract for the transfer of a medallion or any interest therein unless it is part of a bulk transfer of ten (10) or more medallions owned by a fleet or minifleet and is completed within no more than six (6) months of the listing.

(g) A broker shall not accept any commission, rebate or profit on expenditures made by such broker for his principal without the latter's full knowledge and written consent which said consent shall be retained by the broker for a period of three years.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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35 RCNY 5-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-06 Standard of Conduct.

(a) A broker shall not directly or indirectly buy for himself any interest in a medallion listed with him without first disclosing such fact to the owner in writing.

(b) A broker shall not sell a medallion in which he owns an interest, unless he makes known to the vendee such interest in writing.

(c) (1) A broker with whom a medallion and rate card have been left for purposes of sale shall deliver said medallion and rate card to the Commission for placement into storage within 48 hours of receipt of same, exclusive of holidays or weekends.

(2) A broker shall not operate or cause to be operated any medallion delivered to him without the owner's knowledge and express written and duly acknowledged consent.

(d) (1) A broker, to whom money has been advanced on a contract by a transferee shall not pay over any part of such funds to the transferor or any other person without the written approval of the transferee.

(2) The broker shall not commingle such funds with his own, but shall deposit same promptly in a separate, Federally insured, special account.

(3) The broker, upon making such deposit, shall notify in writing the person who advanced the money, giving the name and address of the bank in which the money was deposited and the amount of such deposit.

(4) The broker shall not retain or benefit from accrued interest, if any, from such account, unless authorized, in writing by his principal.

(e) (1) Any advertisement placed by a broker shall indicate that the advertiser is a licensed broker.

(2) A broker shall not use deceptive or misleading advertising.

(f) A broker, while performing his duties and responsibilities as a taxicab broker, shall not commit or attempt to commit, alone or in concert with another, any act of fraud, material misrepresentation, dishonesty or larceny or perform any willful act of omission or commission which is against the best interests of the public.

(g) A broker, who arranges a loan for his principal shall give such principal a copy of the lender's commitment and of all other documents provided to the broker by the lender.

(h) A broker shall advise the parties to a sale, in writing, of their right to be represented by an attorney of their own choosing and/or an accountant with respect to such medallion transfer.

(i) (1) A broker within ten (10) business days after the completion of a closing (including the financial closing) shall provide his principal(s) and the Commission with a written closing statement setting forth the following:

(i) Names and addresses of seller(s) and purchaser(s).

(ii) Medallion(s) being sold.

(iii) Sales price.

(iv) Vehicle cost (if any).

(v) Amount of personal funds furnished by purchaser.

(vi) Names and addresses of lenders together with amount(s) of loans(s).

(vii) Broker's commission.

(viii) Itemization and explanation of all disbursements or payments made on behalf of such party.

(2) A broker shall, within ten (10) business days after completion of the financial closing, remit all monies due his principal(s).

HISTORICAL NOTE

Section in original publication July 1, 1991.

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35 RCNY 5-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-07 Responsibility to the Commission.

(a) A broker, his representative(s) and/or employee(s), shall not offer or give any gift or gratuity to any employee(s), representative(s) or member(s) of the Commission, or any public servant(s), either to a specified party or to a general group of persons and whether or not there is an expectation of something in return.

(b) A broker shall immediately report to the Commission or to the New York City Department of Investigation any request or demand for a gift or gratuity by any employee(s), representative(s) or member(s) of the Commission, or any public servant(s).

(c) A broker, including a member of a partnership or any officer or shareholder of a corporation or representative and/or employee thereof, shall immediately notify the Commission of his conviction of a crime. Such notification shall be in writing and must be accompanied by a certified copy of the certificate of disposition issued by the Clerk of the Court.

(d) A broker, his representative and/or employee shall not threaten, harass or abuse any governmental or Commission representative, public servant or other person, in the course of his occupation as a taxicab broker or representative and/or employee of a broker.

(e) A broker, his representative and/or employee shall not use or attempt to use any physical force against a Commission representative, public servant or other person in the course of his occupation as a taxicab broker, or representative and/or employee of a broker.

(f) A broker without the consent of the Commission, shall not employ or use the services of any individual whose license as a taxicab broker has been revoked or is suspended or who was the chief executive officer of a partnership or corporation whose license has been revoked or is suspended.

(g) No broker or attorney in the capacity of a broker, without the prior written consent of the Commission, shall act on behalf of any broker who has not been licensed by the Commission or whose license has been suspended or revoked.

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35 RCNY 5-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-08 Procedures in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section in original publication July 1, 1991.

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35 RCNY 5-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 5 TAXICAB BROKERS

§5-09 Penalties for Violation of Rules Governing Taxicab Brokers.

Rule	Number	Penalty All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	Personal Appearance Required
§5-03	(a)	$500-1500	Yes
	(b)	$100	No
	(c)	$500-1500	Yes
	(d)	$25	No
§5-04	(a)	$50-500 and/or suspension	Yes
	(b)(1)-(4)	$400-2000 and/or suspension	Yes
	(c)(1)-(7)	$250-1000	No
	(d)(1)	$500-1500 and/or suspension	Yes
	(d)(2)	$250-750 and/or suspension	No
	(d)(3)	$250-750 and/or suspension	No
	(d)(4)	$500-1500 and/or suspension	Yes
§5-05	(a)	$500-1000	Yes
	(b)	$100-500	Yes
	(c)	$100-750	No
	(d)	$100-750	Yes
	(e)	$250-2000	Yes
	(f)	$100-1000	Yes

	(g)	$250-2000	Yes
§5-06	(a)	$500-2000	Yes
	(b)	$250-750	Yes
	(c)	$250-1000	Yes
	(d)	$1000-2500 (1), (2) $100-500 (3), (4)	Yes
	(e)(1)	$100-750	Yes
	(e)(2)	$500-2000	No
	(f)	$100-2500 and/or suspension or revocation	Yes
	(g)	$400-2000 and/or suspension	Yes
	(h)	$500-1000	Yes
	(i)(1)	$500-2000	Yes
	(i)(2)	$1000-2500 and/or suspension or revocation	Yes
§5-07	(a)	$2000 and/or suspension or revocation	Yes
	(b)	$500-1000 and/or suspension or revocation	Yes
	(c)	$500-1000	Yes
	(d)	$1000-2500	Yes
§5-07	(e)	$2000-5000 and/or suspension or revocation	Yes
	(f)	$2500 and suspension	Yes
	(g)	$2500 and suspension	Yes

Violation of any of these rules may also lead to revocation or suspension of a taxicab broker's license.

Any discretionary suspension would be for a minimum of fifteen days.

HISTORICAL NOTE

Section amended City Record Dec. 18, 1992 eff. Jan. 17, 1993.

Section in original publication July 1, 1991.

Penalty column heading amended City Record Nov. 2, 2006 §10, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

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35 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-01 Definitions.

Accessible vehicle. An accessible vehicle is a wheelchair accessible vehicle that is authorized by the Commission to transport passengers by prearrangement and for-hire and that meets the specifications and requirements for accessible vehicles pursuant to the Americans with Disabilities Act of 1990, as amended, and regulations promulgated pursuant thereto.

Affiliated driver. An affiliated driver is a person who drives a for-hire affiliated vehicle and who is required to be licensed by the Commission.

Affiliated vehicle. An affiliated vehicle is a for-hire vehicle other than a black car or a luxury limousine which a base station is authorized by the Commission to dispatch.

Base. A base is a base station, a black car base, or a luxury limousine base.

Base license. A base license is a license issued by the Commission for operation of a base.

Base owner. A base owner is an individual, partnership or corporation licensed by the Commission to operate a base.

Base station. A base station is a central facility which manages, organizes or dispatches affiliated vehicles licensed under Chapter 5 of Title 19 of the Administrative Code, not including luxury limousines or black cars.

Base station owner. A base station owner is any individual, partnership or corporation licensed by the Commission

to own and operate a base station.

Black car. A black car is a for-hire vehicle dispatched from a central facility whose owner holds a franchise from the corporation or other business entity which operates such central facility, or who is a member of a cooperative that operates such central facility, where such central facility has certified to the satisfaction of the Commission that more than ninety percent of the central facility's for-hire business is on a payment basis other than direct cash payment by a passenger.

Black car base. A black car base is a central facility which operates a two-way radio or other communications system used for dispatching or conveying information to drivers of black cars.

Chairperson. The Chairperson is the chairperson of the Commission, or his or her designee.

Chauffeur's license. A chauffeur's license is a valid chauffeur's license of the State of New York or a valid license of similar class from another state of which the licensee is a resident.

Clean air for-hire vehicle. A clean air for-hire vehicle is a for-hire vehicle licensed by the Commission that receives an air pollution score of 9.0 or higher from the United States Environmental Protection Agency or its successor agency and is estimated to emit 6.4 tons or less of equivalent carbon dioxide per year by the United States Department of Energy or its successor agency; provided that such vehicle is powered by the fuel for which such vehicle meets the above-specified standards.

Commission. Commission means the New York City Taxi and Limousine Com- mission.

Decal. A decal is a sticker issued by the Commission evidencing licensing of a for-hire vehicle.

Dispatch. A dispatch is a request for a driver by a base to provide transportation to a passenger who has previously arranged for such transportation with the base.

Driver. A driver is a person who drives a for-hire vehicle and who is required to be licensed by the Commission.

For-hire vehicle. A for-hire vehicle is a motor vehicle carrying passengers for hire in the City, with a seating capacity of twenty passengers or less, excluding the driver, with three (3) or more doors, other than a taxicab, coach, wheelchair accessible van, commuter van or an authorized bus operating pursuant to applicable provisions of law, and not permitted to accept street hails from prospective passengers in the street and required to be licensed by the Commission.

For-hire vehicle driver's license. A for-hire vehicle driver's license is a license issued by the Commission to persons who meet Commission qualifications as for-hire vehicle drivers.

For-hire vehicle permit. A for-hire vehicle permit is a permit issued by the Commission to a for-hire vehicle or base owner to allow a vehicle affiliated with a base to be dispatched by said base.

Issuing jurisdiction. An issuing jurisdiction is a county within New York State contiguous to the City of New York that requires issuance of a license, permit, registration, certification or other approval for a vehicle to perform the pre-arranged pick up or drop off of one or more passengers for compensation in such jurisdiction.

Issuing jurisdiction driver's license. An issuing jurisdiction driver's license shall mean a license, permit, registration, certification or other approval issued by an issuing jurisdiction to operate a vehicle for transportation for hire by pre-arrangement.

Issuing jurisdiction vehicle license. An issuing jurisdiction vehicle license shall mean a license, permit, registration, certification or other approval issued by an issuing jurisdiction to the owner of a vehicle used to provide

transportation for hire by pre-arrangement.

Line work. Line work is a type of pre-arranged service provided pursuant to a contract with a black car base in which the dispatch and passenger assignment are completed at the point of pick up by an employee or contractor of either the black car base or the contracting party.

Livery. Livery means a for-hire vehicle designed to carry fewer than six passengers, excluding the driver, which charges for service on the basis of flat rate, time, mileage, or zones.

Luxury limousine. A luxury limousine is a for-hire vehicle with a seating capacity of twenty passengers or less, excluding the driver, which is dispatched by its base from a central facility which has certified to the satisfaction of the Commission that more than ninety percent of its for-hire business is on a payment basis other than direct cash payment by a passenger, and whose passengers are charged on the basis of garage to garage service and on a flat rate basis or per unit of time or mileage, for which there is maintained personal injury insurance coverage of no less than five hundred thousand dollars per accident where one person is injured and one million dollars per accident for all persons injured in that same accident if said vehicle has a seating capacity of fewer than nine passengers, and which meets the minimum liability insurance requirements set forth in these rules if the vehicle has a seating capacity of ten or more passengers.

Luxury limousine base. A luxury limousine base is a central facility which operates a two-way radio or other communications system used for dispatching or conveying information to drivers of luxury limousines.

Mailing address. Mailing address means the address designated for the mailing of all notices and correspondence from the Commission and for service of summonses. In the case of the base, it shall be the base address. In the case of the driver, it shall be the home address of the driver.

Passenger. A passenger is a person who has engaged a for-hire vehicle for the purpose of being transported to a destination, or a person who is awaiting the arrival of a dispatched for-hire vehicle.

Penalty point. A penalty point is a non-monetary penalty assessed against either a base owner or the owner of a for-hire vehicle upon conviction for violation of certain provisions of this chapter.

Person with a disability. A person with a disability is an individual with a physical or mental impairment or incapacity, including any person who uses a wheelchair, three-wheel scooter, crutches, other mobility aid or a service animal, but who can transfer from such a mobility aid to a for-hire vehicle with or without reasonable assistance.

Portable or hands-free electronic device. A "portable or hands-free electronic device" is any electronic device able to:

1. make a wireless telephone call

2. send or receive a text message

3. allow its user to speak on the telephone hands-free or operate a device by voice command, even when otherwise allowed by New York State law

4. act as a personal assistant (PDA)

5. send and or receive data from the internet or from a wireless network

6. act as a laptop computer or portable computer

7. receive or send pages

8. allow two-way communications between different people or parties

9. play electronic games

10. play music or video; or

11. make or display images; or

12. any combination of the above

This definition is to be liberally construed in light of its purpose to minimize the distraction of drivers, and in recognition of the rapid development of electronic technologies and proliferation of electronic devices that may be made available in the future that similarly transfer digital images, sounds or messages.

"Portable or hands-free electronic device" does not include: (1) any device the use of which while driving is specifically authorized by TLC rules, or (2) the use of a global positioning navigation system ("GPS") which uses voice functions to convey directions, so long as the driver is not inputting data unless legally standing or parked and the GPS is not capable of being used as a cell phone or other portable or hands-free electronic device.

Qualified jurisdiction. A qualified jurisdiction is an issuing jurisdiction which meets the requirements for reciprocity set forth in §498 of the New York State Vehicle and Traffic Law.

Rooflight. Rooflight means equipment attached to the roof of a vehicle, or extending above the roofline of a vehicle, for the purpose of displaying any information. In any instance in which Commission rules permit a rooflight, the permitted rooflight shall be of a one-piece solid translucent material; it shall not approximate the shape or appearance of a taxi rooflight; it may bear only the name of the base with which the vehicle is affiliated, alone or with either a telephone number or a car number; and the name shall not include the words "hack," "taxi," "taxicab," "cab" or "coach."

Seating Capacity. Seating capacity shall include any plain view location which is capable of accommodating a normal adult, is part of an overall seat configuration and design and is likely to be used as a seating position while the vehicle is in motion. For the purpose of determining "seating capacity", the definition of "designated seating position" contained in the United States Department of Transportation Regulations as set forth in the Code of Federal Regulations, as may be amended from time to time, is hereby incorporated by reference.

Service animal. A service animal is a guide dog, signal dog or any other animal trained specifically to work or to perform tasks for a person with a disability, including, but not limited to, guiding individuals with visual impairments, alerting individuals with hearing impairments to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or retrieving dropped items.

Sponsor. Sponsor is a base owner who is licensed by the Commission and has entered into an agreement with a prospective driver, who, if licensed by the Commission, will be affiliated with said base for a stated period of time.

Vehicle owner. A vehicle owner is an individual, partnership or corporation in whose name a vehicle is titled. For purposes of these rules, the term shall also apply to the lessee of the vehicle from the titled owner. Service shall be deemed proper service on the vehicle owner if sent to the registrant or the lessee of the vehicle.

Weapon. A weapon is any firearm (as defined in the New York State Penal Law) for which a license has not been issued as provided in the New York State Penal Law and the Administrative Code of the City of New York, electronic dartgun, gravity knife, switchblade knife, canesword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sandstick, slingshot, pilum ballistic knife, sand bag, sand club, wrist brace type slingshot, shirken, kung fu star, dagger, dangerous knife, dirk, razor, stiletto, imitation pistol or any other instrument or thing whether real or simulated and capable of

inflicting or threatening bodily harm, including but not limited to any other weapons, the possession of which is prohibited pursuant to the New York State Penal Law.

Wheelchair accessible livery. A wheelchair accessible livery shall mean a livery which meets the requirements of section 6-28(a) of this chapter and the owner of which vehicle has opted to participate in the dispatch program as set forth in chapter 16 of this title.

Wheelchair accessible vehicle. A wheelchair accessible vehicle is a for-hire vehicle which is designed for the purpose of transporting persons in wheelchairs or containing any physical device or alteration designed to permit access to and enable the transportation of persons in wheelchairs.

HISTORICAL NOTE

Section amended City Record July 5, 2002 eff. Aug. 4, 2002. Note: amendment inadvertantly

omitted definition of Commission. [See T35 §6-11 Note 1]

Section in original publication July 1, 1991.

Accessible vehicle added City Record May 23, 2007 §6, eff. June 22, 2007. [See T35 §1-35 Note 1]

Affiliated vehicle definition amended City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Base added City Record June 2, 2009 §1, eff. July 2, 2009. [See T35 §6-12 Note 4]

Base definition deleted City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Base license added City Record June 2, 2009 §1, eff. July 2, 2009. [See T35 §6-12 Note 4]

Base owner added City Record June 2, 2009 §1, eff. July 2, 2009. [See T35 §6-12 Note 4]

Base station definition added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Base station owner definition amended City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35

§6-04 Note 3]

Black car definition added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Black car base definition added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04

Note 3]

Chairperson added City Record June 2, 2009 §1, eff. July 2, 2009. [See T35 §6-12 Note 4]

Clean air for-hire vehicle added City Record May 23, 2007 §6, eff. June 22, 2007. [See T35 §1-35 Note 1]

Dispatch definition amended City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Fore-hire vehicle driver's license amended City Record June 2, 2009 §2, eff. July 2, 2009. [See T35 §6-12 Note 4]

For-hire vehicle permit City Record June 2, 2009 §2, eff. July 2, 2009. [See T35 §6-12 Note 4]

Handicapped person definition deleted City Record Apr. 29, 1997 eff. June 1, 1997. [See T35

§6-06 Note 1]

Issuing jurisdiction added City Record Nov. 22, 2006 §2, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Issuing jurisdiction driver's license added City Record Nov. 22, 2006 §2, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Issuing jurisdiction vehicle license added City Record Nov. 22, 2006 §2, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Line work added City Record May 23, 2008 §1, eff. June 22, 2008. [See T35 §6-09 Note 1]

Luxury limousine definition amended City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1] (Note, this amendment failed to pick-up the amend- ment made by City Record Sept. 27, 1996 eff. Oct. 30, 1996. Both amendments are included here) [See T35 §6-04 Note 3]

Luxury limousine base amended City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04

Note 3]

Penalty point added City Record June 2, 2009 §1, eff. July 2, 2009. [See T35 §6-12 Note 4]

Person with a disability definition amended City Record July 8, 1997 §15, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Person with a disability definition added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35

§6-06 Note 1]

Portable or hands-free electronic device added City Record Dec. 30, 2009 §8, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Qualified jurisdiction added City Record Nov. 22, 2006 §2, eff. Dec. 22, 2006. [See T35 §6-26

Note 1]

Rooflight definition amended City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Service animal definition added City Record July 8, 1997 §15, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Weapon definition amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-25 Note 2]

Wheelchair accessible livery added City Record Nov. 23, 2007 §8, eff. Dec. 23, 2007. [See T35

-87 Note 1]

Wheelchair accessible vehicle definition added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Base station owner was found to have operated a commuter van service without a license. The administrative law judge rejected owner's argument that the vehicle, a limousine with a seating capacity of ten, did not fit within the definition of either a luxury limousine (which is defined in section 6-01(a) as a for-hire vehicle designed to carry fewer

than nine passengers) or a commuter van (which is defined in section 9-01 as a for-hire motor vehicle having a seating capacity of at least nine passengers but not more than twenty passengers). The administrative law judge ruled that seating capacity, not physical shape of the vehicle, is the determinative factor. **Taxi and Limousine Comm'n v. Absolute Class Limousine, Inc.,** OATH Index No. 995/98 (Apr. 22, 1998).

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35 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-02 Terms of Licenses.

(a) The term of every driver and vehicle owner license issued by the Taxi and Limousine Commission under the For-Hire Vehicle Rules shall be as follows:

(1) A license issued to a new applicant for a for-hire vehicle driver's license shall expire one year subsequent to the date the license was issued as provided in §6-14.

(2)(A) A license issued to a renewing applicant for a for-hire vehicle driver's license shall expire two years from the date on which the previous license expired. The Commission may, in its discretion, extend the expiration date of such license by up to an additional thirty-one days.

(B) The holder of a renewal license under subparagraph (a)(2)(A) of this paragraph who is in the second year of such license and who has completed the drug test required by §6-16(v)(1) of this chapter for licensees in the first year of such license, may, upon written request to the Chairperson, advance the expiration date of his or her license to any date prior to the scheduled expiration of such license. One such request may be made during the term of such license. The request must be made on a form to be prescribed by the Chairperson or his or her designee and must be submitted in accordance with instructions on that form.

(C) The holder of a license seeking to renew such license after advancing the expiration date thereof hereunder must comply with all requirements for renewal applicants, including with the requirements imposed by §§6-02 and 6-16 of this chapter; notwithstanding the provisions of §6-16(v) of this chapter, the drug test provided for therein shall be performed no sooner than thirty (30) days prior to, and in any event, no later than, such advanced expiration date. For

purposes of §6-16(v) of this chapter, a licensee who has advanced his or her expiration date shall be treated as a licensee in the second year of a two-year license.

(D)(i) Notwithstanding the provisions of §6-02(a)(4) of this chapter, the holder of a renewal license under subparagraph (a)(2)(A) of this paragraph that expires between March 16, 2006, and June 23, 2006, inclusive, may request an extension of the time to submit a license renewal application on the ground that the licensee was unable to submit to license renewal drug testing as required by §6-16(v)(1) of this chapter due to the licensee's absence from the New York City area during the entire time provided by that section for submission to such drug testing.

(ii) The request for an extension of time to submit a license renewal application shall be made in writing to the Chairperson or his or her designee and shall include documentation demonstrating that the holder of the license was absent from the New York City area during the entire time provided by §6-16(v)(1) of this chapter for submission to drug testing for the renewal of such license, and was therefore not reasonably able to submit a license renewal application before the expiration of such license.

(iii) Any such request for an extension of time must be received by the Chairperson or his or her designee no later than September 15, 2006. If the Chairperson or his or her designee grants the request, the licensee's time to submit an application for renewal of his or her license shall be extended to six months after the expiration of his or her license.

(iv) A license renewal application submitted by a licensee granted such an extension must comply with all requirements for renewal applications, including payment of the late-filing fee provided by §6-03(e) of this chapter, except that the drug test required by §6-16(v) of this chapter shall be taken no sooner than thirty (30) days prior to the completion of such license renewal application.

(v) The expiration of a license shall not be affected by the licensee's eligibility for an extension, or request for an extension, of the time to submit a license renewal application under this paragraph, and such license shall remain expired until a renewal license is issued under item (iv) of this subparagraph.

(3)(A) A license issued to a new applicant for a for-hire vehicle license shall expire two years subsequent to the date the license was issued. A license issued to a renewing applicant for a for-hire vehicle license shall expire two years subsequent to the date on which the previous license expired. The Commission may, in its discretion, extend the expiration date of such license by up to an additional thirty-one days.

(B) A for-hire vehicle permit shall terminate prior to the expiration date upon revocation or surrender of the permit, or surrender of the vehicle's license plates to the applicable state department of motor vehicles, and such permit shall not thereafter be renewed or reinstated.

(4) (A) Prior to July 1, 2009, a renewing applicant must file a completed application on or before the expiration date of the license.

(B) (i) On and after July 1, 2009, a renewing applicant must file a completed application for renewal of a for-hire vehicle permit not less than thirty (30) days before the expiration date of the permit.

(ii) The Commission will permit a renewing applicant to file a completed application at any time up until the expiration date of the for-hire vehicle permit upon payment of a $25 late fee.

(iii) No renewal application will be accepted after the expiration date of the for-hire vehicle permit and such permit will expire and not be renewed.

(5) A person who engages in a licensed activity after the expiration date of a license and before the issuance of a renewal license is engaged in unlicensed activity and may be subject to penalties pursuant to applicable statutes and regulations. Nothing contained herein shall prohibit the Commission from taking any action pursuant to §6-14(b) with

respect to conduct which occurred during the probationary period of a new applicant's driver's license, either prior or subsequent to the expiration of the probationary period.

(6) All new applicants must attend and complete a defensive driving course from a school, facility or agency authorized by the Commission and certified by the New York State Department of Motor Vehicles. The course must have been completed within six (6) months prior to the date of application.

(7) All renewal applicants are required to attend and complete an authorized defensive driving course as described in subsection (5). A renewal applicant who submits a Certificate of Completion for an authorized defensive driving course completed less than three (3) years from the date of the renewal application shall be exempt from this requirement.

(b) The term of every base license issued by the Taxi and Limousine Commission under the For-Hire Vehicle Rules shall be as follows:

(1) A license issued to a new applicant applying for a license on or after July 1, 2009 shall expire three years subsequent to the last day of the month in which the new license is issued. (For example, a new applicant files on October 10, 2009 and TLC issues a license on March 24, 2010. That license would expire on March 31, 2013.)

(2) A license issued to a renewing applicant with a license expiring on or after July 1, 2009 shall expire three years from the date on which the previous license expired. (For example, a renewing applicant whose license expired on July 31, 2009 would receive a license expiring on July 31, 2012. An applicant who did not submit a completed renewal application until July 31, 2009 would still receive a license that expired on July 31, 2012, and may be subject to penalties pursuant to paragraphs (5) and (6) below.)

(3) Licenses issued prior to July 1, 2009 shall expire (A) two years from the date on which the previous license expired if a renewal license or (B) two years subsequent to the last day of the month in which the license was issued, if a new license.

(4) A renewing applicant for a base license must file a completed application by no later than sixty days before the expiration date of the license. A renewing applicant must pay a late fee of $25 with any late application filed later than 60 days before the expiration date of the license. No renewing applicant shall be permitted to file a renewal application after the date of expiration of its license. The license of a base which fails to file a completed renewal application prior to the expiration date of the base's license will expire and not be renewed.

(5) A person who engages in a licensed activity after the expiration date of a license and before the issuance of a renewal license is engaged in unlicensed activity and may be subject to penalties pursuant to applicable statutes and regulations, except as provided in paragraph (6).

(6) If timely application for renewal of the license has been made pursuant to Rule 6-02(b)(4), the Chairperson shall extend the effectiveness of the license pending the review of the renewal application. If a renewal license is subsequently issued in such case, its term shall expire as provided in paragraphs (2) and (3) above. If a renewal application is denied, the applicant shall not be considered to have been unlicensed prior to the date of denial of the renewal application.

(c) The Commission may deny an application for a license or renewal of a license or, after notice and hearing, revoke or suspend any license issued, if it finds that an applicant has made a material misstatement or misrepresentation on an application for such a license or the renewal thereof.

HISTORICAL NOTE

Section amended City Record Mar. 27, 1997 eff. May 1, 1997. [See Note 1]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Mar. 1, 1999 §2, eff. Mar. 31, 1999. [See T35 §2-10 Note 1]

Subd. (a) par (1) amended City Record Nov. 2, 2006 §11, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (a) par (2) amended City Record May 26, 2006 §4, eff. June 25, 2006. [See T35 §2-03 Note 3]

Subd. (a) par (2) amended City Record Aug. 29, 1997 eff. Oct. 1, 1997. [See T35 §6-20 Note 1]

Subd. (a) par (3) amended City Record June 2, 2009 §3, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (a) par (4) amended City Record June 2, 2009 §3, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (a) par (6), (7) added (as pars (5), (6)) City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 2]

Subd. (b) amended City Record June 2, 2009 §4, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (c) amended City Record Aug. 29, 1997 §4, eff. Sept. 28, 1997. [See T35 §6-20 Note 1]

Subd. (c) added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Mar. 27, 1997:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city, under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-511 of such Code, authorizing TLC to require base licenses "upon such terms as it deems advisable."

The promulgated rules establish two-year licenses for base stations, black car bases and luxury limousine bases. Local Law 51 of 1996 established a detailed review process for base station licenses that would be more appropriate to a two-year license. An annual license renewal requirement would be burdensome on both the applicant and the agency. For simplicity, a term is established for other base licenses that is equal to the term for base station licenses. Provision is made to continue the effectiveness of licenses during the renewal application review process, if the application is timely. The rule requires that an application for renewal must be made no less than sixty days prior to expiration of the license, to be considered timely. This is intended to establish adequate time for an orderly review process as required by local law, reducing the need to extend the effectiveness of licenses during the renewal application review process.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-03 License and Administrative Fees.

(a) Pursuant to section 19-511 of the Administrative Code of the City of New York, the license fee for the operation of a base station is five hundred dollars ($500) annually. The license fee for the operation of a black car base is five hundred dollars ($500) annually. The license fee for the operation of a luxury limousine base is five hundred dollars ($500) annually.

(b) Pursuant to §19-504(b) of the Administrative Code of the City of New York, the license fee for each for-hire vehicle shall be two hundred seventy-five dollars ($275) annually.

(c) Pursuant to §19-505(j) of the Administrative Code of the City of New York, the fee for a for-hire vehicle driver's license shall be sixty dollars ($60) annually.

(d) The fee for an original license or a renewal thereof shall be paid at the time of filing the application and shall not be refunded in the event of a disapproval of the ap- plication.

(e) There shall be an additional fee of twenty-five dollars ($25) for late filing of a license renewal application where such filing is permitted by the Commission.

(f) An additional fee of twenty-five dollars ($25) shall be paid for each license issued to replace a lost or mutilated license.

(g) Pursuant to §19-504(h) of the Administrative Code of the City of New York, a vehicle licensee may change the

base with which it is affiliated, subject to the approval of the Commission and upon payment of a fee of twenty-five dollars ($25).

(h) Pursuant to §19-504(k) of the Administrative Code of the City of New York, the fee for replacement of license plates issued by the New York State Department of Motor Vehicles shall be twenty-five dollars ($25) per vehicle.

HISTORICAL NOTE

Section heading amended City Record Apr. 29, 1997 eff. June 1, 1997.

Section renumbered (formerly §6-12) City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Section renumbered (formerly §6-11) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (h) added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

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35 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-04 License to Operate a Base Station, Black Car Base or Luxury Limousine Base.

(a) (i) No person shall operate a base without a current and valid license from the Commission, which license is not suspended, revoked or expired. In addition to any penalties specified by this chapter, any person operating a base without a current and valid license, including a license which is suspended, revoked or expired shall be subject to penalties applicable to unlicensed operation. Subdivisions (b) through (d) and (f) and (g) and (j) of this section shall apply only to applicants for a base station license or renewal thereof, or to applicants for a change in base station location pursuant to §6-06(d) of this Chapter, except where otherwise noted.

(ii) For purposes of this subdivision (a), no suspension of a base license following a hearing under chapter 8 of this title shall be effective until notice of the suspension is given by the Commission. Such suspension shall be effective, for purposes of this subdivision (a), (A) ten days after mailing if service is made by certified mail, or (B) upon delivery if service is made by hand delivery. Where a base license is suspended for failure to pay a fine, the suspension shall be effective ten days after service of notice of the suspension, regardless of the method of service of the notice.

(b) (1) An applicant for a license to operate a base station shall demonstrate to the satisfaction of the Commission that the operator of the base station shall provide and utilize lawful off-street facilities for the parking and storage of the licensed for-hire vehicles that are to be dispatched from the base station equal to not less than one parking space for every two such vehicles or fraction thereof. The maximum permissible distance between the base station and such off-street parking facilities shall be one and one-half miles. The off-street parking facilities shall be in a location zoned for the operation of a parking facility.

(2) A license for a base station which was valid on September 18, 1996 shall only be renewed upon the condition

that within two years of such renewal the licensee shall provide off-street parking facilities as required by paragraph (1) of this subdivision. (Example: Base Station ABC license expires on May 31, 1997. Base Station ABC must have off-street parking by May 31, 1999 in order to renew at that time.)

(3) Notwithstanding the provisions of paragraphs (1) and (2), the Chairperson may reduce the number of required off-street parking spaces or may waive such requirement in its entirety upon a determination that sufficient lawful off-street parking facilities do not exist within the maximum permissible distance from the base station or an applicant demonstrates to the satisfaction of the Chairperson that complying with the off-street parking requirements set forth in paragraphs (1) and (2) would impose an economic hardship upon the applicant; except that the Chairperson shall not reduce or waive the off-street parking requirements where it has been determined in an administrative proceeding that the applicant, or a predecessor in interest, has violated any provision of section 6-05 of the rules of the Commission or any successor thereto, as such may from time to time be amended. A determination to waive or reduce the off-street parking requirements shall be made in writing, shall contain a detailed statement of the reasons why such determination was made and shall be made a part of the Commission's determination to approve an application for a base station license.

(4) No base station license shall be renewed where it has been determined after an administrative proceeding that the applicant has failed to comply with the off-street parking requirements set forth in paragraph (1) of this section or as they may have been modified pursuant to paragraph (3) of this section.

(c) (1) An applicant for a license to operate a base station shall demonstrate to the satisfaction of the Commission that he or she is fit to operate a base station. The Commission shall consider the ability of the applicant to adequately manage the base station, the applicant's financial stability and whether the applicant operates or previously operated a licensed base station and the manner in which any such base station was operated. The Commission shall also consider any relevant information maintained in the records of the Department of Motor Vehicles or the Commission.

(2) No license for a new base station shall be issued for a period of three years subsequent to a determination in a judicial or administrative proceeding that the applicant or any officer, shareholder, director or partner of the applicant operated a base station that had not been licensed by the Commission.

(3) An applicant for a license to operate a base station, black car base or luxury limousine base shall be fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services. The criminal history shall be reviewed in a manner consistent with Article 23-A of the New York State Correction Law. The applicant shall pay any processing fee required by the State. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a partnership; the officers, principals, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation. If subsequent to the fingerprinting of the applicant or during the term of the license, one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this subdivision is changed or added, such applicant shall, within five days of such change or addition, file with the Commission an application for an approval of the change or addition of partners, officers, principals or stockholders on such forms as are prescribed by the Commission, and such new partners, officers principals or stockholders shall be fingerprinted in accordance with this subdivision. Alternatively, an applicant who plans to change or add one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this subdivision may require that such fingerprinting be done prior to the change or addition of such new partner, officer, principal or stockholder.

(d) (1) In reviewing an application for a license to operate a base station, the Chairperson shall examine and consider the adequacy of existing mass transit and mass transportation facilities to meet the transportation needs of the public, and any adverse impact that the proposed operation may have on those existing services. The Chairperson shall also consider the extent and quality of service provided by existing lawfully operating for-hire vehicles and taxicabs.

(2) In its review of an application for a license to operate a new base station and in its review of an application to

renew a base station license the Commission shall consider the possible adverse effects of such base station on the quality of life in the vicinity of the base station including, but not limited to, traffic congestion, sidewalk congestion and noise. In its review of an application to renew a base station license the Commission shall consider whether a determination has been made after an administrative proceeding that the operator has violated any applicable rule of the Commission.

(e) Prior to the issuance of a license for a base or the renewal of a valid base license, the applicant shall provide to the Commission a bond in the amount of five thousand dollars with one or more sureties to be approved by the Commission. Such bond shall be for the benefit of New York City and shall be conditioned upon the licensee complying with the requirement that the licensee dispatch only vehicles which are currently licensed by the Commission and which have a current New York City commercial use motor vehicle tax stamp and upon the payment by the licensee of all civil penalties imposed pursuant to any provision of this chapter. The bond must be maintained by the base owner for the term of the license. The bond shall further permit the Commission to draw upon the bond to satisfy any penalties incurred by the base for any violation of this chapter which have not been paid following the imposition of the penalty and the completion of any appeal. The Chairperson will give the base owner 30 days' notice prior to drawing upon the bond to satisfy any penalty. In the event that the Commission draws on the bond, the base owner shall be assessed one penalty point.

(f) Upon receiving an application for the issuance of a license for a new base station or for the renewal of a license for a base station pursuant to this section, the Commission shall, within five business days, submit a copy of such application to the City Council and to the district office of the City Council member and the community board for the area in which the base station is or would be located.

(g) (1) The determination by the Commission to approve an application for a license to operate a new base station or for the renewal of a license to operate a base station shall be made in writing and shall be accompanied by copies of the data, information and other materials relied upon by the Commission in making that determination. Such determination shall be sent to the City Council and to the district office of the Council member within whose district that base station is or would be located within five business days of such determination being made.

(2) Any determination by the Commission to approve an application for a license to operate a new base station or to renew a license to operate a base station shall be subject to review by the City Council, in accordance with section 19-511.1 of the Administrative Code of the City of New York.

(h)(1) Every black car base and luxury limousine base that is a "central dispatch facility", as said term is defined in New York Executive Law §160-cc, shall, as a condition of obtaining a license or of continued licensure, become a member of the New York Black Car Operators' Injury Compensation Fund, Inc. ("Fund"), and shall register with the Department of State as a Member of the Fund. This provision shall not apply to a black car or luxury limousine base that owns fifty (50%) percent or more of the vehicles it dispatches.

(2) Each base which is a central dispatch facility under New York State Executive Law §160-cc shall furnish to the Commission a copy of its certificate of registration with the Fund. Every such black car base and luxury limousine base shall, as a condition of licensure, pay to the Department of State all fees due to said Department as required pursuant to State law.

(3) Every black car base and luxury limousine base subject to the provisions of the Fund shall add the surcharge required by State law and established by the Fund, to each invoice and billing for services, and to each credit payment of services performed by a vehicle affiliated with the base where the call originated from a centralized dispatch facility located within the State of New York, or wherein the trip originated from a point within the State of New York.

(4) In accordance with New York State Executive Law §160-jj, every black car base and luxury limousine base shall remit to the Fund all surcharges due and owing pursuant to subdivision (3) by no later than the fifteenth day of the

month following the month in which the surcharge is collected by the black car base or luxury limousine base.

(5) Every black car base and luxury limousine base shall comply with all applicable provisions of law governing the New York Black Car Operators' Injury Compensation Fund, Inc., and all rules and regulations promulgated thereunder.

(i) Every base station shall comply with all provisions of the New York State Workers' Compensation Law and rules and regulations promulgated thereunder with respect to the provision of coverage and benefits to eligible persons.

(j) Each applicant for a base station license or for the renewal of a base station license or for a change of ownership of a base station license must submit a business plan for the base station with such application. Such business plan must, at a minimum, set forth:

(1) The business name, address, telephone number, email address and 24 hour contact number for the base station;

(2) The base station's methods and practices for ensuring compliance with the rules of this chapter by itself, its employees, owners of vehicles affiliated with the base station, and drivers operating such vehicles;

(3) Such base station's plans to operate within the scope of, and in compliance with, the Commission's rules and how the base station intends to prevent recurrence of violations of the rules of this chapter incurred during the ending licensing term and the term preceding the ending term; (4) Policies and procedures to ensure that affiliated vehicles will make use of the base station's off-street parking location, the address of the off-street parking location and such location's distance from the base station, and policies and procedures to ensure that affiliated vehicles not using the off-street parking location shall comply with all applicable traffic and parking regulations;

(5) The number of vehicles affiliated with the base station (or, in the case of an applicant for a new license, the number of vehicles anticipated to be affiliated with the base station upon licensure) and the average number of vehicles anticipated to be affiliated during the term of the license;

(6) The number of requests for transportation received and the number of trips dispatched on a daily basis (or, in the case of an applicant for a new license, the number of requests anticipated to be received and the number of trips anticipated to be dispatched), and the average number of trips anticipated to be dispatched during the term of licensure;

(7) A description of how calls will be answered, rides dispatched, and complaints handled;

(8) Hours of operation of the base and office hours;

(9) A fare schedule in a form and format prescribed by the Chairperson;

(10) A plan for assuring that affiliated vehicles and the drivers of such vehicles provide transportation only through pre-arrangement made with the base station and do not accept passengers by street hail or other than by dispatch by the base station; and

(11) Such other matters as may be required by the Chairperson or the Commission as a condition of renewal of a base station license in light of the specifics of the base station's application and operating history.

HISTORICAL NOTE

Section renumbered (formerly §6-03) City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06

Note 1]

Section added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See Note 3]

Subd. (a) amended City Record June 2, 2009 §5, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (a) amended City Record Sept. 20, 1999 §1, eff. Oct. 20, 1999. [See Note 2]

Subd. (e) amended City Record June 2, 2009 §6, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subds. (h), (i) added City Record Jan. 31, 2000 §1, eff. Mar. 1, 2000, redesignated by Law Department per Charter §1045. [See Note 1]

Subd. (j) added City Record June 2, 2009 §7, eff. July 2, 2009. [See T35 §6-12 Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 30, 2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under §2303(b)(2) of such Charter, authorizing the TLC to promulgate rules and regulations relating to the standards and conditions of service; and under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter.

The rule amendments require all commuter van services, paratransit services, base stations, black car bases, and luxury limousine bases to comply with the applicable provisions of the New York State Workers' Compensation Law and other laws governing the provision of Workers' Compensation benefits for drivers affiliated with such licensees.

Chapter 49 of the Laws of 1999 was signed by the Governor into law on May 25, 1999 and became effective June 24, 1999. This Law amended the Workers' Compensation Law and added a new article of the Executive Law, to create the New York Black Car Operators' Injury Compensation Fund, Inc. ("Fund"). This Fund was created to provide a mechanism to secure Workers' Compensation benefits for owner-operators and designated drivers of vehicles affiliated with black car and luxury limousine bases. All black car and luxury limousine bases that either operate a centralized dispatch facility in New York State, or that dispatch vehicles for the acceptance of passengers within the State, are subject to this Law, unless the facility owns fifty (50%) percent or more of the vehicles it dispatches. The Executive Law mandates that all centralized black car and luxury limousine dispatch facilities located or doing business within the State of New York become members of the Fund. Section 160-hh(2) of the Executive Law further requires that each such centralized dispatch facility become a member of the Fund as a condition of receiving and retaining a local license.

The Law also requires that a surcharge, determined by the Fund, be added to all invoices and charges for covered transportation services. The surcharges collected must be remitted to the Fund by the fifteenth day of the month following the imposition of the charge. The Law provides a mechanism for the Local licensing authority to conduct hearings to adjudicate violations of the Law.

The maximum proposed fines for violations of the rules relating to participation in the Fund and compliance with all regulations are provided in the New York State Executive Law. Section 160-oo of the Executive Law provides for a fine in an amount not to exceed ten thousand dollars for any violation of the Law. If the violation is for a failure to remit surcharges to the Fund, a fine of up to five thousand dollars for each twenty days the payment is overdue, together with restitution and interest, is provided for. In addition, the Executive Law provides for discretionary revocation of the licensee's Fund membership. Since Fund membership is a requirement for licensure, such action would effectively revoke the license of any base required to become a member of the Fund. The minimum fine of twenty-five dollars for each day of violation is identical to the fine presently in effect with respect to the Taxicab Owners' rule requiring compliance with the Workers' Compensation Laws.

The purpose of the rules amendments is to ensure that black car and luxury limousine bases licensed by the TLC become members of the Fund, pay the required registration fees, charge the required surcharges, and remit the proceeds to the Fund.

For-hire vehicle base stations that do not meet the statutory definition of a Central Dispatch Facility, commuter van services, and paratransit services are not required to become a part of the Fund. However, under the proposed rule amendments, each licensee must nevertheless demonstrate that it is in compliance with all provisions of the Workers' Compensation Laws, either by providing coverage for their drivers and other eligible employees, or by demonstrating that they have no employees required to be covered under the Law. An amendment to the Rules is promulgated to require that each such licensee demonstrate that it is in compliance with the Law. The fine imposed is identical to the fine imposed for a violation of the Taxicab Owners' Rules with respect to the failure to comply with the Workers' Compensation Laws.

The purpose of this amendment is to ensure that all licensees of the Commission comply with State laws governing the provision of Workers' Compensation benefits for covered employees.

2. Statement of Basis and Purpose in City Record Sept. 20, 1999: The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under §2303(b) of such Charter, authorizing the TLC to promulgate rules relating to the standards and conditions of service; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules necessary to exercise authority conferred upon it by the Charter; and under §19-511 of such Code, setting forth requirements for the licensing of base stations by the Commission. The rule modifications set forth herein simplify the procedures for the change of location for licensed car service bases. The rules no longer provide that a change in the location of a licensed car service base requires the owner to file a new base application. Rather, the Commission will now review the application for the proposed base location change, utilizing the criteria for review of the proposed location as set forth in the Administrative Code §19-511. The base owner shall still be required to establish that the base meets the off-street parking requirements at the new location. Furthermore, the Commission will continue to review the need for additional transportation at the proposed location and perform an assessment of the impact of the base upon the quality of life at the proposed location. The purpose of the rule amendment is to streamline the review process for licensed bases seeking to change location, and to promote the more efficient utilization of Commission's resources. This change also enables the Commission to process requests for approval to relocate licensed bases more quickly, thereby reducing the negative impact the approval procedure has upon the operation of bases and their ability to provide adequate service to the public.

3. Statement of Basis and Purpose in City Record Sept. 27, 1996: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-502 of the Administrative Code of the City of New York, which defines terms used in the Administrative Code; under section 19-503 of such Code, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; under section 19-506(e) of such Code, which establishes mandatory penalties for unlicensed operation; under 19-511 of such Code, authorizing the licensing of base stations; under section 19-511.1 of such Code, requiring TLC to forward determinations of base station licenses to the City Council; and under section 19-518 of such Code, governing the transfer of base station licenses. This rulemaking, in part, implements the provisions of Local Law 51 of 1996, which go into effect on September 18, 1996. The new law requires TLC to consider a number of factors in the licensing of base stations, such as adequate parking, the availability of mass transit, and quality of life issues. TLC's approval of an application, including a license renewal application, is subject to City Council review. The newly adopted law also increases the penalties for unlicensed operation of a base station and of a for-hire vehicle to $200-$1,500 per violation. This rulemaking also addresses a proposal which is not set forth in the local law but was recommended by an industry

panel. This proposal prohibits the use of meters. For-hire vehicle fares shall be set by distance or the use of fare zones. The purpose of this rule is to reduce the incidence of trips which respond to street hails and are not pre-arranged, contrary to the requirements of local law.

35 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-05 Transfer of Base Station Licenses.

(a) (1) (A) Any base station license or ownership interest in the licensee may be transferred to a proposed transferee who has demonstrated to the satisfaction of the Commission the qualifications to assume the duties and obligations of a base station owner provided that either the transferor or transferee shall have filed a bond to cover all the outstanding tort liabilities of the transferor arising out of the operation of a base station and the for-hire vehicle owners by the transferor which is in excess of the amount covered by any bond or insurance policy in effect pursuant to the New York State Vehicle and Traffic Law, and all outstanding fines, penalties and other liabilities which the transferor owes to the Commission shall have been satisfied. An application for approval of a transfer of an interest in a base station license or base station owner must include a business plan meeting the requirements of section 6-04(j) of this chapter. All such transfers and any changes in corporate officers or directors must be approved by the Commission in order to be effective and no such transfer or change shall be effective until approved and the Chairperson has given notice of the approval to the licensee. Furthermore, no application to approve a transfer of a base station license or an interest in a base station license or an interest in a base station owner shall be complete, and no approval of such application shall be effective, until both the transferor and transferee have appeared in person as directed by the Chairperson to complete the transfer, with such appearance to be in person for a party who is an individual, or by a general partner, if the party to the transfer is a partnership, or by an officer and stockholders holding a majority of the stock of the party, if the party to the transfer is a corporation.

(B) A base license or ownership interest in a black car base or luxury limousine base may be transferred to a proposed transferee who has demonstrated to the satisfaction of the Chairperson the qualifications to assume the duties and obligations of a base owner provided that all outstanding fines, penalties and other liabilities which the transferor

owes to the Commission shall have been satisfied. All such transfers and any changes in corporate officers or directors must be approved by the Chairperson and no such transfer or change shall be effective until approved and the Chairperson has given notice of the approval to the licensee. Furthermore, no application to approve a transfer of any black car base or luxury limousine base license or an interest in such a base license or an interest in the owner of such a base shall be complete, and no approval of such application shall be effective, until both the transferor and transferee have appeared in person as directed by the Chairperson to complete the transfer, with such appearance to be in person for a party who is an individual, or by a general partner, if the party to the transfer is a partnership, or by an officer and stockholders holding a majority of the stock of the party, if the party to the transfer is a corporation.

(2) No voluntary transfer of a base station license may be made if a judgment in favor of the City of New York or any agency thereof or any state or federal agency has been docketed with the clerk of any county within the City of New York against the licensee and remains unsatisfied, except that a transfer may be permitted if an appeal is pending from an unsatisfied judgment and a bond is filed in an amount sufficient to satisfy the judgment. A transfer may also be permitted without filing a bond provided that all the judgment creditors of a licensee file written permission for such a transfer with the Commission or that the proceeds from the transfer are paid into court or held in escrow on terms and conditions approved by the Commission which will have the effect of protecting the rights of all parties who may have an interest therein.

(b) In reviewing a proposed base station license transfer or transfer of the ownership interest in the license, the Commission shall consider:

(1) the criminal history of the proposed transferee and of the transferee's officers, shareholders, directors and partners, if any, or the proposed officer or directors, in a manner consistent with Article 23-A of the New York State Correction Law.

(2) any relevant information maintained in the records of the Department of Motor Vehicles or the Commission.

(3) transferee's financial stability.

(c) A transfer shall not be approved if in the past two years, the proposed transferee or any officer, shareholder, director or partner of the proposed transferee, where appropriate, has been found to have violated any law or rule involving:

(1) assaultive behavior toward a passenger, official or member of the public in connection with any matter relating to a for-hire vehicle;

(2) conviction for giving or offering an unlawful gratuity to a public servant, as defined in section 10.00 of the New York State Penal Law;

(3) providing the Commission with false information; or

(4) three unexplained failures to respond to an official communication of the Commission or the Department of Investigation which was sent via certified mail, return receipt requested.

(d) The fee for the transfer of a base station license or ownership interest in the licensee shall be $500.

(e) The Commission shall revoke any base station license for nonuse in the event it shall find after a hearing that the base station has not been in operation for sixty consecutive days, provided that such failure to operate shall not have been caused by strike, riot, war, public catastrophe or other act beyond the control of the licensee. The Commission shall also revoke, after a hearing, any base license in the event that the base location is not occupied by the base. Where the Commission finds that a particular base station cannot be operated due to an act beyond the control of the licensee, a temporary base station license shall be issued to the same licensee for an alternative location, provided that all other

requirements for such license are met and provided further that the unexpired term of the original license is six months or more. Such temporary base station license shall be for a term not to exceed 60 days. During the 60 day period, the base owner must either file an application to change the base location or must return to operation at the original base location and notify the Chairperson of the return. The temporary base station license will not be extended unless within the 60 day period the base owner either (1) files an application to change the base location and the Commission has not completed its review of the application within the 60 day period or (2) demonstrates that good cause exists for a further extension because the base owner requires additional time to return the base to the original location.

HISTORICAL NOTE

Section renumbered (formerly §6-04) City Record Apr. 29, 1997 eff. June 1, 1997.

Section added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (a) par (1) amended City Record June 2, 2009 §8, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (e) amended City Record June 2, 2009 §9, eff. July 2, 2009. [See T35 §6-12 Note 4]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-06 Base License Requirements.

A base station owner, black car base owner and luxury limousine base owner shall be responsible for compliance with the following provisions and shall be liable for violations thereof:

(a) A licensed base owner must at all times:

(1) Have at least ten (10) affiliated vehicles on or after January 1, 1988; however, a base that was first licensed prior to January 1, 1988, shall have at least five (5) affiliated vehicles.

(2) Maintain a principal place of business in a commercially zoned area, from which affiliated vehicles and drivers may be dispatched;

(3) Provide safe and adequate storage at such principal place of business for all business records which are required to be kept;

(4) Maintain an operable telephone at the base; and

(5) Provide a mechanism for transmitting trip request information to affiliated drivers.

(6) Conspicuously display within the base the current schedule of rates charged by the base;

(7) Conspicuously display the base name, any trade, business or operating name, and the TLC license number on the front or office door of the base's premises.

(8) Maintain and have available for inspection at the base the evidence of compliance with off street parking requirements in the form required by section 6-04(b)(1) of this chapter.

(b) (1) A base owner shall not hold himself out for business to the public as a for-hire service, which term shall include, but not be limited to, "livery," "car service," or "limousine," without applying for and obtaining a license issued by the Commission for that activity.

(2) A base owner shall not hold himself out for business as a "taxi" or "taxicab" service or in any way use the word "taxi," "taxicab," "cab," "hack" or "coach" to describe his business.

(3) A base owner shall file with the Commission the name, including any trade, business, or operating name used in the operation of the base or in promotions or advertising, and address of the base from which for-hire vehicles affiliated with such base are dispatched. The Chairperson may reject any such trade, business or operating name if, in the judgment of the Chairperson, such name is substantially similar to the trade, business or operating name of another base, and the base owner may not use such name. A base may use only one trade, business or operating name in its operations, including in its public communications, advertising, promotional activities, and passenger solicitation activities although a base may add an additional word such as "premium" or "select" to its approved trade name to promote a different level of service if the base offers multiple levels of service.

(4) Any trade, business or operating name approved by the Chairperson for one base may not be used by any other base, and such name will not be approved for use by any other base, unless both bases seeking to use the same trade, business or operating name share identical ownership.

(5) A base owner shall file with the Chairperson all contact information made available to or offered to the public for purposes of pre-arranging transportation for hire, including telephone numbers, Web sites and email addresses. Such telephone numbers, Web sites, email addresses and other contact information and methods may be used only with the name approved pursuant to paragraph (3) of this subdivision.

(6) A base owner shall file with the Chairperson the base's hours of operations and shall notify the Chairperson of any change in such hours of operation.

(c) A base owner shall conspicuously state in all advertising, whether print, broadcast, electronic and internet advertising and in all handbills, fliers, Web sites or other promotional materials and on all business cards and receipts that the base is licensed by TLC and shall include the number of the TLC license issued to the base in all such materials.

(d) A base owner who seeks to change the address of a base must apply for approval of the new location by the Commission. The proposed location must comply with all of the requirements of §6-04, except that if there has been no change in the ownership of the base, the requirements of §6-04(c) and (e) may be waived by the Commission. A base owner who moves a base to any location without the prior approval of the Commission is operating as an unlicensed base, and is subject to the penalties of §6-04(a).

(e) A base owner shall not transfer or assign the base owner's license to another without the Commission's written approval.

(f) A base owner shall not dispatch a for-hire vehicle from any location other than that specified in the base license, except that a wheelchair accessible livery may be dispatched as provided in chapter 16 of this title.

(g)(1) A base owner shall maintain on file with the Commission a current telephone number (which must be connected to an answering machine or recording device), pager number, answering service telephone number or similar means of telephone contact, so that the owner may be reached by the Commission on a twenty-four hour basis.

(2) An owner must respond to any telephone or pager contact from the Commission within forty-eight hours, seven

days a week.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See Note 1]

Subd. (a) pars (6), (7), (8) added City Record June 2, 2009 §10, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (b) par (3) amended City Record June 2, 2009 §11, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (b) pars (4), (5), (6) added City Record June 2, 2009 §11, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (c) amended City Record June 2, 2009 §12, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (d) amended City Record Sept. 20, 1999 §2, eff. Oct. 20, 1999. [See T35 §6-04 Note 2]

Subd. (f) amended City Record Nov. 23, 2007 §9, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Subd. (g) added City Record Jan. 31, 2000 §3, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

DERIVATION

Section derived from former §6-05.

Section repealed City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Section renumbered (formerly §6-03), heading amended, City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 1]

Subd. (a) par (1) amended City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (a) par (4) amended City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (ee) added (as Subd. (cc)) City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Subd. (m) amended City Record July 8, 1997 §16, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (s) par (4) added City Record July 8, 1997 §17, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (t) par (1) numbered and amended City Record Mar. 27, 1997 eff. May 1, 1997. [See Note 2]

Subd. (t) par (2) added City Record Mar. 27, 1997 eff. May 1, 1997.

NOTE

1. Statement of Basis and Purpose in City Record Apr. 29, 1997:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under §2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and

regulations necessary to exercise the authority conferred upon it by the Charter.

The rule reorganizes the For-Hire Vehicle Rules, for purposes of simplification and clari- fication.

After receiving public comments regarding the rule proposal, the following changes have been made: Rule 6-06(a)(1), the option of posting a bond to satisfy the ten-vehicle requirement was eliminated; recognizing a receipt for a vehicle license for ninety days was eliminated; and the penalty for violation of Rule 6-11(a) was changed to reflect Local Law 51 of 1996.

The Commission has not adopted at this time the portions of the proposal requiring permanent exterior markings identifying for-hire vehicle bases and display of FHV drivers licenses in a credentials holder; such proposals are still under consideration.

2. Statement of Basis and Purpose in City Record Mar. 27, 1997: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter. The promulgated rules increase penalties for violation of several for-hire vehicle rules by base owners. Those rules concern key requirements of vehicle and driver licensing, vehicle inspection and responsibility for quality of life violations. The following requirements have increased penalties: Rule 6-05(f)(2) prohibits bases from dispatching vehicles which fail to comply with the marking requirements and licensing requirements of the TLC; Rule 6-05(n) requires base owners to comply with TLC directives; Rule 6-05(s)(2) prohibits base owners from dispatching unlicensed drivers; Rule 6-05(t)(2) requires base owners to verify on a regular basis that affiliated vehicles display current inspection stickers; and Rule 6-05(v)(2) requires base owners to ensure that base personnel and drivers do not double park, park on the sidewalk, or otherwise park, stop or stand in a manner that violates traffic rules, or repair vehicles on the street, within the immediate area of the base. The purpose of the increase in penalties is to improve compliance by base owners. In addition, the promulgated rules require a base owner to monitor each vehicle's compliance with TLC inspection requirements on a continuing basis, rather than annually. Regular inspection of for-hire vehicles is done by inspection stations authorized by the N.Y.S. Department of Motor Vehicles. Local law requires that such inspections of for-hire vehicles be done three times a year. By making the base responsible for inspections on a continuing basis, the rule improves compliance with inspection requirements, further protecting the safety of the riding public.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Base station owners were found to have operated a base station at a location not approved by the Commission in violation of section 6-06(b)(1). The Commission proved that respondents dispatched for hire vehicles from a base located at an address other than the address which had been approved by the Commission in violation of section 6-06(f). Respondents also violated sections 6-06(f) and 6-04(a) by dispatching for hire vehicles while their base license had been suspended. **Taxi and Limousine Comm'n v. Absolute Class Limousine, Inc., OATH Index No. 995/98 (Apr. 22, 1998).**

§6-07 Operation of the Base.

A base station owner, black car base owner and luxury limousine base owner shall be responsible for compliance with the following provisions and shall be liable for violations thereof:

(a) A base station owner shall provide an accurate and binding price quote to any prospective passenger contacting the base for transportation to a specified destination and intermediate stop(s), and if the passenger engages to receive the transportation, the price for such transportation shall be the price quoted by the base unless the passenger changes the

destination or number of stops. A base owner shall not quote or charge a fare in excess of the fare prescribed by the schedule of the rates of fare on file with the Commission as required by section 6-08(c) of this chapter. A base owner shall be responsible for ensuring that transportation is provided only by pre-arrangement through the base.

(b) A base owner shall be responsible for overseeing the management of the base to ensure that base personnel, and the owners and drivers of vehicles affiliated with the base, whether on duty or not, do not, within the area set forth in paragraph (3), engage in any of the following activities:

(1) double park, park on the sidewalk, park across a driveway, park by or at a fire hydrant or bus stop, or otherwise park, stop or stand in a manner that violates the Vehicle and Traffic Laws of the State of New York and the New York City Traffic Rules; or

(2) engage in mechanical maintenance or repair of any vehicle, except to make such emergency repairs as may be necessary to move a disabled vehicle. A dead battery or a flat tire is an example of a disabling condition.

(3) The base owner's responsibilities pursuant to paragraphs (1) and (2) shall extend to the public streets and sidewalks on either side of the street, within the city block front where the base is located, including both sides of the street on which the base is located.

(4) A base owner shall further be responsible for ensuring that vehicles affiliated with the base or dispatched by the base and their drivers will obey all applicable traffic and parking regulations within the area set forth in paragraph 3.

(5) A base owner shall further be responsible for ensuring that vehicles affiliated with the base or dispatched by the base and their drivers when visiting the base will not create a nuisance such as by engaging in unnecessary horn honking, littering, or the playing of loud audio material within the area set forth in paragraph 3.

(c) A base owner shall maintain and enforce rules governing the conduct of affiliated drivers while performing their duty as for-hire vehicle drivers. Said rules shall be submitted in writing to the Commission when the base is licensed by the Commission, and within seven (7) days, exclusive of holidays and weekends, thereafter whenever said rules are updated or amended.

(d) Upon filing with the Workers' Compensation Board to end the disbursement of benefits for the driver of an affiliated vehicle who has recovered from a disability and is ready to return to work, a base owner shall provide the driver with documentation that benefits have ceased in order for the Commission to return such driver's license.

(e) A base owner shall not instruct, authorize or permit an affiliated driver to discriminate unlawfully against people with disabilities. Such discrimination includes, but is not limited to, refusing to serve people with disabilities, refusing to load and unload the mobility aids of people with disabilities, and imposing any charge in addition to the authorized fare for the transportation of people with disabilities, service animals, wheelchairs, or other mobility aids.

(f) Effective October 31, 2001, a base owner shall be responsible for providing transportation service to persons with disabilities. A base owner may fulfill this requirement either by:

(1) dispatching an affiliated accessible vehicle, upon request; or

(2) arranging for the dispatch of an accessible vehicle affiliated with another licensed base, upon request, if the base owner has entered into a contractual or other arrangement with such base for the provision of accessible vehicles to persons with disabilities. The Chairperson may, in his or her discretion, approve vehicles for the provision of accessible service that deviate from the requirements set forth in the Americans with Disabilities Act or the Regulations promulgated thereunder.

Whether a base owner dispatches an affiliated accessible vehicle, or arranges for the dispatch of vehicles affiliated

with another base, said base owner shall be responsible for the provision of "equivalent service" to persons with disabilities. This service equivalency requirement shall be met only if the service available to persons with disabilities, when viewed in its entirety, is provided in the most integrated setting to the needs of such individual and is equivalent to the service provided to other individuals with respect to the following service characteristics:

(a) Response time to requests for service;

(b) Fares charged;

(c) Hours and days of service availability;

(d) Ability to accept reservations;

(e) Restrictions based upon trip purpose;

(f) Other limitations on capacity or service availability.

(g) A base owner shall maintain and enforce rules and policies preventing vehicles affiliated with the base or dispatched by the base and drivers of such vehicles from accepting street hails.

(h) A base owner may terminate the affiliation of a vehicle only by (1) submitting to the Chairperson a signed and dated agreement in which the vehicle owner consents to such termination or (2) by giving the vehicle owner notice to the vehicle owner's address as on file with the Commission by certified mail with return receipt requested, together with proof of mailing of such notice, with copies of the notice and proof of mailing mailed to the Commission. Such termination will become effective upon the date of the vehicle owner's agreement if termination occurs by option (1) or the date of mailing if termination occurs by option (2).

(i) Notwithstanding the provisions of subdivision (h) of this section, a vehicle's affiliation with a base will terminate automatically upon revocation of the base's license, suspension of the base's license for a continuous period in excess of 30 days, or upon expiration of the base's license. In addition, a vehicle's affiliation with a base will terminate automatically upon expiration or revocation of such vehicle's for-hire vehicle permit.

(j) A base owner shall not dispatch a vehicle which is not affiliated with such base unless (1) the base is dispatching an accessible vehicle pursuant to contract as provided by section 6-07(f) or (2) the base is dispatching a vehicle affiliated with another licensed base and the customer is informed of the dispatch of the vehicle from the second base.

(k) A base owner shall be responsible for handling customer complaints when directed by the Chairperson and shall provide any information requested by the Chairperson regarding such complaints.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (a) amended City Record June 2, 2009 §13, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (b) open par amended City Record June 2, 2009 §15, eff. July 2, 2009. [See T35 §6-12

Note 4]

Subd. (b) par (3) amended City Record June 2, 2009 §14, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (b) pars (4), (5) added City Record June 2, 2009 §15, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (e) added City Record July 8, 1997 §17, eff. Aug. 11, 1997. Language juxtaposed by Taxi and Limousine Commission, pursuant to authority of City Corporation Counsel, to reflect major amendments and renumbering to Chapter 6 in City Record Apr. 29, 1997 and erroneously overlooked. [See T35 §4-01 Note 1]

Subd. (f) added City Record Dec. 19, 2000 §1, eff. Jan. 18, 2001. [See Note 1]

Subd. (f) par (2) amended City Record May 23, 2007 §7, eff. June 22, 2007. [See T35 §1-35 Note 1]

Subds. (g), (h), (i), (j), (k) added City Record June 2, 2009 §16, eff. July 2, 2009. [See T35 §6-12 Note 4]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 19, 2000:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City; under §2303(b)(6) of such Charter, authorizing the TLC to promulgate rules and regulations relating to requirements for the safety, design and comfort of vehicles; under §2303(b)(11) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out the purposes of the Charter; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under §19-503.1 of such Administrative Code, authorizing the TLC to promulgate regulations with respect to the standards of operation of for-hire vehicles.

This Rule amends the For-Hire Vehicle Rules to provide either accessible vehicles or alternative service to persons with disabilities, including passengers in wheelchairs.

The Commission recognizes a need for the provision of service to persons with disabilities. Present transportation service providers, including mass transit providers, do not offer adequate demand-responsive service to disabled persons. The Commission has had a continuing dialogue with representatives of the transportation industry and the disabled community in an attempt to ensure that providers of for-hire vehicle services meet their respective responsibilities to the disabled community. Several proposals for the provision of limited service have been requested by and submitted to the TLC; however, prior to and since proposing these rules, no acceptable comprehensive plan to provide equivalent service to persons with disabilities has been submitted.

The Rules governing the operation of For-Hire Vehicle, Black Car and Luxury Limousine Bases are amended to provide that such bases either dispatch affiliated accessible vehicles to transport persons with disabilities, or enter into an arrangement with another licensed base for the dispatch of accessible vehicles. A base that does not provide its own accessible vehicles to persons with disabilities may contract with another provider of accessible transportation to provide service to its disabled clients for the same price charged its other clients. Whether a base owner dispatches its own accessible vehicles, or enters into an arrangement with another base for the provision of such vehicles to its clients, it must provide equivalent service to persons with disabilities. Equivalent service is defined as service to persons with disabilities provided by the base receiving the original request for service at the same rate of fare, response time, and hours of service availability, as provided for non-disabled passengers.

Regulations promulgated by the United States Department of Transportation (USDOT), implementing the Americans With Disabilities Act (ADA), provide that demand-responsive transportation providers, such as taxicab and for-hire vehicle services, are subject to the provisions of the ADA. However, providers of transportation services

utilizing vehicles with a seating capacity of fewer than eight (8) persons are not required to purchase accessible automobiles or provide "equivalent service" as the term is defined in the Regulations promulgated pursuant to the ADA. ADA regulations applicable to taxicabs and for-hire vehicles prohibit the charging of a surcharge or premium fare to transport passengers with disabilities, prohibit service providers from discriminating against the disabled with respect to the provision of service, or the transportation of service animals or mobility aids, and prohibit service providers from requiring disabled persons to travel with an attendant.

Although not required to do so by the ADA, a number of Cities in the United States, as well as other Cities abroad, have already either mandated the use of accessible for-hire vehicles or have provided for voluntary conversion to accessible vehicles by for-hire vehicle service providers.

With the adoption of these Rules, the TLC would establish accessibility requirements that exceed those presently mandated by the ADA and the Regulations promulgated thereunder, by requiring an accessible vehicle be provided to any disabled person, upon request.

Since for-hire vehicles, black cars and luxury limousines accept passengers exclusively on the basis of prearrangement, the provision of service to the disabled can be accomplished either through the purchase of accessible vehicles or through permitting the base to enter into a contractual arrangement with another licensed base that will provide substantially equivalent service to the disabled. The definition of service equivalency contained in the proposed Rule is adopted from the standard set forth in the USDOT regulations relating to demand-responsive service. The application of factors such as the fares charged, the response time for service, the hours of service operation and any restrictions on the provision of service determines whether there is service equivalency between persons with and without disabilities.

Taxicabs respond exclusively to street hails; accordingly it does not appear feasible for a taxicab owner to enter into a contractual arrangement for the provision of equivalent service since equivalent service is, by its very nature, prearranged. The rules promulgated herein do not mandate that taxicabs be made accessible at this time, since there does not presently exist on the market an accessible vehicle which has been proven satisfactory for operation as a double-shifted taxicab for twenty-four (24) hours a day, seven (7) days a week. Vehicles are now being tested in various pilot programs which, if successful, would demonstrate that there are accessible vehicles available for use as taxicabs.

These Rules contain a provision that would authorize the Chairperson to approve vehicles that do not meet the accessibility requirements set forth in the ADA. The purpose of this provision is to give the Chairperson the flexibility to approve experimental vehicles that meet the needs of the disabled community but which may not completely comply with all of the technical specifications set forth in the United States Department of Transportation Regulations regarding accessible vehicles. The Chairperson may also adopt vehicle specifications that are more stringent than existing or future ADA vehicle specifications.

A public hearing was held on June 29, 2000, with respect to this proposal. Representatives from the disabled community were generally supportive of these Rules. Some advocates requested that a base owner be required to purchase a certain number or percentage of accessible vehicles. This request was not incorporated into these rules, since the provision allowing a base to enter into an arrangement with another base for the provision of accessible vehicles ensures that disabled persons would have equivalent access to for-hire vehicles at the same price, and with the same hours of opration and reliability of service, as other clients. However, comments were also received concerning language in the proposed Rule that would have authorized the Chairperson to exempt bases from the requirements set forth herein. This provision has been deleted since the rule already provides alternative means by which a base may comply with these requirements without purchasing accessible vehicles.

The provisions of these Rules would become effective October 31, 2001, to provide an opportunity for manufacturers to meet the demand for accessible vehicles and for service providers to comply with the requirements set forth herein.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The constitutionality of the statute has been upheld. The wheelchair accessibility rule creates an obligation to pay money, but does not constitute a protected property interest for purposes of the Takings Clause of the Fifth Amendment. The taxi owners retain their ability to continue to operate and have beneficial use of their for-hire livery base stations, since they can adjust their fees in order to recoup the cost of compliance with the new regulation. Promulgation of the wheelchair accessibility rule was proper as effectuating a substantial public purpose. **Transportation Unlimited v. New York City Taxi & Limousine Comm.,** 11 A.D.3d 384, 784 N.Y.S.2d 41 (1st Dept. 2004).

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-08 Base Record-Keeping and Notice Requirements.

A base station owner, black car base owner and luxury limousine base owner shall be responsible for compliance with the following provisions and shall be liable for violations thereof:

(a) Any notice from the Commission shall be deemed sufficient if sent to the last mailing address furnished by such base owner.

(b) On a quarterly basis, a base owner shall send the Commission a list of all affiliated drivers and affiliated for-hire vehicles. In addition to the quarterly report, a base owner may notify the Commission at any other time when a vehicle is no longer affiliated with his/her base; such notification shall be deemed a defense to any liability attaching to such owner for damage to persons or property caused by such vehicle subsequent to such notification.

(c) A base owner shall be responsible for filing with the Chairperson in a form and format prescribed by the Chairperson, the schedule of the rates of fare charged by such base, including any surcharges such as credit card fees. Such a schedule shall be filed whenever rates are changed and also annually, no later than the anniversary date of the license and, in any year in which the license expires, such schedule must be filed with the renewal application. A schedule must also be filed with any application to change the ownership or location of the base. Failure to file such schedule with a renewal application or an application to change ownership or location will result in denial of the application by the Chairperson.

(d) A base owner shall comply with all record-keeping procedures established and required by the Commission. The operational information required to be maintained, which is set forth in §6-08(e) below, shall be safeguarded and

maintained at the base for a period of six (6) months, except inspection records which are to be kept for twelve (12) months. All such records may be inspected by Commission representatives during regular business hours.

(e) A base owner shall be responsible for ensuring that the following records are kept for all dispatched calls:

(1) the date, the time, and location of the passenger to be picked up, the driver's for-hire operator's permit, and the permit number of the for-hire vehicle; and

(2) a list of all current affiliated vehicles, which includes information regarding the owner of the vehicle, including, but not limited to the owner's name, mailing address, and home telephone number, the vehicle's registration number, the vehicle's Commission permit number, the license plate number of the vehicle, the name of the vehicle's insurance carrier and the policy number, and the dates of inspection of the vehicle and the outcome of each said inspection.

(f) A base owner shall be responsible for maintaining paper or electronic records of all vehicles that are or have been affiliated with or dispatched by the base during the preceding 12 months, including dates of affiliation, vehicle identification numbers, Department of Motor Vehicles (or equivalent) registration numbers, for-hire vehicle permit numbers, and inspection records, together with the drivers of such vehicles including dates of operation, Department of Motor Vehicles license numbers, for-hire vehicle driver's license numbers and copies of forms affiliating and dis-affiliating vehicles.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (c) amended City Record June 2, 2009 §17, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (f) added City Record June 2, 2009 §18, eff. July 2, 2009. [See T35 §6-12 Note 4]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Livery driver's claim that the car service would carry a blank dispatch entry, without any pickup or drop-off information, because a specific driver was requested, was in direct violation of paragraph (e)(1) of this section, which requires base owners to keep records of all dispatches. **Police Dep't v. Moneta,** OATH Index No. 468/00 (Mar. 2, 2000).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-09 Black Car Vehicle Specifications.

(a) Beginning on January 1, 2010, no vehicle that is the subject of a new application for a for-hire vehicle permit shall be affiliated with a black car base unless the for-hire vehicle meets either the requirements of an accessible vehicle pursuant to §6-07(f) of this chapter or §3-03.2 of this title, or has a minimum city rating of twenty-five (25) miles per gallon as labeled pursuant to title 49, section 32908 of the United States Code and regulations promulgated pursuant thereto. For purposes of this subdivision, an application for a for-hire vehicle permit after a previous permit has expired will be considered a new application. For-hire vehicles that are affiliated with luxury limousine or livery bases are not subject to the requirements of this subdivision.

(b) Beginning on January 1, 2011, no vehicle that is the subject of a new application for a for-hire vehicle permit shall be affiliated with a black car base unless the for-hire vehicle meets either the requirements of an accessible vehicle pursuant to §6-07(f) of this chapter or §3-03.2 of this title, or has a minimum city rating of thirty (30) miles per gallon as labeled pursuant to title 49, section 32908 of the United States Code and regulations promulgated pursuant thereto. For purposes of this subdivision, an application for a for-hire vehicle permit after a previous permit has expired will be considered a new application. For-hire vehicles that are affiliated with luxury limousine or livery bases are not subject to the requirements of this subdivision.

(c) Only black car bases may dispatch vehicles to do line work and only for-hire vehicles that are affiliated with black car bases may perform line work.

HISTORICAL NOTE

Section added City Record May 23, 2008 §2, eff. June 22, 2008. [See Note 1]

Subd. (a) amended City Record Feb. 18, 2009 §1, eff. Mar. 20, 2009. [See Note 2]

Subd. (b) amended City Record Feb. 18, 2009 §1, eff. Mar. 20, 2009. [See Note 2]

NOTE

1. Statement of Basis and Purpose in City Record May 23, 2008:

In December 2007, the Taxi and Limousine Commission (TLC) unanimously passed rules requiring new taxicabs to achieve a city mileage rating of 25 miles per gallon in October 2008, except for wheelchair accessible taxicabs. In October 2009, the standard will rise to 30 mpg. Almost 380 hybrid taxicabs were on the road when the taxicab proposal was announced last May. Now, as taxicab owners convert ahead of schedule, there are more than 975. They have proven their reliability during the three annual inspections, and the first 18 in the fleet have already logged over 200,000 miles as well as higher inspection passage rates than other vehicles. The TLC estimates that the rules will save a taxicab owner $11,000 per year in gas costs, for industry-wide savings of roughly $140 million per year. By 2013, virtually the entire taxicab fleet will be converted to higher mileage standards.

In February, the Mayor asked the TLC to require new black cars to meet fuel efficiency standards of 25 mpg in 2009 and 30 mpg in 2010. The promulgated rules considered today will also mandate vehicle retirement and provide protection for black car operators against competitors who operate less gasoline-efficient vehicles. To help drivers, the City has worked with the financial sector, auto dealers, and black car fleets to develop solutions that will finance the higher down payment. Pursuant to these rules, by 2013, nearly all black cars will meet the new standards. Mayor Bloomberg indicated the City's intention to complete the PlaNYC for-hire transportation initiative by working with the livery industry, again taking into account the unique aspects of that industry. The TLC's next course of action will be to develop a concrete plan to introduce similar standards for livery vehicles.

Responding to the Mayor's request, and to requests from users of black car services for rules requiring a better performing black car fleet and imposing a maximum age on black cars, the TLC promulgated rules that will amend existing TLC rules relating to black cars and black car service in three respects.

First, to create a better performing fleet, the promulgated rules provide that, beginning on January 1, 2009, applications for new TLC for-hire vehicle (FHV) permits for vehicles to be affiliated with black car bases must be for vehicles with city ratings of at least 25 miles per gallon. Beginning on January 1, 2010, such vehicles must have minimum city ratings of 30 miles per gallon.

The city mileage rating of a vehicle is to be determined pursuant to chapter 329 of title 49 of the United States Code and regulations promulgated pursuant thereto. Ratings for 2008 model vehicles are available at **http://www.fueleconomy.gov/feg/FEG2008.pdf**, and it is anticipated that the 2009 ratings will be available at a similar Web site.

Second, the promulgated rules set a maximum age of six model years for FHVs affiliated with black car bases. For vehicles currently in use as black cars, the rules provide a phase-in period that starts with the expiration of a vehicle's permit beginning January 1, 2009 (for vehicles of model years 2001 or earlier), and ends with the expiration of a vehicle's permit beginning January 1, 2013 for all for-hire vehicles in black car service.

For-hire vehicles solely affiliated with luxury and livery bases will not be subject to these minimum mileage requirements and vehicle retirement requirements. Vehicles that were formerly affiliated with black car bases may continue to be eligible for affiliation with livery and luxury limousine bases.

Third, to facilitate orderly dispatching, the promulgated rules provide that only FHVs affiliated with black car

bases are permitted to perform line work and only black car bases are able to dispatch vehicles to do line work. Line work is defined as a type of pre-arranged service provided pursuant to a contract with a black car base in which the dispatch and passenger assignment are completed at the point of pick up by an employee or contractor of either the black car base or the contracting party. Line work involves the pre-arranged dispatch of a number of vehicles to a specified location, where typically the vehicle and driver wait in a line to be assigned to a particular passenger or passengers. The TLC finds that line work is uniquely important to black car service and therefore should be reserved to black cars.

When fully phased in, the promulgated rules will yield a savings of more than $5,000 in gasoline costs per vehicle per year. Therefore, the promulgated rule will yield industry-wide savings from using less gasoline of approximately $50,000,000 per year. This better performance will increase the economic health of the industry by decreasing black car vehicle owner and driver costs and will further benefit black car users by reducing upward pressure on black car fares.

Following addresses concerns that were raised during the comment period on the proposed rules:

First, because the promulgated rules require a minimum mileage rating for black cars, a question was raised whether the rules are intended to preclude black cars with non-gasoline fueled engines. The answer is no. As technological advances continue, the TLC will continue to test and approve vehicle technologies such as hydrogen fuel-cell, clean diesel, compressed natural gas, electric battery cars, and other alternative fuel sources and technologies.

Second, a concern was expressed that black car owners may seek to avoid the obligation to convert to hybrid vehicles by re-licensing them as luxury limousines. Vehicle owners should be aware that TLC rules require that luxury limousines maintain:

· $200,000 in personal injury protection (PIP) insurance;

· Liability insurance of $500,000 per person; and

· Liability insurance of $1 million per accident for a limousine that seats fewer than nine passengers, $1.5 million per accident for a limousine that seats from nine to 15 passengers, and $5 million per accident for a limousine that seats more than 15 passengers.

TLC staff will vigilantly enforce the luxury limousine insurance requirements as a means to prevent any attempt by black car owners to pose as luxury limousines.

Third, a concern was expressed about the applicability of the promulgated rules to black cars affiliated with TLC-licensed black car bases that are located outside New York City, but which conduct point-to-point activity within the city. To clarify, these promulgated rules apply to all black car bases that are licensed by TLC, regardless of location. Likewise, luxury limousines affiliated with bases located outside New York City that pick-up and drop-off passengers within New York City are required to comply with the higher insurance requirements for luxury limousines, listed above.

Fourth, as when the Commission adopted minimum miles per gallon rules for taxicabs last year, a concern was expressed about the availability of vehicles that meet the 30 miles per gallon requirement that will come into play for black cars in January 2010, as well as the availability of adequate vehicle financing to fund the purchase of new vehicles. The TLC and the Mayor's office, in conjunction with the New York City Investment Fund and other private partners, have arranged for financing approaches to be available. Therefore, although the TLC fully expects that vehicle availability and affordable financing will not be an issue, TLC staff will closely monitor the situation and, if changes in today's rule become necessary, will recommend appropriate amendments.

Finally, a concern was expressed that section 6-09(a) and (b) might be misconstrued to mean that renewal of a black car vehicle permit constitutes a "new application" such that the vehicle must be retired. However, §6-09(a) and (b)

provide that submission of a black car vehicle permit application **after** expiration of the previous black car vehicle permit will not constitute a timely renewal application, and therefore will constitute a new application for purposes of determining the vehicle's retirement date. A timely renewal application-meaning a renewal application submitted before the expiration of the previous permit-will not constitute a "new application."

2. Statement of Basis and Purpose in City Record Feb. 18, 2009: In April 2008, the Taxi and Limousine Commission (TLC) promulgated rules requiring new black cars, except for wheelchair accessible vehicles, to achieve fuel efficiency standards of 25 mpg city rating in 2009 and 30 mpg city rating in 2010. To help drivers, the City worked with the financial sector, auto dealers, and black car fleets to develop solutions that would finance the higher down payment. After promulgation of those rules, the economic downturn hit this nation's economy and struck a major blow to financial and insurance firms who are among the primary customers of the black car industry and who would have provided the financing that TLC contemplated in promulgating those rules. As a result, providers of black car services were severely impacted. For these reasons, the TLC promulgated rules to delay by one year the mandate for 25 and 30 mpg black car vehicles and the black car retirement rules passed in April 2008. For-hire vehicles solely affiliated with luxury and livery bases are not subject to these minimum mileage requirements and vehicle retirement requirements. Vehicles that were formerly affiliated with black car bases may continue to be eligible for affiliation with livery and luxury limousine bases.

Rules of the City of New York

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35 RCNY 6-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-10 Affiliation with Black Car Bases.

(a) All for-hire vehicles affiliated with black car bases that are model year 2001 or earlier must be retired from black car service no later than the expiration dates of their for-hire vehicle permits on and after January 1, 2010.

(b) All for-hire vehicles affiliated with black car bases that are model year 2003 or earlier must be retired from black car service no later than the expiration dates of their for-hire vehicle permits on and after January 1, 2011.

(c) All for-hire vehicles affiliated with black car bases that are model year 2005 or earlier must be retired from black car service no later than the expiration dates of their for-hire vehicle permits on and after January 1, 2012.

(d) All for-hire vehicles affiliated with black car bases that are model year 2006 or earlier must be retired from black car service no later than the expiration dates of their for-hire vehicle permits on and after January 1, 2013; provided, however, a for-hire vehicle that is five model years old upon its permit expiration on and after January 1, 2013, shall not be affiliated with a black car base after one year following such renewal.

(e) All for-hire vehicles affiliated with black car bases that are seven 7 model years old or older and are not specified in subdivisions (a), (b), (c) or (d) of this section must be retired from black car service no later than the expiration dates of their for-hire vehicle permits on and after January 1, 2014 and every year thereafter; provided that a for-hire vehicle that is six model years old upon its permit renewal on or after January 1, 2014 shall not be affiliated with a black car base after one year following such renewal.

(f) A for-hire vehicle affiliated with a black car base which has reached its retirement date must be retired from

black car service, regardless of whether it passes the New York State Department of Motor Vehicle inspection.

HISTORICAL NOTE

Section added City Record May 23, 2008 §2, eff. June 22, 2008. [See T35 §6-09 Note 1]

Subds. (a), (b), (c), (d), (e) amended City Record Feb. 18, 2009 §1, eff. Mar. 20, 2009. [See T35 §6-09 Note 2]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-11

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-11 For-Hire Vehicle Owner Licensing.

(a) A for-hire vehicle owner shall be responsible for having said for-hire vehicle licensed by the Commission. The Commission shall post on its Web site a list of vehicles holding current, valid permits. A for-hire vehicle owner shall not allow a vehicle to be dispatched unless the owner holds a current, valid for-hire vehicle permit for such vehicle which permit is not expired, suspended or revoked.

(b) A for-hire vehicle license shall be valid only while the registration of the vehicle remains valid. Operation of a vehicle without a valid registration is operation without a TLC license in violation of §19-506 of the Administrative Code, regardless of whether a TLC license had previously been obtained while a registration was valid. A for-hire vehicle owner shall immediately surrender his for-hire vehicle license to the Commission upon the expiration, restriction, suspension or revocation of his vehicle registration card.

(c) An owner of a for-hire vehicle shall not dispatch or permit another person to dispatch such vehicle unless it is affiliated with a licensed base and such dispatch is made from the base with which the vehicle is affiliated, except when a dispatch is made pursuant to section 6-07(f) of this chapter. Dispatch of a vehicle which is not affiliated with a licensed base and dispatch of a vehicle from a base with which the vehicle is not affiliated shall constitute unlicensed operation and subject the owner to any applicable penalties for unlicensed operation unless the dispatch is made as authorized by section 6-07(j) of this chapter.

(d) (1) A for-hire vehicle owner shall comply with the New York State Vehicle and Traffic Law and the New York State Insurance Law regarding coverage by bond or policy of liability insurance and all other forms of insurance required by law.

(2) A for-hire vehicle owner, which has received notice that its liability insurance is to be terminated, shall surrender its for-hire vehicle permit and decal(s) to the Commission on or before the termination date of the insurance, unless the vehicle owner submits proof of new insurance effective on the date of termination of the old policy before the termination of the policy.

(3) Within seven (7) days, exclusive of holidays and weekends, a for-hire vehicle owner shall notify the Commission in writing of any change in insurance carrier or coverage, specifying the name and address of the insurance carrier, new and former, and the number of the policy for each affiliated vehicle and submit proof of such coverage.

(4) **(a)** Notwithstanding any inconsistent provision of paragraph (d)(1) of this rule, each for-hire vehicle owner, other than the owner of a for-hire vehicle with a seating capacity of nine or more passengers, shall, for each vehicle owned, maintain for purposes of insurance or other financial security, coverage in an amount of not less than $200,000 per person, payable for those expenses specified in paragraphs 1, 2 and 3 of subdivision a of section 5102 of the New York State Insurance Law, and coverage in an amount of not less than $100,000 minimum liability, and of not less than $300,000 maximum liability for bodily injury and death, as said terms are described and defined in section 370(1) of the Vehicle and Traffic Law.

(b) Each owner of a vehicle for hire with a seating capacity of at least nine but not more than fifteen passengers shall, for each vehicle owned, maintain for purposes of insurance or other financial security, coverage in an amount of not less than $200,000 per person, payable for those expenses specified in paragraphs 1, 2 and 3 of subdivision a of section 5102 of the New York State Insurance Law, and coverage in an amount of not less than $1,500,000 minimum liability for bodily injury and death, as said terms are described and defined in section 370(1) of the Vehicle and Traffic Law.

(c) Each owner of a vehicle with a seating capacity of at least sixteen passengers shall, for each vehicle owned, maintain for purposes of insurance or other financial security, coverage in an amount of not less than $200,000 per person, payable for those expenses specified in paragraphs 1, 2 and 3 of subdivision a of section 5102 of the New York State Insurance Law, and coverage in an amount of not less than $5,000,000 minimum liability for bodily injury and death, as said terms are described and defined in section 370(1) of the Vehicle and Traffic Law.

(5) A for-hire vehicle owner shall immediately report to his/her insurance carrier, in writing all accidents involving his/her for-hire vehicle which are required to be reported to the insurance carrier.

(6) A for-hire vehicle owner shall immediately report to the Commission, in writing, all accidents involving his or her vehicle which are required to be reported to the Department of Motor Vehicles pursuant to §605 of the Vehicle and Traffic Law. A copy of any report furnished to the Department of Motor Vehicles pursuant to law shall be furnished to the Commission within ten (10) days of the date by which the owner is required to file such report with the Commissioner of Motor Vehicles.

(e) (1) No unauthorized entry shall be made on the for-hire vehicle permit or decal(s), nor shall any entry on the for-hire vehicle permit or decal(s) be changed or defaced.

(2) An unreadable for-hire vehicle permit or decal(s) shall immediately be surrendered to the Commission for replacement.

(3) A for-hire vehicle owner shall immediately notify the Commission of the theft, loss or destruction of a for-hire vehicle permit or decal(s) of said vehicle, furnish the Commission with an affidavit or information as may be required, and shall replace same.

(f) A for-hire vehicle owner shall be responsible for ensuring that the replacement of any lost or stolen New York State license plates is reported in writing to the Commission, within forty-eight (48) hours, exclusive of weekends and holidays, after obtaining such plates.

(g) A for-hire vehicle owner shall designate each and every driver who operates said vehicle as his agent for accepting service by Commission personnel of summonses or notices to correct defects in the vehicle. Delivery of such summons or notice to a driver shall be deemed proper service of the summons or notice on the vehicle owner. The Commission shall send a photocopy of any summons or notice to correct to the vehicle owner and the base owner of record. An applicant for a for-hire vehicle permit shall designate the vehicle operator or driver as agent for service of any and all legal process from the Taxi and Limousine Commission which may be issued against the title owner, registered owner, or lessee.

(h) A for-hire vehicle owner shall notify the Commission in person or by first class mail, within seven (7) days, exclusive of holidays and weekends, of any change of mailing address. Any notice from the Commission shall be deemed sufficient if sent to the last mailing address furnished by the for-hire vehicle owner.

(i) No for-hire vehicle shall be a two door vehicle.

(j) A for-hire vehicle owner shall comply with all Commission notices and directives to correct defects in said vehicle.

(k) A for-hire vehicle owner shall not permit said for-hire vehicle to be operated without daily personal inspection and reasonable determination that all equipment, including but not limited to, brakes, lights, signals and passenger seat belts and shoulder belts are in good working order and meet all the requirements of the New York State Vehicle and Traffic Law and these Rules.

(l)(1) A for-hire vehicle owner shall maintain on file with the Commission a current telephone number (which must be connected to an answering machine or recording device), pager number, answering service telephone number or similar means of telephone contact, so that the owner may be reached by the Commission on a twenty-four hour basis.

(2) An owner must respond to any telephone or pager contact from the Commission within forty-eight hours, seven days a week.

(m) The holder of a for-hire vehicle permit issued under this chapter shall satisfy any outstanding judgment and pay any civil penalty owed for a violation relating to traffic in a qualified jurisdiction or a violation of the regulations of a qualified jurisdiction.

(n) There shall not be more than one for-hire vehicle permit issued and in effect for any vehicle, as indicated by the vehicle identification number, at any one time.

(o) If the Commission receives a for-hire vehicle permit application for a vehicle, as indicated by the vehicle identification number, for which Commission records indicate that a previously issued for-hire vehicle permit is in effect and not expired, the holder of such previously issued permit shall be scheduled for a hearing to determine the fitness of such holder to hold such permit under section 8-15 of this title and the previously issued permit shall be revoked unless the holder demonstrates that the holder has transferred the permit to a new vehicle.

(p) The holder of a for-hire vehicle permit who wishes to transfer the permit to a new vehicle must file an application to transfer the permit within fifteen days after registering the new vehicle with the New York State Department of Motor Vehicles, or comparable agency of the state of registration. No such application will be approved until the permit holder presents the vehicle for inspection at the Commission's inspection facility.

(q) No for-hire vehicle permit shall be issued to any applicant if a previous for-hire vehicle permit held by the applicant was revoked by the Commission, until the applicant for such new permit has been determined fit to hold such permit following a determination of such applicant's fitness to hold a permit under section 8-15 of this title. For purposes of this subdivision and the review of fitness required for applicants under this paragraph, a previous permit

which has been revoked shall include any permit held by any partner, officer or shareholder of applicant, or by any entity in which any partner, officer, or shareholder of applicant was a partner, officer, or shareholder

(r) A for-hire vehicle permit shall be revoked for non-use pursuant to section 19-504(g) of the Administrative Code of the City of New York if:

(1) the permit holder fails to maintain a base affiliation as required by section 6-11(c) of this chapter for 60 days;

(2) the permit holder fails to maintain insurance coverage as required by section 6-11(d) of this chapter for 60 days; or

(3) the permit holder fails to comply with the inspection requirements as required by section 6-12(c) of this chapter for 60 days.

(s) Any owner of a for-hire vehicle the for-hire vehicle permit for which has been revoked by the Commission, has expired, or has been denied renewal, must surrender the permit to the Commission, and, if the vehicle is registered in New York State, must surrender the T&LC license plates to the New York State Department of Motor Vehicles, each within 10 days after such revocation, expiration, or denial.

(t) A for-hire vehicle may be affiliated with only one base at any time.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (a) amended City Record June 2, 2009 §19, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (c) amended City Record June 2, 2009 §20, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (d) amended City Record July 5, 2002 eff. Aug. 4, 2002. [See Note 1]

Subd. (d) par (2) amended City Record June 2, 2009 §21, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (d) par (4) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 2]

Subd. (d) pars (5), (6) added (as pars (4), (5)) City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 1]

Subd. (e) amended City Record June 2, 2009 §22, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (l) added City Record Jan. 31, 2000 §4, eff. Mar. 1, 2000. [See Note to T35 §1-55]

Subd. (m) added City Record Nov. 22, 2006 §3, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Subds. (n)-(t) added City Record June 2, 2009 §23, eff. July 2, 2009. [See T35 §6-12 Note 4]

DERIVATION

Section derived from former §6-07.

Section repealed City Record Apr. 29, 1997 eff. June 1, 1997.

Section renumbered (formerly §6-05) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04

Note 3]

Subd. (e) amended City Record July 8, 1997 §20 eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (aa) repealed and added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04

Note 3]

Subd. (aa) par (1)-(5) repealed City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (ff) added City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

NOTE

1. Statement of Basis and Purpose in City Record July 5, 2002:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, permitting the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under §19-502(g) of the Administrative Code of the City of New York, authorizing the TLC to license and regulate for-hire vehicles with a seating capacity of up to twenty passengers, under §19-503 of said Code, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; and under Section 19-503.1 of said Code, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter to license and regulate vehicles for hire.

These rules amend the for-hire vehicle rules relating to the licensing and operation of vehicles for hire with a seating capacity of up to twenty passengers, excluding the driver. In December 2001, the City Council amended §19-502(g) of the Administrative Code to confer upon the TLC jurisdiction over the licensing and regulation of such vehicles. Prior to that date, the Commission was authorized to license and regulate for-hire vehicles, other than commuter vans, with a seating capacity of less than nine passengers.

These rules enact licensing requirements for these vehicles which have now been placed under TLC jurisdiction. Each vehicle must be licensed by the Commission and affiliated with a licensed base before it is permitted to accept passengers, by prearrangement, within the City of New York. Only a driver licensed by the Commission shall be authorized to transport passengers for hire in these vehicles. Some additional requirements have been promulgated with respect to these vehicles, including higher insurance requirements which reflect the additional number of passengers these vehicles may carry. These requirements are identical to the insurance requirements applicable to such vehicles engaging in interstate commerce. In addition, because such vehicles are often modified by after-market coachbuilders after manufacture, a requirement is contained in the rules providing that the vehicle length, width, weight or seating capacity may not be modified after manufacture unless the alteration is completed pursuant to a manufacturer-approved program. Presently, both General Motors and Ford Motor Company have approved after-market vehicle modification programs, and have designated coachbuilders approved to perform after-market modifications in accordance with these programs.

This rulemaking is a part of the TLC Regulatory Agenda for Fiscal Year 2003 published in the **City Record** on April 30, 2002.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-12

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-12 Conditions of Operation Relating to For-Hire Vehicles.

A base owner and a for-hire vehicle owner shall each be separately and independently responsible for compliance with the following provisions and liable for penalties for violation thereof. No for-hire vehicle permit shall be issued or renewed unless the for-hire vehicle is in compliance with the requirements of this section at the time of issuance or renewal. Each for-hire vehicle must be in compliance with the following at all times during which such vehicle has a for-hire vehicle permit:

(a)(1) A current, valid Commission license decal or decals, which are not expired, suspended or revoked, are affixed to the front right side of the windshield of the vehicle so as to be plainly visible.

(2)(i) Beginning on September 1, 2009, each vehicle must have three (3) current, valid and unexpired Commission license decals issued by the Commission.

(ii) One of these decals must be on the front lower right side of the windshield of the vehicle and one on the lower rear corner of each of the two rear quarter windows, or, if there are no rear quarter windows, on the lower rear window just above the rear door.

(iii) Each decal must be plainly visible.

(iv) Each decal must contain all information that may be required by the Chairperson, and must be completed correctly and legibly.

(3)(i) For any vehicle for which a new application or a renewal application is made, or which is a replacement vehicle, or which is changing its base affiliation, or which is changing its license plates, beginning on September 1, 2009, the vehicle must have three (3) current, valid and unexpired Commission license decals.

(ii) One of these decals must be on the front lower right side of the windshield of the vehicle and one on the lower rear corner of each of the two rear quarter windows, or, if there are no rear quarter windows, on the lower rear window just above the rear door.

(iii) Each decal must be plainly visible.

(iv) The decals must be affixed by Commission staff.

(v) When the for-hire vehicle is replaced or changes affiliation to a different base, or changes its license plates, such vehicle must be brought to the Commission's Safety and Emissions Division to have new decals placed on the vehicle by Commission staff.

(4) Single decal exception applicable only to luxury limousines. Any for-hire vehicle that is a luxury limousine must comply with all the provisions of this subdivision (a) except that such vehicle will only be required to have a single Commission decal affixed to the front lower right side of the windshield of the vehicle.

(b) A current, valid and unexpired registration sticker from an authorized state motor vehicle department is affixed to the left front windshield so as to be plainly visible.

(c) (1) A current, valid and unexpired New York State Department of Motor Vehicles inspection sticker, which is no fewer than eight (8) months from the month of expiration on the sticker, is affixed to the front left side of the windshield so as to be plainly visible.

(2) For-hire vehicles shall be inspected three times a year and at least once every four months.

(3)(i) **New Applications for For-Hire Vehicles That Are Model Year 1996 or Later.**

Beginning on September 1, 2009, and during such time as the Commission's Safety and Emissions Division is a Department of Motor Vehicles (DMV) certified inspection station, as a condition for issuance of a new for-hire vehicle permit or approval as a replacement vehicle, vehicles that are model year 1996 or later must be inspected at the Commission's Safety and Emissions Division within ten (10) days after the issuance of T&LC plates by DMV, or after the Commission's acceptance of the application for vehicles registered outside New York State, and, in either case, must pass such inspection within sixty (60) days after the date of the first scheduled inspection of such vehicle and before issuance of a new for-hire vehicle permit. The maximum number of inspections allowed in such sixty-day period is four (4) inspections. The maximum limit of 4 inspections which must occur within 60 days applies not only to the vehicle originally submitted for licensure but also to any replacement vehicle submitted. Failure of the vehicle originally submitted for licensure and of all replacement vehicles to pass an inspection four times within 60 days will result in denial of the application. Such inspection(s) shall comply with the vehicle inspection requirements set forth in section 301 of the Vehicle and Traffic Law and shall further inspect for compliance with the owner and vehicle requirements set forth in this chapter, and shall constitute one of the inspections required by section 19-504(f) of the Administrative Code and by paragraph (2) of this subdivision, unless the vehicle has accumulated fewer than 500 miles traveled at the time the vehicle arrives at the Commission's facility for inspection in which case the inspection will be only a visual inspection. The fee for such TLC inspections shall be the fee prescribed by regulation of the DMV for inspections pursuant to section 305 of the Vehicle and Traffic Law.

(ii) **New Applications for For-Hire Vehicles That Are Model Year 1995 or Earlier.**

Beginning on September 1, 2009, and during such time as the Commission's Safety and Emissions Division is a

DMV certified inspection station, as a condition for issuance of a new for-hire vehicle permit or approval as a replacement vehicle, vehicles that are model year 1995 and earlier must be inspected at the Commission's Safety and Emissions Division within ten (10) days after the issuance of T&LC plates by DMV, or after the Commission's acceptance of the application for vehicles registered outside New York State, and, in either case, must pass such inspection within sixty (60) days after the date of the first scheduled inspection of such vehicle and before issuance of a new for-hire vehicle permit. The maximum number of inspections allowed in such sixty-day period is four (4) inspections. The maximum limit of 4 inspections which must occur within 60 days applies not only to the vehicle originally submitted for licensure but also to any replacement vehicle submitted. Failure of the vehicle originally submitted for licensure and of all replacement vehicles to pass an inspection four times within 60 days will result in denial of the application. Such inspection(s) shall comply with the vehicle inspection requirements set forth in section 301 of the Vehicle and Traffic Law and shall further inspect for compliance with the owner and vehicle requirements set forth in this chapter, except that such inspections shall not include emissions testing and shall not constitute one of the inspections required by section 19-504(f) of the Administrative Code and by paragraph (2) of this subdivision. The fee for such TLC inspections shall be the safety inspection fee prescribed by regulation of the DMV for inspections pursuant to section 305 of the Vehicle and Traffic Law.

(4)(i) **Renewals for For-Hire Vehicles That Are Model Year 1996 or Later.**

Beginning on February 1, 2010, and during such time as the Commission's Safety and Emissions Division is a DMV certified inspection station, as a condition for renewal of a for-hire vehicle permit, vehicles that are model year 1996 or later must have been inspected at the Commission's Safety and Emissions Division and pass such inspection within thirty (30) days after the date of the first scheduled inspection of such vehicle and before a renewal permit will be issued. The maximum number of inspections allowed in such thirty-day period is four (4) inspections. The maximum limit of 4 inspections which must occur within 30 days applies not only to the vehicle originally submitted for licensure but also to any replacement vehicle submitted. Failure of the vehicle originally submitted for licensure and of all replacement vehicles to pass an inspection four times within 30 days will result in denial of the application. If a vehicle has not passed inspection by the permit expiration date, the vehicle shall not operate until it passes inspection. If a vehicle does not pass inspection within the thirty-day period, the vehicle shall not operate and the application shall be denied. Such inspection(s) shall comply with the vehicle inspection requirements set forth in section 301 of the Vehicle and Traffic Law and shall further inspect for compliance with the vehicle owner and for-hire vehicle requirements set forth in this chapter and shall constitute one of the inspections required by section 19-504(f) of the Administrative Code and by paragraph (2) of this subdivision. The fee for such TLC inspections shall be the fee prescribed by regulation of the DMV as set forth in paragraph (3)(i) of this subdivision.

(ii) **Renewals for For-Hire Vehicles That Are Model Year 1995 or Earlier.**

Beginning on February 1, 2010, and during such time as the Commission's Safety and Emissions Division is a DMV certified inspection station, as a condition for renewal of a for-hire vehicle permit, vehicles that are model year 1995 and earlier must have been inspected at the Commission's Safety and Emissions Division and pass such inspection within thirty (30) days after the date of the first scheduled inspection of such vehicle and before a renewal permit will be issued. The maximum number of inspections allowed in such thirty-day period is four (4) inspections. The maximum limit of 4 inspections which must occur within 30 days applies not only to the vehicle originally submitted for licensure but also to any replacement vehicle submitted. Failure of the vehicle originally submitted for inspection and of all replacement vehicles to pass an inspection four times within 30 days will result in denial of the application. If a vehicle has not passed inspection by the permit expiration date, the vehicle shall not operate until it passes inspection. If a vehicle does not pass inspection within the thirty-day period, the vehicle shall not operate and the application shall be denied. Such inspection(s) shall comply with the vehicle inspection requirements set forth in section 301 of the Vehicle and Traffic Law and shall further inspect for compliance with the vehicle owner and for-hire vehicle requirements set forth in this chapter, except that such inspections shall not include emissions testing and shall not constitute one of the inspections required by section 19-504(f) of the Administrative Code and by paragraph (2) of this subdivision. The fee for such TLC inspections shall be the safety inspection fee prescribed by regulation of the DMV as set forth in

paragraph (3)(ii) of this subdivision.

(d) For vehicles registered with the Department of Motor Vehicles prior to April 30, 1999, a current, valid and unexpired New York City commercial use motor vehicle tax stamp is affixed to the front right side of the windshield of the vehicle so as to be plainly visible. For vehicles registered after April 30, 1999, proof that the required commercial use motor vehicle tax for the current tax period has been paid.

(e)(1) The license plate number on said motor vehicle tax stamp, state registration and Commission decals each match, and match the license plates affixed to the vehicle.

(2) The last six digits of the vehicle identification number (VIN) on the Commission decals shall match the last six digits of the VIN on the state registration and match the VIN of the vehicle.

(3) A for-hire vehicle that is registered in New York State must have New York State license plates affixed to the vehicle that are embossed with the legend "T & LC."

(4) A base and/or a base owner shall not dispatch, and a for-hire vehicle owner shall not allow a vehicle to be dispatched:

(A) unless the vehicle is registered in New York State and has license plates embossed with the legend "T & LC", or unless the vehicle is registered in another state and complies with any applicable license plate requirements.

(B) unless the vehicle has a current, valid for-hire vehicle permit which has not expired, been suspended, or been revoked.

(f)(1) The marking requirements of the Commission:

(i) **Exterior Markings.** Beginning on July 1, 2009, the exterior markings of a for-hire vehicle must include: the name of the base station with which the vehicle is affiliated, the base station license number, and the base station telephone number, either (1) all in letters and numerals not less than one-and-one-half inches in height, on the exterior of a door or doors on both sides of the affiliated vehicle, below the windows and not less than six inches above the bottom of the door(s); (2) all in letters and numerals not less than one inch in height in one location on the rear of the affiliated vehicle below the rear window, and not less than six inches above the bottom of the rear of the vehicle, or (3) both on the doors and rear of the vehicle. The letters and numerals must be of a color contrasting with the color of the body of the vehicle to provide easy legibility. Lettering and numbering shall be spaced to provide easy legibility and, if placed on doors on both sides of the vehicle shall be identical on both sides of the livery. All decals shall have semi-permanent adhesive. Luxury limousines and black cars shall be exempt from the requirements of this subdivision (f)(1)(i).

(2) A vehicle owner may not display any advertising, either on the exterior or the interior of a for-hire vehicle, unless such advertising has been authorized by the Commission, and a permit has been issued to the owner in accordance with the provisions of the Administrative Code. The Commission shall not approve any advertising for the exterior of a for-hire vehicle that consists, in whole or in part, of roof top advertising.

(3) Any accessible vehicle licensed by the Commission shall display insignia, the design of which shall be provided by the Commission on its Web site or through means it deems appropriate as set forth on its Web site, that identify such vehicle as an accessible vehicle. Such insignia shall be located on the exterior of the C-pillars of a sedan or an SUV or on the exterior of the D-pillars of a minivan, on both sides of such vehicle, and shall be visible to passengers entering the accessible vehicle.

(4) Any clean air for-hire vehicle licensed by the Commission shall display insignia, the design of which shall be provided by the Commission on its Web site or through other means it deems appropriate as set forth on its Web site,

that identify such vehicle as a clean air vehicle. Such insignia shall be located on the exterior of the C-pillars of a sedan or an SUV or on the exterior of the D-pillars of a minivan, on both sides of such vehicle, and shall be visible to passengers entering the clean air for-hire vehicle.

(g) A for-hire vehicle shall not be equipped with a rooflight, except for a vehicle that operates primarily in Staten Island and is affiliated with a base located in Staten Island. A rooflight on such a Staten Island vehicle must meet the specifications set forth in the definition of "rooflight" in these rules.

(h) No for-hire vehicle shall be, in whole or in part, any shade of taxicab yellow.

(i) No for-hire vehicle shall be equipped with a meter, except a wheelchair accessible livery which is participating in the dispatch program as set forth in chapter 16 of this title.

(j) The provisions of this subdivision (j) apply to the base owner and the owner of the for-hire vehicle; the driver's responsibilities are set forth separately in subdivision 6-16(e) of this chapter.

(1) Before July 1, 2009 each for-hire vehicle must contain the following items in the right visor or on top of the right side of the dashboard or in the glove compartment:

(A) the certificate of registration or legible photostat thereof;

(B) the for-hire vehicle permit or legible photostat thereof; and

(C) the insurance card or legible photostat thereof.

(2) Beginning on July 1, 2009, each for-hire vehicle must contain the following items:

(A) in the right visor or on top of the right side of the dashboard or in the glove compartment:

(i) the certificate of registration or legible photostat thereof;

(ii) the insurance card or legible photostat thereof; and

(iii) the for-hire vehicle permit or legible photostat thereof.

(B) in a protective holder mounted behind the driver's seat in the vehicle (except as provided in subdivision (j)(4)):

(i) the for-hire vehicle driver's license of the driver.

(3) Beginning on September 1, 2009, each for-hire vehicle must contain the following items:

(A) in the right visor or on top of the right side of the dashboard or in the glove compartment:

(i) the certificate of registration or legible photostat thereof; and

(ii) the insurance card or legible photostat thereof.

(B) in a protective holder mounted behind the driver's seat in the vehicle (except as provided in subdivision (j)(4)):

(i) the for-hire vehicle driver's license of the driver; and

(ii) the for-hire vehicle permit.

(4) Exception regarding license and permit postings applicable only to Black Cars and Luxury Limousines. Any

for-hire vehicle which is either a black car or a luxury limousine must comply with all requirements of this subdivision (j) and display all items required to be displayed as of the dates specified, except that such vehicles will not be required to display the for-hire vehicle driver's license and the for-hire vehicle permit in a protective holder mounted behind the driver's seat in the vehicle provided that those items are displayed in the vehicle in a way so as to be clearly visible from the passenger seat and available for inspection by the passenger upon request.

(k) Livery Bill of Rights. Beginning on June 26, 2009 every livery owner must post a Livery Passengers' Bill of Rights in a form and format prescribed by the Commission, which shall be posted by the Commission on its Web site or through means it deems appropriate as set forth on its Web site. The Livery Passengers' Bill of Rights must be placed in a protective holder mounted behind the front passenger's seat of the vehicle.

HISTORICAL NOTE

Section amended City Record June 2, 2009 §24, eff. July 2, 2009. [See Note 4]

DERIVATION

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Open par amended City Record May 23, 2008 §3, eff. June 22, 2008. [See T35 §6-09 Note 1]

Subd. (d) amended City Record July 15, 1999 eff. Aug. 14, 1999. [See Note 2]

Subd. (e) par (3) added City Record Apr. 13, 2006 §1, eff. May 13, 2006. [See Note 3]

Subd. (f) amended City Record Sept. 20, 1999 §1, eff. Oct. 20, 1999. [See Note 1]

Subd. (f) pars (3), (4) added City Record May 23, 2007 §8, eff. June 22, 2007. [See T35 §1-35

Note 1]

Subd. (i) amended City Record Nov. 23, 2007 §10, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Subd. (n) added City Record July 5, 2002 §3, eff. Aug. 4, 2002. [See §6-11 Note 1]

Subd. (o) added City Record Nov. 22, 2006 §4, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Subd. (p) amended City Record Feb. 18, 2009 §2, eff. Mar. 20, 2009. This subdivision was bracketed out in amendment in City Record June 2, 2009. [See T35 §6-09 Note 2]

Subd. (p) added City Record May 23, 2008 §3, eff. June 22, 2008. [See T35

§6-09 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 20, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations relating to standards and conditions of service which are reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the

Charter; and under §19-525 of said Code, authorizing the Commission to issue advertising permits to licensed vehicles and promulgate rules and regulations with respect to such permits.

The regulations prohibit a for-hire vehicle from displaying any advertising on or in a licensed vehicle unless the owner has obtained an advertising permit issued by the Commission pursuant to §19-525 of the Administrative Code.

Section 19-525(a) of the Administrative Code authorizes the Commission to issue advertising permits to any vehicle licensed by the Commission. Currently, such permits are only issued to licensed medallion taxicabs. Existing rules of the Commission prohibit a taxicab from displaying any interior or exterior advertising without a permit, but are silent with respect to authorized advertising on for-hire vehicles. The rule set forth herein promotes consistency with respect to the regulation of advertising on both taxicabs and for-hire vehicles by allowing for-hire vehicles to display appropriate advertising after the owner has obtained a for-hire vehicle advertising permit from the Commission.

The rules of the Commission relating to advertising do not prohibit the indication of a base name or telephone number on the exterior of a vehicle, since such information is required to be displayed by the Commission pursuant to Rule 6-12(f), now redesignated as 6-12(f)(1). After public comment, the regulation was amended to prohibit the display of roof top advertising on for-hire vehicles. This change was made to the rule to maintain the clear physical distinctions between for-hire vehicles and taxicabs and to prevent confusion by the public between these two types of vehicles.

2. Statement of Basis and Purpose in City Record July 15, 1999: The rules promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules relating to standards and conditions of service which are reasonably designed to carry out its purposes and under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules necessary to exercise authority conferred upon it by the Charter. The rule amendment eliminates the requirement that a for-hire vehicle display a commercial use motor vehicle tax stamp on the windshield. The proposed rule would provide that a for-hire vehicle could not be used for hire unless the required commercial use motor vehicle tax has been paid. Effective as of April 30, 1999, for-hire vehicle owners will no longer receive a commercial motor vehicle tax stamp from the New York City Department of Finance. Commencing on June 1, 1999 the tax will be collected directly by the New York State Department of Motor Vehicles upon the new or renewal registration of the vehicle. A current, valid registration will thereafter constitute proof of payment of the tax. Since most for-hire vehicles are registered in March, the commercial motor vehicle tax for the period ended May 31, 2000 will be paid directly to the Department of Finance. A tax stamp displayed upon the windshield will continue to be proof of payment of the commercial use motor vehicle tax for these vehicles. Accordingly, for this year, some For-Hire Vehicles ("FHVs") will continue to be required to display tax stamps on the windshield. For FHVs registered after June 1, 1999, a current, valid registration will constitute proof of payment of the tax. Since the Department of Finance will continue to collect the tax and issue tax stamps for medallion taxicabs, no change in the taxicab owners rules, with respect to the tax stamp requirement, has been promulgated.

3. Statement of Basis and Purpose in City Record Apr. 13, 2006: Section 6-12(e)(3) requires that licensed for-hire vehicles (liveries, black cars and luxury limousines) that are registered in New York State must have New York State license plates that are embossed with the legend "T&LC" below the license plate number, signifying licensure by TLC as for-hire vehicles. The requirement will apply to for-hire vehicles that are issued new or renewal for-hire vehicle licenses on or after May 10, 2006. Without this rule, for-hire vehicles registered at New York State addresses outside of New York City are able to obtain license plates that are embossed with the legend "livery" from New York State's Department of Motor Vehicles ("DMV"). DMV has indicated to TLC staff that it will honor the requirement in the rule that TLC-licensed for-hire vehicles must have the "T&LC" legend. Requiring all TLC-licensed for-hire vehicles to have "T&LC" embossed license plates would facilitate recognition of such vehicles by the public, TLC staff, insurance providers, and others. In particular, TLC staff research indicates that insurers recognize the "T&LC" license plate as an indication that the vehicle is TLC-licensed, and is therefore subject to the mandatory minimum insurance coverage requirements set forth in §6-11(d)(4) of TLC's rules. Such research further indicates that a for-hire vehicle with "livery"

license plates is not recognized by insurers as TLC-licensed, and therefore in some cases owners of such vehicles are able to purchase insurance coverage less than that mandated by TLC rules. Similarly, mandatory "T&LC" license plates will facilitate the collection of the applicable annual $400 commercial New York City motor vehicle tax, which in some cases has been evaded by owners of for-hire vehicles with "livery" license plates.

4. Statement of Basis and Purpose in City Record June 2, 2009: This rule amends chapter 6 of the Taxi and Limousine Commission's rules to strengthen oversight of the for-hire vehicle industry, to enhance the ties among bases and for-hire vehicle owners and FHV drivers, and to better communicate the legal status of for-hire vehicles to the public. This rule will require greater accountability of bases and vehicle owners for the lawful conduct of the for-hire business. The rule will reward greater accountability by enhancing the value of a base license. In particular, the rule would: As to vehicles: · require that each for-hire vehicle be inspected at the TLC's inspection facility at upon first licensure and upon license renewal. For vehicles that are model year 1996 or later, the TLC inspection will qualify as one of the three DMV inspections required annually. Upon initial licensure of a vehicle that has been driven less than 500 miles, the inspection can be a visual inspection only, and will not count as a DMV inspection. · set time limits during the application or renewal process by which the TLC inspection must be passed and require that each vehicle must pass within four tries. · require that license decals be placed on the vehicle by the TLC only after the vehicle has passed the TLC inspection or at any time a vehicle is replaced or changes affiliation. · require that, starting in September, 2009, vehicles (except luxury limousines) must have three exterior TLC decals. · enhance requirements for exterior base identification markings for each vehicle. · require the summary suspension pursuant to section 8-17(b) of any for-hire vehicle permit and the return of the TLC decal(s) at any time a vehicle is found to be unfit or unsafe at its inspection. · require that renewal applications for for-hire vehicle permits must be filed at least 30 days prior to permit expiration. Renewing applicants may file a renewal application after that date only upon payment of a $25 late fee and in no event later than the expiration date. · provide explicitly that for-hire vehicle permit termination includes revocation or surrender of the permit. · provide explicitly that a for-hire vehicle may be affiliated with only one base at any time. · prohibit a base and a vehicle owner from dispatching a for-hire vehicle from a base other than the base with which the vehicle is affiliated, although bases may dispatch vehicles from other bases provided that the customer is notified. · specify that applicants for for-hire vehicle permits with a prior history of vehicle permit revocation will be subject to a fitness hearing before any new permit can be issued. · impose penalties for vehicle owners if drivers accept street hails. · impose fixed penalties and suspension until compliance with respect to the for-hire vehicle permits for failure to have a valid TLC license decal on a vehicle. · require that vehicle owners who fail for any 60-day period to maintain affiliations or insurance or to comply with the inspection requirements, be subject to revocation under section 19-504(g) of the Administrative Code. · provide for the non-renewal of any for-hire vehicle permit if the vehicle is not in compliance with the requirements of section 6-12 of the TLC's rules at the time of renewal. · require for-hire vehicles to have heating and air conditioning. As to bases: · impose new requirements for bases seeking to terminate vehicle affiliations to reduce the possibility that licensed vehicles lack affiliations. · require base stations to submit business plans meeting certain minimum standards with license applications, renewal applications or applications for ownership changes. · enhance requirements regarding base use of trade names and telephone numbers, Web sites and contact information. · strengthen base record keeping requirements. · extend the term of base licenses to three years. · require base license renewal applications be filed 60 days prior to license expiration. · enhance requirements for bases with respect to filing their rates of fare with the Commission. · require livery bases to provide a price quote to prospective riders. · require bases to provide bonds. · require base owners to maintain lists of vehicles which are affiliated with the base and their drivers. · impose penalties for base station owners which fail to maintain a bond and for those who have failed to pay fines and penalties resulting in a draw on the bond. · add a fine for base owners who fail to meet requirements to provide transportation service to persons with disabilities. · provide that base transfers can occur only upon appearance of the transferor and transferee at the TLC and clarify that all base license transfers require TLC approval. As to bases and vehicles: · require revocation of base licenses and for-hire vehicle permits upon repeated convictions for violations of certain rules, in particular rules regarding the dispatch of unlicensed drivers. · specify that bases, vehicle owners and drivers cannot require passengers to share rides. · clarify that base owners and vehicle owners are separately and independently responsible for the conditions of operation of for-hire vehicles. · specify that base owners, vehicles and drivers are responsible for obeying traffic laws and not creating a nuisance while visiting a base.

As to drivers: · require the driver of a for-hire vehicle to keep the vehicle clean during his or her work shift. · require the driver of a for-hire vehicle to comply with passenger requests regarding heat, air conditioning and audio equipment. Finally, the rule provides for the posting of a Livery Passengers' Bill of Rights, as required by section 19-537 of the Administrative Code of the City of New York, recently added by local law (effective June 26, 2009).

CASE AND ADMINISTRATIVE NOTES

¶ 1. City Charter Sec. 2303, which requires the Taxi and Limousine Commission to serve notices of violations in the same manner as a summons, applies only to violations by unlicensed operators. Where the agency seeks to serve a licensed operator with notice of violations in connection with overdue vehicle inspections, service can be made by ordinary mail. Humming Bird Car Service, Inc. v. New York City Taxi and Limousine Commission, 184 Misc.2d 146, 706 N.Y.S.2d 850 (Sup.Ct. New York Co. 2000).

¶ 2. For hire driver failed to affix a valid TLC license decal on the windshield of his licensed for-hire vehicle in violation of paragraph (a) of this section. **Taxi and Limousine Comm'n v. Dadon,**, OATH Index No. 2147/00 (June 29, 2000), **modified on penalty,** Comm'r Dec. (Dec. 11, 2000).

¶ 3. For a period of time ending in 2002, the Taxi & Limousine Commission (TLC) had a practice of assessing multiple fines for violations of 35 RCNY 6-12 and 6-13, collecting the full statutory fine from each of the base station owner, the vehicle owner, and the vehicle lessee. A challenge to the statute alleged that the collection of three fines, instead one, constituted an excessive fine under the Eighth Amendment. The court, however, held that in the absence of an allegation that any of the individual fines was excessive, the collection of fines from multiple parties did not violate the Eighth Amendment. New York State Federation of Taxi Drivers, Inc. v. City of New York, 270 F.Supp.2d 340 (E.D.N.Y. 2003).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-12.1

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-12.1 Additional Conditions of Operation of For-Hire Vehicles and Bases.

A base owner and a for-hire vehicle owner shall each be separately and independently responsible for compliance with the following provisions and liable for penalties for violation thereof.

(a)(1) A base owner shall not dispatch or allow to operate, and a for-hire vehicle owner shall not allow to be dispatched or operated, a for-hire vehicle unless the driver's chauffeur's license is current and valid. For purposes of these rules, a valid chauffeur's license shall mean a license which is neither expired, suspended, revoked, conditional or restricted as to use by the New York State Department of Motor Vehicles or agency of another state which issued such license for violations of traffic laws or regulations. Each base owner and each for-hire vehicle owner is responsible for knowing the status of the state issued driver's license for any driver dispatched.

(2) A base owner shall not dispatch or allow to operate, and a for-hire vehicle owner shall not allow to be dispatched or operated, a vehicle unless the driver possesses a current for-hire vehicle driver's license issued by the Commission. For purposes of these rules, a current for-hire vehicle driver's license shall mean a license issued for the current time period which is neither suspended, revoked nor expired. The Commission shall post on its Web site a list of drivers and vehicles holding current, valid permits and licenses.

(3) A base owner and a for-hire vehicle owner shall not knowingly allow a for-hire vehicle to be operated by a driver who is under the influence of any drugs or alcohol or whose driving ability is in any way impaired.

(b)(1) No for-hire vehicle shall be driven when the Chairperson or the New York State Department of Motor Vehicles or a DMV inspection facility has determined that the vehicle is unsafe or unfit for use as a for-hire vehicle.

The for-hire vehicle permit shall be suspended pursuant to section 8-17(b) of this title upon such determination. In addition:

(2) If the Chairperson has determined that the vehicle is unsafe or unfit, the decals shall be confiscated by the Chairperson.

(3) If the New York State Department of Motor Vehicles or a DMV inspection facility other than the Commission has determined that the vehicle is unsafe or unfit, the vehicle owner must return the decals to the Chairperson within 72 hours of issuance of the determination.

(4) If the Chairperson has any reason to believe that any for-hire vehicle is unsafe or unfit for use, the Chairperson may order such vehicle to report to the Commission's inspection facility.

(c)(1) Each for-hire vehicle shall have all seat belts and shoulder belts clearly visible, accessible and in good working order.

(2) Each for-hire vehicle shall in addition to seat belts for each seating position and shoulder belts for both outside front seat positions be equipped with shoulder belts for both outside passenger rear seat positions.

(d) No for-hire vehicle shall be issued a permit or be used to transport passengers for hire in the City of New York if the vehicle has been altered after manufacture to increase its length, width, weight or seating capacity, or to modify its chassis and/or body design, unless the modification has been made in accordance with a program approved in advance by the original vehicle manufacturer, and the alteration has been performed by an entity approved and certified by the vehicle manufacturer to perform such alterations. An original, unaltered, approved vehicle modifier's certification sticker shall be affixed to the vehicle at a location to be determined by the Commission.

(e) Any officer or employee of the Commission designated by the Chairperson of the Commission, or any police officer, may conduct on-street inspections of vehicles providing transportation for hire and operating within New York City to assure compliance with all applicable laws and rules and may order the vehicle to report to the Commission's inspection facility.

(f) No for-hire vehicle owner shall permit his or her vehicle to transport passengers for hire other than through pre-arrangement with a base licensed by the Commission. A for-hire vehicle owner shall be liable for penalties for any violation of this section if the vehicle is used to transport passengers other than through pre-arrangement.

(g)(1) To be affiliated with a black car base, a vehicle owned or leased by a new applicant, beginning January 1, 2010, must meet the requirements set forth in section 6-09 and, beginning January 1, 2011, must meet the requirements set forth in section 6-10 of this chapter. For purposes of this paragraph (g)(1), a "new applicant" is the owner or lessee of a vehicle who does not hold a current for-hire vehicle permit for that vehicle.

(2) To be affiliated with a black car base, a vehicle owned or leased by a renewal applicant, beginning January 1, 2011, must meet the requirements set forth in section 6-10 of this chapter. For purposes of this paragraph (g)(2), a "renewal applicant" is the owner or lessee of a vehicle who holds a current for-hire vehicle permit for that vehicle and is affiliated with a black car base when the application is submitted.

(h) No base and no owner of a for-hire vehicle shall require that any prospective passenger must share a ride with another prospective passenger.

(i) The owner of a for-hire vehicle shall be responsible for ensuring that the driver and vehicle will obey all applicable traffic and parking regulations within the area set forth in section 6-07(b)(3) of this chapter.

(j) The owner of a for-hire vehicle shall be responsible for ensuring that the driver and the vehicle while stopped at

the base with which the vehicle is affiliated or by which the vehicle is dispatched will not create a nuisance such as by engaging in horn honking, littering, or the playing of loud audio material within the area set from in section 6-07(b)(3) of this chapter.

(k) The owner of a for-hire vehicle shall be responsible for ensuring that the vehicle is equipped with functioning heating and air conditioning equipment.

HISTORICAL NOTE

Section added City Record June 2, 2009 §25, eff. July 2, 2009. [See T35 §6-12 Note 4]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-13

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-13 Partitions, Cameras and Emergency Lights.

A for-hire vehicle base and a for-hire vehicle owner shall be jointly and severally responsible for compliance with the following provisions and liable for violation thereof. No for-hire vehicle shall be used in the course of operations of a for-hire vehicle service unless the vehicle is in compliance with the following:

(a) A for-hire vehicle, except as provided in paragraphs two and three of this subdivision, shall be equipped with a partition which isolates the driver from the rear seat passengers or all passengers present in such vehicle, as set forth in paragraph one of this subdivision.

(1) The partition shall be made of polycarbonate material not less than 0.375 inches thick extending upward from the back of the front seat to the ceiling of the vehicle. There shall be a provision for communication with passengers and for a money slot while the partition is closed. Such partition may be able to be partially opened by the driver, as long as the driver can fully close the partition at any time. A for-hire vehicle owner shall also equip the vehicle with a 0.085 inch thick plate of ballistic steel or its equivalent, installed inside the back rest of the front seat. The plate shall cover the complete back rest area which is exposed to the rear seat compartment. Provided, however, that, notwithstanding any other provision of these rules, all for-hire vehicles, except those that are exempt pursuant to paragraphs two or three of this subdivision, when an existing partition is required to be replaced or when a partition is installed (including, but not limited to, at first licensing), shall be equipped with a partition, the transparent portion of which shall be constructed, at a minimum, of a mar-resistant polycarbonate and shall be not less than 0.375 inches thick, that will provide passengers and drivers with maximum visibility.

(A) For a flat partition and a partition for a for-hire vehicle with factory installed curtain airbags, the transparent

portion of the partition shall extend from the ceiling to join or overlap with the protective plate of the partition.

(B) For an L shaped partition, on the side that is behind the driver, the transparent portion of the partition shall extend from the ceiling to join or overlap with the protective plate and on the side that extends forward to back between the two front seats, the transparent portion of the partition shall extend from the ceiling to join or overlap with the protective plate of the partition on the right side of the center console between the two front seats.

(C) The protective plate shall join or be overlapped by the transparent portion of the partition and shall extend from the point that the protective plate joins, or if overlapped by the transparent portion of the partition, the point that would be the point of joiner with the transparent portion of the partition, downward to the floor of the for-hire vehicle. The protective plate shall be constructed of a 0.085 inch thick plate of ballistic steel or its equivalent installed in and covering the complete back rest area of the front seat which is exposed to the rear seat compartment and, for an L shaped partition, on the right side of the center console between the two front seats.

(D) No partition shall be installed unless it shall have the following features which do not compromise passenger or driver safety:

(i) a means for passengers and drivers to communicate with each other; and

(ii) the capacity for the passengers to pay fares, either by cash or by credit card if the for-hire vehicle is capable of accepting credit card payments, and for the passengers to receive receipts for payments and transactions, while the passenger is in the rear passenger compartment.

(2) A for-hire vehicle shall be exempt from the requirements of paragraph (1) if the vehicle is affiliated only with a black car base or a luxury limousine base.

(3) A for-hire vehicle shall be exempt from the requirements of paragraph (1) if the vehicle is equipped with at least the following two safety devices:

(i) A FCC-licensed commercial two-way radio with an emergency button that would notify the dispatcher that the driver is in trouble or a cellular telephone which has an emergency dialing feature, and

(ii) Some other device specifically approved by the Chairperson to satisfy this requirement, in addition to the trouble light required by subdivision (b) of this section; provided, however, that, when an existing in-vehicle camera system is required to be replaced or when such system is installed in compliance with this paragraph, it shall meet the requirements set forth in section 3-03(e)(3)(v) of this title. Such for-hire vehicle shall further be equipped with the trouble light required by subdivision (b) of this section.

(b) The vehicle shall be equipped with a help or distress signaling light system, unless the owner is exempt pursuant to paragraph (7) of this subdivision. The light system shall be in accordance with the following specifications:

(1) The help or distress signaling light system shall consist of two turn signal type "lollipop" lights.

(2) One light shall be mounted on the front center of the vehicle, either on top of the bumper or forward or behind the grill. A second light shall be mounted on top of the rear bumper, to the left of the license plate.

(3) Each light shall be three to four inches in diameter, have a total rated output of thirty-two candle power and shall be the color amber or have an amber colored lens that the light output of the device is the color amber at thirty-two candle power.

(4) The activator shall be installed within easy reach of the driver and shall be silent when operating.

(5) The lights shall flash between 60 and 120 times per minute.

(6) The wiring shall not affect or interfere directly otherwise with any wiring or circuitry used by a meter for measuring time and distance.

(7) A vehicle shall be exempt from the requirements of this subdivision if the vehicle is affiliated only with a black car base or a luxury limousine base.

(c) Each for-hire vehicle equipped with an in-vehicle camera system shall display decals on each rear passenger window, visible to the outside, that contain the following information, in letters at least one-half inch high: "This vehicle is equipped with camera security. YOU WILL BE PHOTOGRAPHED."

HISTORICAL NOTE

Section heading amended City Record Apr. 23, 2007 §6, eff. May 23, 2007. [See T35 §1-17 Note 4]

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (a) amended City Record June 1, 2000 §2, eff. July 1, 2000. [See T35 §1-17 Note 2]

Subd. (a) amended City Record May 3, 2000 §1, eff. June 2, 2000. This Emergency Rule was also

enacted in City Record Apr. 21, 2000 eff. May 21, 2000. [See T35 §1-17 Note 1]

Subd. (a) open par amended City Record Apr. 23, 2007 §6, eff. May 23, 2007. [See T35 §1-17

Note 4]

Subd. (a) par (1) amended City Record Apr. 23, 2007 §6, eff. May 23, 2007. [See T35 §1-17 Note 4]

Subd. (a) par (3) amended City Record Apr. 23, 2007 §6, eff. May 23, 2007. [See T35 §1-17 Note 4]

Subd. (c) added City Record Apr. 23, 2007 §6, eff. May 23, 2007. [See T35 §1-17 Note 4]

CASE NOTES

¶ 1. See New York State Federation of Taxi Drivers, Inc. v. City of New York, 270 F.Supp.2d 340 (E.D.N.Y. 2003), discussed in note 3 of 35 RCNY 6-12.

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Rules of the City of New York

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35 RCNY 6-14

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-14 Probationary Licenses.

(a) An applicant will be issued a probationary license valid for a period of one-year subsequent to the date the license was issued. The Commission will evaluate the applicant at the conclusion of the one-year probationary period and will determine if renewal of the license is appropriate. In making such determination, the Commission may consider the driving record, any violation of the For-Hire Vehicle Rules, or any other evidence that suggests that the driver no longer meets all requirements for a license.

(b) Renewal of a probationary license will be automatically barred or the Commission may revoke a probationary license at any time if any of the following occurs during the probationary period:

(1) The driver is convicted of a crime in any jurisdiction.

(2) The driver is convicted of driving while impaired by alcohol or drugs.

(3) The driver is convicted of refusing to submit to a breathalyzer or other chemical test.

(4) The driver is convicted of leaving the scene of an accident.

(5) The driver accumulates eight or more points against his New York State Chauffeur's License or comparable license issued by his State of residence, the total of which shall include points existing on the driver's State license prior to his or her application for a license with the Commission.

(6) The driver is convicted of three or more moving violations.

(7) The driver is convicted of two speeding violations.

(8) The driver accumulated four or more points in accordance with the Commission's persistent violator program described in Rule 6-23.

(9) The driver is convicted of two or more violations of Rule 6-16(d), 6-16(f), or 6-16(g).

(c) For purposes of subdivision (b) of this rule, the Commission will consider the date of occurrence rather than the date of conviction when determining if a violation occurred within the probationary period.

HISTORICAL NOTE

Section added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-04 Note 2]

Subd. (a) amended City Record Nov. 2, 2006 §12, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

CASE NOTES

¶ 1. License revocation recommended under this section for a for-hire driver who was convicted during his probationary term of driving his private car while under the influence of alcohol. **Taxi & Limousine Comm'n v. Fuentes**, OATH Index No. 201/08 (Aug. 28, 2007); **Taxi & Limousine Comm'n v. Alexandridis**, OATH Index No. 202/08 (Aug. 28, 2007)(same).

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35 RCNY 6-15

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-15 Driver License Requirements.

(a) (1) A driver shall not operate a for-hire vehicle unless he is licensed by the Commission and affiliated with a licensed base.

(2) A driver shall not operate a for-hire vehicle without a valid New York State chauffeur's license or a valid license of equivalent class of the state of which he is a resident. For the purposes of these rules, a valid chauffeur's license or a license of equivalent class shall mean a license which is neither probationary, suspended, revoked, conditional, nor restricted as to use by the New York State Department of Motor Vehicles or agency of another state which issued such license for violations of traffic laws or regulations.

(3) An applicant for a for-hire vehicle driver's license, other than an applicant who is a City of New York Police Officer, shall be tested, at the applicant's expense, for drugs or controlled substances, as set forth in §3306 of the Public Health Law. Such testing shall be performed by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. A positive test result shall result in the denial of a new application. Said determination shall be a final agency decision. A renewal applicant must be tested for drugs in accordance with §6-16(v) of this chapter.

(b) An applicant for a for-hire vehicle driver's permit shall agree that service of any paper, notice, letter, summons, complaint or legal process of any kind or nature may be made by the City of New York, or any department thereof, upon the person to whom the permit is issued by leaving a copy of any such paper, notice, letter, summons, complaint or legal process with any member of his or her family or any other person with whom he or she may reside at the address listed in his or her application.

(c) A driver shall immediately surrender his for-hire vehicle operator's permit to the Commission upon the restriction, suspension or revocation of his chauffeur's license.

(d) (1) A driver, within twenty-four (24) hours, exclusive of holidays and weekends, shall notify the Commission of the loss or theft of his for-hire vehicle operator's permit and shall replace said such permit.

(2) A driver shall not alter, deface, mutilate, or obliterate any portion of his for-hire vehicle operator's permit or the attached photograph.

(3) A driver shall immediately surrender to the Commission an unreadable or unrecognizable for-hire vehicle operator's permit and shall replace such permit.

(4) A driver shall not permit another person to use his for-hire vehicle operator's permit.

(e) An applicant for a for-hire operator's permit shall be fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services. The criminal history of any applicant, including a renewal applicant, shall be reviewed in a manner consistent with Article 23-A of the New York State Correction Law and the application of any applicant denied, or the for-hire operator's permit of any current holder shall be revoked, after notice and a hearing, following conviction of such applicant or holder for any serious criminal offense as set forth in §498.1(f)*1 of the New York Vehicle and Traffic Law. The applicant shall pay any processing fee required by the State. A driver shall immediately inform the Commission when convicted of any crime and shall supply the Commission with a certified copy of the Certificate of Disposition issued by the Clerk of the Court with respect to such conviction.

(f) A driver shall, upon filing for Workers' Compensation benefits because of a disabling work-related injury, submit the driver's for-hire vehicle driver's license to the Commission and cease driving, for so long as the driver claims a disability that prevents the driver from operating a vehicle for hire. Such license shall not be returned until such driver presents to the Commission documentation of cessation of Workers' Compensation benefits due to recovery from such work-related disability, as provided in §6-07(d) of this chapter.

(g) A driver shall notify the Commission in person or by first class mail, within seven (7) days, exclusive of holidays and weekends, of any change of mailing address. Any notice from the Commission shall be deemed sufficient if sent to the last mailing address furnished by the driver.

(h) The holder of a for-hire operator's permit issued under this chapter shall satisfy any outstanding judgment and pay any civil penalty owed for a violation relating to traffic in a qualified jurisdiction or a violation of the regulations of a qualified jurisdiction.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (a) par (2) amended City Record July 15, 1999 §2, eff. Aug. 14, 1999. [See T35 §2-02 Note 1]

Subd. (a) par (3) amended City Record Feb. 14, 2006 §7, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

Subd. (a) par (3) amended City Record Oct. 31, 2000 §4, eff. Nov. 30, 2000. [See T35 §2-03 Note 1]

Subd. (a) par (3) amended City Record Apr. 12, 1999 §4, eff. May 12, 1999. [See T35 §2-19 Note 1]

Subd. (a) par (3) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 3]

Subd. (e) amended City Record Nov. 22, 2006 §5, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Subd. (h) added City Record Nov. 22, 2006 §6, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

DERIVATION

Section derived from former §6-06.

Section repealed City Record Apr. 29, 1997 eff. June 1, 1997.

Section renumbered (formerly §6-04) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (j) amended City Record July 8, 1997 §18, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (t) added City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Subds. (u)-(x) added City Record July 8, 1997 §19, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

FOOTNOTES

1

[Footnote 1]: * Should be §498(1)(f).

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35 RCNY 6-16

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-16 Conditions of Operation for For-Hire Vehicle Drivers.

(a) A driver shall not operate a for-hire vehicle in such a manner or at such a speed which endangers users of other vehicles, pedestrians or such driver's passengers.

(b) A driver who, knowing or having cause to know that personal injury or damage to property has been caused by the driver's culpability or due to an accident involving the driver's for-hire vehicle, shall, before leaving the place where such damage or injury occurred, exhibit to the person or persons who were injured or whose property was damaged the driver's chauffeur's license, for-hire vehicle operator's permit, and vehicle permit, and give to such other person or persons the driver's name, operator's permit number, and vehicle permit number, as well as the name of the vehicle's insurance carrier and the insurance policy number.

(c) A driver shall operate his for-hire vehicle at all times in full compliance with all New York State and New York City traffic laws, rules and regulations and all rules, regulations and procedures of the Port Authority of New York and New Jersey, the Triboro Bridge and Tunnel Authority, and any regulatory body or governmental agency having jurisdiction over motor vehicles, with respect to matters not otherwise specifically covered in these rules. Violations of the foregoing shall be classified as follows for purposes of this subdivision:

(1) Laws, rules or regulations governing stationary vehicles.

(2) Laws, rules or regulations governing moving vehicles, other than hazardous moving violations defined by paragraph (3) of this subdivision.

(3) Laws, rules or regulations governing moving vehicles which involve hazardous moving violations defined as follows:

(i) speeding;

(ii) failing to stop for school bus;

(iii) following too closely;

(iv) inadequate brakes (own vehicle);

(v) inadequate brakes (employer's vehicle);

(vi) failing to yield right of way;

(vii) traffic signal violation;

(viii) stop sign violation;

(ix) yield sign violation;

(x) railroad crossing violation;

(xi) improper passing;

(xii) unsafe lane change;

(xiii) driving left of center;

(xiv) driving in wrong direction;

(xv) leaving scene of an accident involving property damage or injury to animal.

(d) A driver shall not operate an unlicensed for-hire vehicle.

(e)(1) A driver must not operate a for-hire vehicle without a current, valid and unexpired for-hire vehicle permit decal or decals issued by the Commission. The decal shall be affixed to the front right side of the windshield of the vehicle and, if three decals are required, also on each of the two rear quarter windows. The decals must be plainly visible. In addition, until July 1, 2009 the following items shall be present in the for-hire vehicle:

(A) the driver's for-hire vehicle driver's license;

(B) the certificate of registration or legible photostat thereof;

(C) the for-hire vehicle permit or legible photostat thereof;

(D) the insurance card or legible photostat thereof;

(E) if such for-hire vehicle is used for providing pre-arranged transportation for hire between the City of New York and an issuing jurisdiction, a trip log conforming to the requirements of §6-25 of this chapter.

(2) Beginning on July 1, 2009, the driver's for-hire vehicle driver's license must be displayed in a protective holder mounted behind the driver's seat and the vehicle must contain all other items listed in paragraph (1) of this subdivision.

(3) Beginning on September 1, 2009 a driver must not operate a for-hire vehicle without three (3) current, valid

and unexpired for-hire vehicle license decals, issued by the Commission's Licensing Division, affixed, one to the front right side of the windshield of the vehicle and one to each of the two rear quarter windows, so as to be plainly visible, and the following items shall be present in the for-hire vehicle:

(A) in the right visor or on top of the right side of the dashboard or in the glove compartment:

(i) the certificate of registration or legible photostat thereof;

(ii) the insurance card or legible photostat thereof;

(B) in a protective holder mounted behind the driver's seat in the vehicle:

(i) the for-hire vehicle driver's license of the driver; and

(ii) the for-hire vehicle permit.

(C) if such for-hire vehicle is used for providing pre-arranged transportation for hire between the City of New York and an issuing jurisdiction, a trip log conforming to the requirements of §6-25 of this chapter.

(f) A driver shall not solicit or pick up passengers by means other than prearrangement through a licensed base, except that the driver of a wheelchair accessible livery may be dispatched as provided in chapter 16 of this title.

(g) A driver shall not pick up a passenger at an authorized taxi stand.

(h) A driver, while operating a for-hire vehicle, shall not, without the Chairperson's written authorization, have in his or her possession or in the vehicle, a weapon as defined by §6-01 of these Rules, or any other instrument which is intended to be used as a weapon.

(i) (1) A driver, whether in his vehicle or not, shall, at all times at all Port Authority of New York and New Jersey facilities, conduct himself and operate his vehicle in accordance with all rules and regulations and procedures of the Port Authority of New York and New Jersey.

(2) A driver shall at all times at all Port Authority of New York and New Jersey facilities remain inside his or her vehicle or with fifteen (15) feet thereof or in areas designated by the Port Authority of New York and New Jersey and shall not solicit or pick up passengers at any Port Authority of New York and New Jersey facility except by prearrangement.

(3) A driver shall comply with all Commission rules at all Port Authority of New York and New Jersey facilities.

(j) A driver shall not smoke in a for-hire vehicle.

(k) A driver shall not engage in mechanical maintenance or repair of any vehicle on public streets and sidewalks, except to make such emergency repairs as may be necessary to move a disabled vehicle. A dead battery or a flat tire is an example of a disabling condition.

(l) A driver shall not refuse to transport any person with a disability or any guide dog accompanying such person.

(m) A driver shall permit a passenger who is unable to enter or ride in the rear passenger part of the vehicle, to occupy the front seat alongside the driver.

(n) Upon request of a passenger, the driver shall load or unload a passenger's luggage, wheelchair, crutches or other property in or from the vehicle's interior or trunk compartment, and shall secure such compartment.

(o) A driver shall not charge or attempt to charge a fare above the pre-approved rate quoted by the dispatcher. A

driver shall not impose or attempt to impose any additional charge for transporting a person with a disability, a service animal accompanying a person with a disability or a wheelchair or other mobility aid. No passenger shall be asked or required to tip.

(p) A passenger who is unable to enter or ride in the rear seat of a for-hire vehicle must be permitted to occupy the front seat alongside the driver. If a passenger's luggage, wheelchair, crutches, three-wheeled motorized scooter, other mobility aid or other property occupies the rear seat of the for-hire vehicle, the passenger must be permitted to occupy the front seat alongside the driver.

(q) (1) A driver shall not refuse by words, gestures or any other means, without justifiable grounds set forth in subdivision (r) of this section, to provide transportaion, when dispatched, for a person who has prearranged the trip and the destination is within the City of New York, the counties of Westchester or Nassau or Newark Airport. This includes a person with a disability and any service animal accompanying such person.

(2) a driver shall not require a person with a disability to be accompanied by an attendant. However, where a person with a disability is accompanied by an attendant, a driver shall not impose or attempt to impose any charge in addition to the authorized rate of fare for transporting the attendant.

(3) A driver shall not refuse to transport a passenger's luggage, wheelchair, crutches, other mobility aid or other property.

(r) Justifiable grounds for the conduct otherwise prohibited by subdivision (q) of this section shall be the following:

(1) the passenger is carrying, or is in possession of any article, package, case or container, other than a wheelchair or other mobility aid, which the driver may reasonably believe will cause damage to the interior of the for-hire vehicle, impair its efficient operation, or cause it to become stained or foul smelling;

(2) the passenger is escorted or accompanied by an animal which is not properly or adequately secured in a kennel case or other suitable container. This provision shall not apply to service animals accompanying people with disabilities;

(3) the passenger is disorderly or intoxicated. Provided, however, that a driver shall not refuse to provide service to a person with a disability solely because such person's disabilty results in an appearance or involuntary behavior which may offend, annoy or inconvenience the driver; or

(4) if the passenger has refused a request by the driver to obey the no-smoking requirement of law, the driver may discharge the passenger after asking the passenger to cease smoking in the for-hire vehicle. Provided, however, that, if the driver discharges the passenger, it must be at a safe location.

(s) If the Commission has reasonable suspicion to believe that a driver has a drug or controlled substance impairment that renders him or her unfit for the safe operation of a for-hire vehicle, it may direct the driver to be tested or examined for such impairment, at such driver's expense, by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health. If the results of said test(s) or examination(s) are positive, the driver's license may be revoked after a hearing. Failure of a driver to be tested or examined as directed may lead to suspension or revocation of such driver's license in accordance with §8-16 of this title.

(t) A driver shall not operate a for-hire vehicle while his driving ability is impaired by either intoxicating liquor (regardless of its alcoholic content), drugs or other controlled substances, nor while driving such for-hire vehicle or for six hours prior to driving or occupying such for-hire vehicle shall he consume any intoxicating liquor regardless of its alcoholic content or any drugs or other controlled substances.

(u) (1) A driver shall not use a portable or hands-free electronic device while operating a for-hire vehicle, unless such for-hire vehicle shall be lawfully standing or parked. "Use" of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver's ear. "Use" of a portable or hands-free electronic device by a driver does not include a short, solely business-related communication in connection with a dispatch from a base using a FCC-licensed commercial two-way radio or if the electronic device used is mounted in a fixed position in the vehicle and is not hand-held, and if the communication is by voice or by use of one-touch pre-programmed buttons or function keys.

A driver may offer as an affirmative defense that he or she was using a portable or hands-free electronic device while operating a for-hire vehicle for the sole purpose of communicating with an emergency response operator that there exists an imminent threat to life or property, and that it was impossible for the driver to safely stop the vehicle before placing the call. The driver must provide documentary proof that the electronic communication was to an emergency response operator.

(2) Additional penalties for use of a portable or hands-free electronic device while operating a for-hire vehicle.

(i) For purposes of this paragraph (u)(2), "portable or hands-free electronic device violation" shall mean a violation of §6-16(u)(1) of this chapter or a violation of any state law or rule prohibiting or restricting the use of a portable or hands-free electronic device while driving, such violation having been adjudicated by a court or other tribunal having jurisdiction over such violations.

(ii) Any for hire vehicle driver who commits a portable or hands-free electronic device violation is required to attend and satisfactorily complete an authorized course of training in the dangers of driving while distracted by portable or hands-free electronic devices. The course shall be a minimum of one hour and shall include a review of the rules governing the use of portable or hands-free devices, and the dangers of driving while distracted. The course must be completed and verification of course completion provided by the designated school within sixty days of TLC's issuance of a directive to the for hire vehicle driver that he or she is required to take such course.

(v)(1) Notwithstanding the foregoing, each licensee, other than a licensee who is a City of New York Police Officer, also shall be tested annually, at the licensee's expense, for drugs or controlled substances, as set forth in §3306 of the Public Health Law. For licensees in the first year of a two-year license, such testing must occur no sooner than thirty (30) days prior to, and in any event no later than, the date one year prior to the expiration date of such license. For licensees in the second year of a two-year license, such testing must occur no sooner than thirty (30) days prior to, and in any event no later than the expiration date of such license. Such testing shall be performed by an individual or entity designated by the Commission and possessing a requisite permit issued by the New York State Department of Health.

(2) If the results of said test are positive, the driver's license may be revoked after a hearing in accordance with §8-15 of this title. A finding that the driver has failed said test will result in revocation of the driver's license.

(3) Failure of a licensee in the first year of a two-year license to be tested no sooner than thirty (30) days prior to, and in any event no later than, the date one year prior to the expiration date of such license shall result in suspension of the driver's license in accordance with §8-17 of this title. If such licensee undergoes the required testing within thirty (30) days after the date one year prior to the expiration date of the current license, the suspension of the driver's license shall be lifted. If such licensee undergoes the required testing more than thirty (30) days after the date one year prior to the expiration date of the current license, such licensee shall also be required to pay a penalty of $200 to have the suspension of the driver's license lifted.

(4) Failure of a licensee in the second year of a two-year license to be tested by the expiration date of such license shall result in denial of a license renewal application, if any, and expiration of the license.

(w) A driver while stopped at the base with which the driver's vehicle is affiliated shall use the off-street parking

facilities required by section 6-04(b) of this chapter or, if not, shall comply with all applicable traffic and parking regulations.

(x) A driver while stopped at the base with which the driver's vehicle is affiliated must not create a nuisance such as by engaging in littering or the playing of loud audio material within the area set forth in section 6-07(b)(3) of this chapter. A driver must never engage in horn honking while stopped at the base.

(y) No driver of a for-hire vehicle shall require that any prospective passenger must share a ride with another prospective passenger.

(z) A driver during his or her workshift must keep the vehicle's interior clean and scent free.

(aa) All audio equipment controlled by the driver must be turned on or off at the request of the passenger. The passenger shall have the right to select what is played on the audio equipment. Whether or not the vehicle is hired, an audio device must be played at normal volume only, and all noise ordinances shall be complied with.

(bb) A driver must turn on or off heating or air-conditioning equipment at the request of the passenger.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (c) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

Subd. (e) amended City Record June 2, 2009 §26, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subd. (e) amended City Record Nov. 22, 2006 §7, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Subd. (f) amended City Record Nov. 23, 2007 §11, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Subd. (h) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-25 Note 2]

Subd. (o) amended City Record June 2, 2009, 2009 §27, eff. July 2, 2009. [See T35 §6-12 Note 4]

Subds. (o)-(r) added City Record July 8, 1997 §19, eff. Aug. 11, 1997. Language juxtaposed and redesignated by Taxi and Limousine Commission, pursuant to authority of City Corporation Counsel, to reflect major amendments and renumbering to Chapter 6 in City Record Apr. 29, 1997 and erroneously overlooked. [See T35 §4-01 Note 1]

Subd. (s) amended City Record Feb. 14, 2006 §3, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

Subds. (s), (t) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 3]

Subd. (u) amended City Record Dec. 30, 2009 §9, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Subd. (u) added City Record May 27, 1999 §4, eff. June 26, 1999. [See T35 §2-25 Note 1]

Subd. (v) amended City Record Feb. 14, 2006 §4, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

Subd. (v) amended (temporarily) City Record Nov. 21, 2005 §3, eff. Nov. 21, 2005 until Mar. 21, 2006 per Charter §1043(h) and 60 day extension notice in City Record Jan. 6, 2006. [See T35

§2-19 Note 2]

Subd. (v) amended (as subd. (s)) City Record Oct. 31, 2000 §5, eff. Nov. 30, 2000. [See T35 §2-03 Note 1]

Subd. (v) added City Record Apr. 12, 1999 §5, eff. May 12, 1999. Subdivision redesignated by Law Department per Charter §1045(b). [See T35 §2-19 Note 1]

Subd. (v) par (2) amended City Record Nov. 22, 2006 §11, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Subds. (w)-(bb) added City Record June 2, 2009 §28, eff. July 2, 2009. [See T35 §6-12 Note 4]

CASE AND ADMINISTRATIVE NOTES

¶ 1. For-hire vehicle driver threatened a passenger and drove in a manner that caused her to sustain physical injuries. Passenger credibly identified respondent as the driver of the vehicle. Respondent's version of events lacked credibility and was not supported by the documentary evidence he submitted. License revocation imposed. **Taxi and Limousine Comm'n v. Fofana**, OATH Index No. 151/00 (Oct. 15, 1999), **aff'd**, Comm'n Dec. (Jan. 5, 1999).

¶ 2. Driver asked passengers on trip from Newark airport to Manhattan for $45 instead of the pre-approved fare quoted by the dispatcher of $30 plus tolls and tip, in violation of paragraph (o) of this section. **Taxi and Limousine Comm'n v. Hadeir**, OATH Index No. 1560/99 (May 27, 1999), **modified on penalty**, Comm'n Dec. (July 12, 1999).

¶ 3. After spitting on TLC inspector, respondent, a for hire vehicle owner and operator, ran to his vehicle, accelerated and drove on the sidewalk to avoid traffic, which was unreasonable under the circumstances and endangered other vehicles and pedestrians. **Taxi and Limousine Comm'n v. Dadon,**, OATH Index No. 2147/00 (June 29, 2000), **modified on penalty,** Comm'r Dec. (Dec. 11, 2000).

¶ 4. Respondent, for hire vehicle owner and operator, violated a law governing stationary vehicles when he parked in a "No Standing" zone. **Taxi and Limousine Comm'n v. Dadon,** OATH Index No. 2147/00 (June 29, 2000), **modified on penalty,** Comm'r Dec. (Dec. 11, 2000).

¶ 5. For hire vehicle driver tested positive for cocaine, was found unfit and license revocation was recommended. **Taxi & Limousine Comm'n v. Almonte-Reynoso**, OATH Index No. 963/08 (Nov. 23, 2007).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-17

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-17 Critical Driver Program.

(a) The for-hire vehicle driver's license of any driver who, within a period of fifteen months, accumulates six or more points against his license issued by the Department of Motor Vehicles or an equivalent license issued by the driver's state of residence, unless previously revoked, shall be suspended for thirty days.

(b) The for-hire vehicle driver's license of any driver who, within a period of fifteen months, accumulates ten or more points against his license issued by the Department of Motor Vehicles or an equivalent license issued by the driver's state of residence shall be revoked.

(c) The Commission may at any time review the fitness of a driver to be licensed by the Commission in view of any moving violation, accident, or other driving related incident. Nothing contained herein shall preclude the imposition by the Commission of additional or more severe penalties, or any other action deemed appropriate, in accordance with the Rules of the Commission.

(d) For the purpose of this rule, the points assigned by the Department of Motor Vehicles for any violation shall be deemed to have been accumulated as of the date of occurrence of the violation.

(e) The relevant fifteen month period to be used for calculating any suspension or revocation imposed under subsection (a) or (b) herein shall be calculated from the date of the most recent occurrence which led to a conviction of a violation carrying points; provided however, that no action under subsection (a) or (b) shall be taken with regard to any violation carrying points which occurred prior to February 15, 1999.

(f) For the purpose of calculating penalties pursuant to subsection (a) or (b), herein, a driver who has accumulated points for multiple violations arising from a single incident shall be deemed to have accumulated points for the single violation with the highest point total.

(g) Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the Department of Motor Vehicles, and who furnishes the Commission with proof that the course was completed, on or before August 31, 1999, shall have two (2) points deducted from the total number of points assessed for the purpose of determining any suspension or revocation pursuant to this Rule. No point reduction shall affect any suspension or revocation action which may be taken pursuant to these Rules prior to the completion of the course; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

(h) Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the Department of Motor Vehicles, and who furnishes the Commission with proof that the course was completed on or after September 1, 1999, shall have two (2) points deducted from the total number of points assessed pursuant to this Rule. No point reduction shall affect any suspension or revocation action taken pursuant to these Rules prior to the completion of the course. No person shall receive a point reduction pursuant to this subsection more than once in any eighteen month period; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

HISTORICAL NOTE

Section amended City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §2-07 Note 1]

Section added City Record Jan. 15, 1999 eff. Feb. 14, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 15, 1999:

The rule promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under §2303(a) of the New York City Charter, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in New York City; under §2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under §19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The rules establish a "Critical Driver Program," by which the Commission will review all driving infractions by taxicab and for-hire vehicle drivers which result in the imposition of "points" under Part 131 of the Regulations of the Department of Motor Vehicles ("DMV"). Those taxicab and for-hire vehicle drivers who accumulate six or more points on their New York State Department of Motor Vehicle Driver's Licenses within 18 months will have their TLC taxicab or for-hire vehicle driver licenses suspended for 30 days. Taxicab or for-hire vehicle ("FHV") drivers who accumulate ten or more points within a period of 18 months will have their taxicab or for-hire vehicle driver licenses revoked. This action will be taken irrespective of any action taken by DMV with respect to the licensee's state-issued operator's license.

The purpose of this rule is to protect public safety by suspending or revoking the licenses of individuals who have an unsatisfactory driving record. This rule will relate the existing DMV "point" system, whereby motorists convicted of certain moving violations are assigned points based upon the severity of the offense, to the motorists's TLC license. The number of points required for TLC action against an individual's hack or FHV operator's license is less than the number of points that would result in licensing action being taken by DMV. However, where DMV has assigned points for more than one violation arising out of a particular incident, only the violation carrying the greatest number of points will be used in calculating Critical Driver penalties. The result of this program will be to hold licensees of the Commission to a

higher standard with respect to their TLC licenses than the DMV currently holds the general public with respect to state-issued driver's licenses. This higher standard is justified based upon the direct impact licensees of the Commission have upon public safety.

A review of the driving records of TLC licensees indicates that a significant number of licensees have accumulated excessive points on their DMV licenses and are still permitted to hold both a State-issued driver's license and a TLC license. Many of these drivers have been involved in serious accidents causing personal injury and property damage. For example, there are more than 100 TLC licensees who have accumulated at least 17 points on their DMV licenses within the past eighteen months. No action against these licensees has been taken by DMV.

The Commission believes that adoption of the Critical Driver Program will reduce accidents and compel taxi and livery drivers to obey traffic regulations and operate their vehicles safely. This rule amendment may also reduce insurance costs by creating a better pool of qualified drivers. The Commission believes that a direct correlation between a licensee's DMV record and his or her ability to safely operate a taxicab or for-hire vehicle has been clearly established.

The proposed text of this rule was first published in the **City Record** on April 26, 1998. A public hearing on this proposal was held on May 28, 1998. The text of the proposed rule was redrafted to clarify language contained in the earlier draft and to respond to comments received by the Commission in writing and at the public hearing.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-18

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-18 Personal Conduct of Licensees.

(a) No licensee shall offer or give any gift, gratuity or thing of value to any employee, representative or member of the Commission or any public servant.

(b) A licensee shall immediately report to the Commission any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the Commission or any public servant.

(c) A licensee shall not offer or give any gift or gratuity or thing of value to a person or persons employed at any airport or other transportation terminal to provide ground transportation information services, dispatching service, security services, traffic and parking control or baggage handling whether or not such person or persons is employed by Port Authority of New York and New Jersey, LIRR, Metro-North or any similar entity.

(d)(1) A licensee, while performing his duties and responsibilities as a licensee, shall not commit or attempt to commit, alone or in concert with another, any act of fraud, misrepresentation or larceny against a passenger, Commission representative, public servant or any other person.

(2) A licensee, while performing his duties and responsibilities as a licensee, shall not commit or attempt to commit, alone or in concert with another, any willful act of omission or commission which is against the best interests of the public, although not specifically mentioned in these Rules.

(e) A licensee shall cooperate with all law enforcement officers and authorized representatives of the Commission, including but not limited to giving, upon request, his name, license number and other documents required to be in his

possession.

(f) A licensee shall not use or attempt to use any physical force against a passenger, Commission representative, public servant or other person, while performing his duties and responsibilities as a licensee or as a result of actions which occurred in connection with a licensee's performance of his duties as a licensee. A licensee shall not distract, harm or use physical force against or attempt to distract, harm or use physical force against a service animal accompanying a person with a disability.

(g) A licensee shall be responsible for answering truthfully and complying as directed with all questions, communications, directives, and summonses from the Commission or its representatives, as well as producing any licenses or other documents required to be kept by the Commission whenever the Commission requires him to do so, within ten days of notification. A base owner shall have an affirmative duty to aid the Commission in obtaining information sought by the Commission regarding drivers or vehicles affiliated with such base.

(h) Except as provided in Rule 6-15(e), a licensee shall be responsible for notifying the Commission within fifteen (15) calendar days after any felony conviction of the licensee, individually, or, in the case of a base, as a member of a partnership or any officer of a corporation. Such notification shall be in writing and must be accompanied by a certified copy of the certificate of disposition issued by the clerk of the court with respect to such conviction.

(i) A licensee shall not threaten, harass or abuse a passenger, Commission representative, public servant or other person, while performing his duties and responsibilities as a licensee. A licensee shall not harm or use physical force against or attempt to harm or use physical force against a service animal accompanying a person with a disability.

(j) A licensee shall be courteous to passengers.

(k) The owner or operator of a vehicle licensed by a qualified jurisdiction operating in the City of New York pursuant to §498 of the New York State Vehicle and Traffic Law must comply with the provisions of subdivisions (a) through (g) and (i) through (j) of this section as though such owner or operator was a "licensee" under this section.

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (d) amended City Record Aug. 10, 1998 §5, eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

Subds. (f), (i) amended City Record July 8, 1997 §§16, 18 eff. Aug. 11, 1997. Language juxtaposed and amended by Taxi and Limousine Commission, pursuant to authority of City Corporation Counsel, to reflect major amendments and renumbering to Chapter 6 in City Record Apr. 29, 1997 and erroneously overlooked. [See T35 §4-01 Note 1]

Subd. (j) added City Record June 26, 1998 eff. July 26, 1998. [See Note 1]

Subd. (k) added City Record Nov. 22, 2006 §8, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1998:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under Section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the

business and industry of transportation of persons by licensed vehicles for hire in the city; under Section 2303(b)(2) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes and to regulate standards and conditions of service; and under Section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The regulations increase the penalties for discourteous conduct and smoking in a taxicab, increase the penalty for smoking in a for-hire vehicle, and prohibit discourteous conduct against passengers by for-hire vehicle operators.

The purpose of the regulations is to protect the riding public and enhance the quality of life for passengers who utilize taxicab or for-hire vehicle services. The existing rules of the Commission prohibit licensed medallion taxicab drivers from engaging in rude and discourteous conduct toward passengers. The present penalty of $25 is not a deterrent to such misconduct. Commission studies have shown a substantial increase in the number of convictions under this rule in recent years. There were 672 convictions for discourteous conduct during 1997, and 350 convictions for this violation during the first four months of 1998.

The penalty imposed for smoking in a taxicab or for-hire vehicle ($25) is inconsistent with provisions of the New York State Public Health Law and the New York City Indoor Clean Air Act, which impose higher penalties for similar misconduct. State and local laws carry penalties of at least $100 per violation for such activity. While state and local laws do not prohibit drivers from smoking in unoccupied taxicabs, there is a serious concern regarding the health risks of breathing second hand smoke in enclosed places, such as taxicabs. Convictions under the smoking rules increased by more than seventy (70%) percent in 1997, to 172 convictions for smoking in a taxicab or for-hire vehicle. The conviction data shows that smoking in taxicabs remains a serious health concern.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A driver of for-hire vehicles licensed pursuant to this chapter, who actually received a Commission summons to attend a licensing standards hearing but failed to appear at the hearing, thereby violated paragraph (g) of this section. Taxi and Limousine Commission v. Herrera, OATH Index No. 509/98 (Nov. 20, 1997).

¶ 2. Car service violated section 6-18(d), which prohibits acts against the best interest of the public, by permitting drug trafficking on its premises. License revocation imposed. **Taxi and Limousine Comm'n v. Haven Car Service Corp.,** OATH Index No. 652/99 (Jan. 22, 1999).

¶ 3. Respondent refused to comply with reasonable directions to produce his driver's credentials when pulled over for operating an unlicensed for-hire vehicle. Respondent shoved inspectors and resisted arrest. License revocation recommended for resisting authority and physical assault on inspectors. **Taxi and Limousine Comm'n v. Jacotin**, OATH Index No. 396/99 (Jan. 26, 1999).

¶ 4. For-hire vehicle driver threatened a passenger and drove in a manner that caused her to sustain physical injuries. Passenger credibly identified respondent as the driver of the vehicle. Respondent's version of events lacked credibility and was not supported by the documentary evidence he submitted. **Taxi and Limousine Comm'n v. Fofana**, OATH Index No. 151/00 (Oct. 15, 1999).

¶ 5. For-hire vehicle driver asked passengers on trip from Newark airport to Manhattan for $45 instead of the pre-approved fare of $30 plus tolls and tip quoted by the dispatcher. When passengers refused, the driver stopped the car and indicated that he would not continue because passengers had a dog in the car. A verbal exchange took place between the driver and passengers. After a conversation with the livery owner appeared to resolve the matter, the trip resumed, but the driver continued to complain and the passengers got out of the cab at a stop light. Driver violated paragraph (I) of this section, but it appeared that one passenger may have intimidated him, there was no physical contact, and the driver ultimately agreed to continue the trip, although the passengers eventually left the vehicle. Suspension of license for one year recommended. Commissioner imposed revocation, stating that it has consistently

revoked the licenses of drivers who have committed similar violations. **Taxi and Limousine Comm'n v. Hadeir**, OATH Index No. 1560/99 (May 27, 1999), **modified on penalty**, Comm'n Dec. (July 12, 1999).

¶ 6. Respondents were two for-hire vehicle drivers. One of respondents instigated an argument with a passenger and then drove the passenger to an unrequested destination, physically dragged the passenger's ten-year-old son out of the vehicle, and punched the passenger and brandished a knife. The other respondent was found to have struck the passenger with a tire iron. **Taxi and Limousine Comm'n v. Luna**, OATH Index Nos. 2129-30/99 (July 16, 1999).

¶ 7. For-hire vehicle drivers are prohibited from soliciting or picking up passengers by means other than by prearrangement through a licensed base. 35 RCNY § 6-16(f). In a default proceeding, respondent Luna was found to have violated rule 6-16(f) when he accepted a street hail. **Taxi and Limousine Comm'n v. Luna**, OATH Index Nos. 2129-30/99 (July 16, 1999).

¶ 8. Administrative law judge found respondent to have offered a gratuity to Commission clerk to process his application out of turn. **Taxi and Limousine Comm'n v. Luna,** OATH Index No. 774/00 (Mar. 6, 1999), **modified on penalty,** Comm'n Dec. (May 22, 2000).

¶ 9. Respondent engaged in misconduct, when he directed profanities and spit at Commission inspectors who wrote three summonses and confiscated respondent's TLC driver's license. **Taxi and Limousine Comm'n v. Dadon,** OATH Index No. 2147/00 (June 29, 2000), **modified on penalty,** Comm'r Dec. (Dec. 11, 2000).

¶ 10. Commissioner/Chair held a racial slur made by a driver, which was directed against a Commission ALJ in a communication to the Commission's presiding ALJ, constituted violation of subsection (d)(2), an act against "the best interests of the public," and subsection (i) of this section, harassment and/or abuse of a Commission representative. The OATH ALJ had found only a violation of subsection (i) and no violation of subsection (d)(2) because the communication was to a Commission representative and petitioner did not demonstrate a nexus to the public. The Commissioner/Chair adopted the OATH ALJ's penalty recommendation of license revocation and $1700 fine. **Taxi & Limousine Comm'n v. Shavel**, OATH Index No. 2410/07 (Aug. 23, 2007), **accepted**, Comm'r/Chair Decision (Sept. 4, 2007).

¶ 11. Pursuant to subsection (g) of this section, for-hire vehicle drivers are required to comply with directives from the Commission and its representatives. Driver was found to have failed to comply with a directive to appear at an interview to answer questions regarding an allegation that he used a fraudulent Social Security number to obtain two licenses from the Commission. The penalty for a proven violation of this rule is a $200 fine and license suspension until driver complies with directive. Suspension until compliance, without fine, imposed where Commission requested only that sanction. **Taxi & Limousine Comm'n v. Avila**, OATH Index No. 1299/08 (Jan. 11, 2008).

¶ 12. Under subsection (i) of this section, a licensee is considered to be "performing his duties and responsibilities as a licensee" while on Commission property conducting business with Commission representatives. The respondent was the holder of a for-hire vehicle license who used profanity toward a Commission employee while applying for a hack license. Although he was not engaged in the duties and responsibilities of a driver, the licensee should have comported himself in accordance with Commission rules. **Taxi & Limousine Comm'n v. Sandy**, OATH Index No. 362/09 (Sept. 8, 2008).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-19

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-19 Franchise Sales Act.

The Commission shall not grant a license to, nor renew the license of, any base owner who is offering and selling franchises as defined by the New York Franchise Sales Act (Act) in violation of said Act, and may suspend or revoke the license of any base owner found to have violated the provisions of said Act. In determining whether a base owner is in violation of the Act, the Commission may rely upon the written advice of the New York State Department of Law certifying to the Commission that the base owner is in violation of the Act.

HISTORICAL NOTE

Section renumbered (formerly §6-10) City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Section renumbered (formerly §6-08) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-20

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-20 Seizure and Forfeiture of Unlicensed Vehicles for Hire.

(a) **Seizure.** In accordance with §19-506(h) of the Administrative Code, any officer or employee of TLC designated by the Chairperson of TLC, and any police officer may, upon service of a summons for violation of subdivision b or c of §19-506 of the Administrative Code, seize any vehicle which such officer or employee has probable cause to believe is operated or offered to be operated without an appropriate vehicle license in violation of such subdivision b or c. A vehicle seized in accordance with such §19-506(h) shall be removed to a designated secured facility.

(b) **Summons and Notice of Seizure.** (1) The officer or employee effecting seizure shall serve a summons for violation of subdivision b or c of §19-506 of the Administrative Code upon the owner of the seized vehicle, by service upon the owner or upon a person who uses or owner, express or implied.

(2) An officer or employee of TLC who effects seizure as described in §6-20(a) shall also deliver to the vehicle owner a notice of seizure, including identification of the seized vehicle and information concerning these regulations and the designated secured facility to which the vehicle was or will be taken. Such notice of seizure may be delivered in the same manner as service of the summons.

(3) An officer or employee of TLC shall also mail a notice of seizure and a copy of the summons to the owner of the vehicle. Any defect in delivery or mailing of a notice of seizure or in mailing of a copy of the summons shall not affect the validity of service of a summons upon the owner as described in §6-20(b)(1) herein.

(c) **Expedited hearing concerning a seized vehicle.** The summons shall set forth a date and time for a hearing in

the administrative tribunal of TLC. Such hearing shall be held within fourteen business days after seizure. If the seized vehicle has been released pursuant to §6-20(d), such hearing is not required to be scheduled on an expedited basis.

(d) **Release of a seized vehicle prior to the scheduled hearing.** (1) An owner may obtain the release of the vehicle by appearing at the administrative tribunal with the notice of violation, on or before the scheduled hearing date, either to:

(i) Plead Guilty and be assessed a civil penalty by an administrative law judge. TLC staff shall also determine the amount of removal and storage fees. The owner must pay in full the civil penalty and removal and storage fees. Upon such payment, TLC shall issue an order to release the vehicle. The owner or his agent may present the order at the designated secured facility to obtain the vehicle.

(ii) Post a bond in the amount of the maximum civil penalty, plus removal and storage fees. Upon the posting of such bond, TLC shall issue an order to release the vehicle. The owner or his agent may present the order at the designated secured facility to obtain the vehicle.

(2) If the owner does not obtain the vehicle by the date specified in the order of release, the owner shall be responsible for any further storage fees, and payment of such fees shall be made before the release of the vehicle.

(e) **Decisions at the expedited hearing.** (1) If the Administrative Law Judge dismisses the summons, the Administrative Law Judge shall issue an order for release of the seized vehicle without removal and storage fees.

(2) If the Administrative Law Judge finds that the owner was in violation and that this was not the third or subsequent violation by the owner of subdivisions b or c of §19-506 of the Administrative Code committed on or after February 20, 1990 and within a thirty-six month period, the Administrative Law Judge shall assess a civil penalty as provided in §19-506(e) of the Administrative Code, and TLC staff shall assess removal and storage fees. The owner must pay the civil penalty and removal and storage fees in order to obtain from TLC an order for release of the seized vehicle.

(3) If the Administrative Law Judge finds that the owner was in violation and that this was the third or subsequent violation by the owner of subdivisions b or c of §19-506 of the Administrative Code committed on or after February 20, 1990 and within a thirty-six month period, the Administrative Law Judge shall set a civil penalty, as provided in §19-506(e) of the Administrative Code, and shall issue a notice to the owner and to the Chairperson of TLC or his designee that the vehicle is subject to forfeiture upon a judicial determination.

(4) **Inquest hearings.** If the owner of the seized vehicle fails to appear for the hearing, an inquest hearing will be held. An administrative law judge shall make a determination pursuant to paragraph (1), (2), or (3) of this subdivision (e). TLC will inform the respondent of the inquest determination by first class mail. The information mailed to the owner shall include the provisions of §6-20(i) herein concerning abandoned vehicles. The respondent may appear at TLC offices within seven business days of such mailing to comply with the inquest determination or to move in the administrative tribunal to vacate such inquest determination. In the event that such inquest determination is vacated, the respondent shall be entitled to a hearing de novo on the original summons. Such hearing shall be scheduled within fourteen business days of the order vacating the inquest determination.

(f) **Appeals.** If found in violation of subdivisions b or c of §19-506 of the Administrative Code, an owner must pay the civil penalty together with removal and storage fees in order to appeal. However, if the decision to be appealed was made pursuant to §6-20(e)(3), the owner must pay only the civil penalty in order to appeal. If upon appeal the decision is reversed in whole or part, the owner shall receive a refund of the relevant civil penalty and fees.

(g) **Forfeiture.** (1) In addition to the penalties set forth in §19-506(e) of the Administrative Code, if an owner is convicted in the criminal court or found in the TLC administrative tribunal to be in violation of subdivisions b or c of §19-506 of the Administrative Code three or more times, and all of such violations were committed on or after February

20, 1990 and within a thirty-sixth month period, the interest of such owner in any vehicle used to commit such third or subsequent violation shall be subject to forfeiture upon notice and judicial determination.

(2) The Chairperson of the TLC or his designee shall determine whether to pursue the remedy of forfeiture. If such person determines not to pursue the remedy of forfeiture, the owner shall be so notified by first class mail. The owner may obtain an order of release of the vehicle by paying the civil penalty determined pursuant to §6-20(e)(3) together with removal and storage fees.

(3) A forfeiture proceeding shall be commenced by proper service upon the owner of a summons and other papers pursuant to the provisions of the civil practice law and rules.

(h) **Public sale pursuant to forfeiture.** (1) After a judicial determination of forfeiture, but no sooner than thirty days after such determination and upon notice of at least five days, the TLC shall sell such forfeited vehicle at public sale, except as provided in paragraph (2) herein. Such notice of sale shall be published in the City Record or in a newspaper of general circulation, and shall also be mailed to any lienholder or mortgagee shown in the records of the jurisdiction which issued the number license plates on the vehicle.

(2) Any person, other than an owner whose interest is forfeited pursuant to §19-506 of the Administrative Code and these rules, who establishes a right of ownership in a vehicle, including a part ownership or security interest, shall be entitled to delivery of the vehicle if such person:

(i) redeems the ownership interest which was subject to forfeiture by payment to the city of the value thereof;

(ii) pays the reasonable expenses of the safekeeping of the vehicle between the time of seizure and such redemption; and

(iii) either

(A) asserts a claim in the forfeiture proceeding, or

(B) submits a claim in writing to the Commission within thirty days after judicial determination of forfeiture.

(3) Notwithstanding paragraphs (1) and (2) of this subdivision (h), establishment of a right of ownership shall not entitle a person to delivery of a vehicle if TLC establishes in the forfeiture proceeding or in a separate administrative adjudication of a claim asserted pursuant to §6-20(h)(2)(iii) herein that the violations of subdivisions (b) or (c) of §19-506 of the Administrative Code upon which the forfeiture is predicated were expressly or impliedly permitted by such person.

(4) If a person asserts a claim pursuant to §6-20(h)(2)(iii)(B) herein, the TLC shall schedule an adjudication of such claim in its administrative tribunal. Notice of the hearing shall be mailed to the claimant at least ten business days in advance of the hearing. The administrative law judge shall rule as to whether the violations upon which the forfeiture was predicated were expressly or impliedly permitted by the claimant. If the administrative law judge finds that there was such permission by the claimant, the claim shall be denied.

(i) **Abandoned vehicles.** (1) If an owner does not assert an interest in a seized vehicle by removing it from storage within the time periods specified in paragraph (2) of this subdivision (i), the vehicle shall be deemed abandoned. A declaration of such abandonment may be made by the Deputy Commissioner for legal affairs of TLC or his designee, without further hearing.

(2) A vehicle shall be deemed abandoned, pursuant to paragraph (1) herein, if an owner:

(i) has not removed the vehicle from storage within five days of obtaining an order of release pursuant to §6-20(d) or (e) herein; or

(ii) has not paid the civil penalty and removal and storage fees within five days of a hearing determination of violation pursuant to §6-20(e)(2) herein, or within seven days after notice of an inquest determination of violation was mailed to the owner pursuant to §6-20(e)(4) herein; or

(iii) has not obtained an order vacating inquest determination of violation and setting a hearing de novo, within seven days after notice of such inquest determination was mailed to the owner pursuant to §6-20(e)(4) herein; or

(iv) has not paid the civil penalty and removal and storage fees, within seven days after a notice that the TLC shall not pursue the remedy of forfeiture was mailed to the owner pursuant to §6-20(g)(2) herein.

(3) In the event that a vehicle has been deemed abandoned pursuant to paragraphs (1) and (2) of this subdivision (i), TLC shall mail to the owner a notice that the vehicle has been recovered by TLC as an abandoned vehicle and that, if unclaimed, its ownership shall vest in TLC and it will be sold at public auction or by bid after ten days from the date such notice was mailed. Such notice shall also be mailed to any lienholder or mortgagee shown in the records of the jurisdiction which issued the number of license plates on the vehicle.

(4) An owner, lienholder or mortgagee may claim the vehicle within ten days from the date that the notice described in paragraph (3) of this subdivision (i) was mailed, by paying the removal and storage fees due and, in the case of an owner, the civil penalty claimed as a lien by TLC on such vehicle.

(5) In the event that an abandoned vehicle is not claimed within ten days after the notice described in paragraph (3) of this subdivision (i) was mailed, ownership of the abandoned vehicle shall vest in TLC. TLC may sell an abandoned vehicle at public auction or by bid. Any proceeds from the sale, less expenses incurred for removal, storage and sale of the vehicle, and less the civil penalty claimed as a lien by TLC, shall be held without interest for the benefit of the former owner of the vehicle for one year. If not claimed within such one year period, such proceeds shall be paid into the general fund of TLC.

(j) **Removal and storage fees.** (1) The removal fee shall be one hundred fifty dollars ($150).

(2) The storage fee shall be a rate set by New York City Department of Transportation.

HISTORICAL NOTE

Section amended City Record Aug. 29, 1997 eff. Oct. 1, 1997. [See Note 1]

Section renumbered (formerly §6-11) City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06

Note 1]

Section renumbered (formerly §6-10) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04

Note 3]

Subd. (j) amended (as part of §6-11) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04

Note 3]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 29, 1997:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the

business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-506(h) of such Code, authorizing TLC to promulgate regulations concerning the seizure and release of seized vehicles.

The promulgated rule extends the period of time within which TLC is required to schedule a hearing for the owner of a seized vehicle for hire. This time period is extended from seven calendar days to fourteen business days. That is an extension of between eleven and thirteen more calendar days which would be permitted prior to holding a hearing. Under the new rules, TLC may schedule such hearings within up to twenty days rather than within seven days. This flexibility will allow for more efficient scheduling and management of TLC's case load.

Based upon comments received, the proposal was modified, to permit those vehicle owners who are currently prohibited from posting a bond to be permitted to post a bond. Under current rules, the owner of a seized vehicle may not post a bond, if the owner has been found in violation for operation of an unlicensed vehicle for hire on two or more occasions within thirty-six months. The purpose of this modification is to ensure that all owners have the opportunity to redeem their vehicle prior to a hearing, when the time which may elapse prior to a hearing is extended.

The rulemaking has also been modified to include technical amendments. Citations to section numbers have been amended to reflect the correct section.

Rules of the City of New York

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35 RCNY 6-21

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-21 Procedure in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section renumbered (formerly §6-08) City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Section renumbered (formerly §6-06) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Subd. (a) amended City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (b) amended City Record Aug. 29, 1997 eff. Oct. 1, 1997. [See T35 §6-20 Note 1]

Subd. (f) amended City Record May 15, 1995 §3, eff. June 19, 1995. [See T35 §1-85 Note 1]

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35 RCNY 6-22

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-22 Penalties for Violation of For-Hire Vehicle Rules.

Rule No.	PenaltyAll fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	Personal Appearance Required
§6-02(a)(3)	$25	No
§6-02(b)(3)	[Repealed]	
§6-04(a)	$200-1,500 and one penalty point, plus any applicable penalties under the NYC Administrative Code for unlicensed operation.	Yes
§6-04(b)(4)(ii)	Revocation	Yes
§6-04(e)	$250 for failure to post or maintain bond; one penalty point for draw on bond.	No
§6-04(h)(1)	$25 for each day of non-compliance, to a maximum of $10,000, and either suspension until compliance or base license revocation.	Yes
§6-04(h)(2)	$25 for each day of non-compliance, to a maximum of $10,000, and either suspension until compliance or base license revocation.	Yes
§6-04(h)(3)	$25 for each day of non-compliance, to a maximum of $10,000, and either suspension until compliance or base license revocation.	Yes
§6-04(h)(4)	$500-$5,000 for each twenty days said payment is overdue, and suspension until compliance or revocation, together with restitution to the Fund for any unpaid amount, together with interest at the rate of 12 percent per annum.	Yes

§6-04(h)(5)	$500-$10,000 and suspension until compliance or revocation.	Yes
§6-04(i)(1)	$25 for each day of non-compliance, to a maximum of $10,000, and either suspension until compliance or base license revocation	Yes
§6-05(e)	Revocation	Yes
§6-06(a)(1)	Suspension until minimum is met	Yes
§6-06(a)(2)	Suspension until requirement is met	Yes
§6-06(a)(3)	Suspension until requirement is met	Yes
§6-06(a)(6)	$50	No
§6-06(a)(7)	$50	No
§6-06(a)(8)	$50	No
§6-06(b)(1)	$350-first violation	Yes
	$500-second violation in 24 monthsRevocation for third violation in 36 months	
§6-06(b)(2)	$250	No
§6-06(b)(3)	$100	No
§6-06(b)(5)	$100	No
§6-06(b)(6)	$50	No
§6-06(c)	$100	No
§6-06(d)	Suspension of base license and one penalty point	Yes
§6-06(e)	Suspension of base license	Yes
§6-06(f)	$250 and suspension until compliance and one penalty point	Yes
§6-06(g)(1)	$100	No
§6-06(g)(2)	$500	No
§6-07(a)	$100 for failure to provide quote on request. $200 for passenger overcharge, whether from any quote or from schedule of fares requires to be filed with the Commission.	No
§6-07(b)	First occasion-$50	Yes
	Second and subsequent occasions-$100-250A base which has been found in violation of Rule 6-07(b) on six dates within twelve months shall not have its base license renewed	
§6-07(c)	$25-100	Yes
§6-07(d)	$100-250	Yes
§6-07(e)	$350-1,000 and/or suspension up to 30 days or revocation	Yes
§6-07(f)	$1000 and, if the violation includes failure to maintain either an affiliated accessible vehicle or an arrangement with another base to provide such service, suspension of the base license until compliance	Yes
§6-07(g)	Suspension until compliance	Yes
§6-07(j)	$150	No
§6-07(k)	$150	No
§6-08(c)	$50	No
§6-08(d)	$25-100	Yes
§6-08(e)	$50	No
§6-09(c)	$250-first violation	No
	$500-second violation within 24 months	No
§6-11(a)	One penalty point, plus $500 for the first offense in 12 months; $1000 for the second and subsequent offenses within a 12-month period.	No
§6-11(b)	One penalty point and $100-350 and/or suspension up to 30 days; summary suspension until compliance pursuant to §8-17(b) of this	Yes

	title.	
§6-11(c)	$150 plus penalties applicable for unlicensed operation	Yes
§6-11(d)(1)	$150-350 and/or suspension up to 30 days	Yes
§6-11(d)(2)	$150-350 and/or suspension up to 30 days	Yes
§6-11(d)(3)	$100	No
§6-11(d)(4)(a),(b) or (c)	$350 and suspension until compliance	Yes
§6-11(d)(5)	$500-1,000	Yes
§6-11(d)(6)	$150 and $25 for each day of violation thereafter and suspension until compliance	Yes
§6-11(e)(1)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes
§6-11(e)(2)	$25	No
§6-11(e)(3)	$50	No
§6-11(f)	$50	No
§6-11(h)	$50	No
§6-11(i)	Suspension of the vehicle owner license	Yes
§6-11(j)	$50 per day until information is supplied	Yes
§6-11(k)	$25-250	Yes
§6-11(l)(1)	$100	No
§6-11(l)(2)	$500	No
§6-11(m)	Suspension until satisfaction or payment	No
§6-11(o)	Revocation of previously issued permit	Yes
§6-11(r)	Revocation	Yes
§6-12(a)	For failure to have the proper decal(s): $500 for the first offense in 12 months; $1,000 for the second offense and subsequent offenses within a 12-month period for the base and the vehicle owner; and suspension of the for-hire vehicle permit until compliance. For failure to complete the decal(s) correctly: $100 for the vehicle owner	No
§6-12(b)	$100	No
§6-12(c)	Base: $350. Vehicle: $100 and suspension of the vehicle owner license until the condition is corrected plus one penalty point.	No for Base. Yes for Vehicle
§6-12(d)	$100	No
§6-12(e)(1)	$100	No
§6-12(e)(2)	$100	No
§6-12(e)(3)	$350 and summary suspension until compliance pursuant to §8-17(b) of this title	No
§6-12(e)(4)	Base: $300 and one penalty point	No
§6-12(f)(1)	$25	No
§6-12(f)(1)(i)	$25	No
§6-12(f)(1)(ii)	$50	No
§6-12(f)(2)	$50	No
§6-12(f)(3) or (4)	$75	No
§6-12(g)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes
§6-12(h)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes

§6-12(i)	$50	No
§6-12(j)	$50 for each violation of this rule; however, no fine for a violation of this rule shall exceed $100	Yes
§6-12(k)	$100	No
§6-12(u)-(o)	[8 entries Repealed]	
§6-12.1(a)(1)	Base: $500, except if the DMV status of the driver's license is not available on the Commission's Web site; Vehicle: $100 and one penalty point	No
§6-12.1(a)(2)	Base: $500 for the first violation in 12 months$800 for each subsequent offense within a 12-month periodVehicle owner: $350 and one penalty point	No
§6-12.1(a)(3)	Revocation and $10,000	Yes
§6-12.1(b)	Vehicle owner: $100-350 and/or suspension up to 30 days; summary suspension until compliance pursuant to §8-17(b) of this title	Yes
§6-12.1(c)(1)	$100-250	Yes
§6-12.1(c)(2)	$100-250	Yes
§6-12.1(d)	Vehicle owner: $10,000 and license suspension until compliance if alteration is not approved. $10,000 and license revocation if certification sticker is altered.Base: $1,000	Yes
§6-12.1(e)	Suspension of for-hire vehicle permit or recognition of issuing jurisdiction vehicle license until compliance.	No
§6-12.1(f)	Vehicle: During any license term, $100 for the first violation during such term, with the penalty increasing by $100 for each subsequent violation up to a maximum of $10,000.	No
§6-12.1(h)	$50	No
§6-12.1(i)	$50	No
§6-12.1(j)	$50	No
§6-12.1(k)	$50	No
§6-13(a)	$350 and suspension until the condition is corrected	Yes
§6-13(b)	$100 and suspension until the condition is corrected	Yes
§6-13(c)	$50	No
§6-15(a)(1)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes
§6-15(a)(2)	$100-350, and/or suspension up to 30 days; summary suspension until compliance pursuant to §8-17(b) of this title.	Yes
§6-15(c)	$100	No
§6-15(d)(1)	$25	No
§6-15(d)(2)	$50	No
§6-15(d)(3)	$25	No
§6-15(d)(4)	$250	No
§6-15(e)	$100	No
§6-15(f)	$75-150	Yes
§6-15(g)	$50	No
§6-15(h)	Suspension until satisfaction or payment.	No
§6-16(a)	$350-1,000 and/or suspension up to 30 days or revocation if driver is found guilty of having violated this rule more than 3 times within an 18 month period.	Yes
§6-16(b)	$25-250 and/or suspension up to 30 days	Yes
§6-16(c)(1)	$50	No

§6-16(c)(2)	$150	No
§6-16(c)(3)	$250	No
§6-16(d)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes
§6-16(e)	$50 for each violation of this rule; however, no fine for a violation of this rule shall exceed $100.	Yes
§6-16(f)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes
§6-16(g)	$350-first violation $500-second violation in 24 monthsRevocation for third violation in 36 months	Yes
§6-16(h)	Revocation	Yes
§6-16(i)(1)	$50-100	Yes
§6-16(i)(2)	$50-100	Yes
§6-16(i)(3)	$50-100	Yes
§6-16(j)	For offenses occurring prior to July 26, 1999, $50 for the first conviction within a 12 month period and $150 for each subsequent conviction. For offenses occurring on or after July 26, 1999, $150.	No
§6-16(k)	$50	No
§6-16(l)	Revocation and $5,000	Yes
§6-16(m)	$75	No
§6-16(n)	$50	No
§6-16(o)	$100-250 except that the penalty for seeking a tip shall be $50, and order restitution of overcharge to the passenger	Yes
§6-16(p)	$75 for a violation involving a person $25 for a violation involving luggage	No
§6-16(q)(1)	$200-350 for the first violation $350-500 for a subsequent violation within thirty-six months	Yes
§6-16(q)(2)	$100-250 and order restitution of any overcharge to the passenger	Yes
§6-16(q)(3)	$200-350	Yes
§6-16(t)	Revocation	Yes
§6-16(u)	$200	No
§6-16(u)(1)	$200	No
§6-16(w)	$50	No
§6-16(x)	$50	No
§6-16(y)	$50	No
§6-16(z)	$25	No
§6-16(aa)	$25	No
§6-16(bb)	$25	No
§6-18(a)	Revocation and $10,000	Yes
§6-18(b)	$1,000 up to revocation	Yes
§6-18(c)	Base and Driver: $1,000 up to revocation Vehicle Owner: $250-1,000	Yes
§6-18(d)(1)	$350-1,000 and/or suspension up to 60 days or revocation	Yes
§6-18(d)(2)	$150-350 and/or suspension up to 30 days or revocation	Yes
§6-18(e)	$15-150	Yes
§6-18(f)	$500-1,500 and/or suspension up to 60 days or revocation	Yes
§6-18(g)	$200 and suspension until compliance	Yes

§6-18(h)	$50	No
§6-18(i)	$350-1,000 and suspension up to 30 days or revocation	Yes
§6-18(j)	$150	No
§6-25(a)	$300	No
§6-25(b)	$300	No
§6-26(a)(1)	$300	No
§6-26(a)(2)	$100	No
§6-26(a)(3)	$350	No
§6-26(a)(4)	$100	No
§6-26(a)(5)	$300	No
§6-26(a)(6)	Notice to Correct w/10 days	N/A
§6-27(a)(1)	$350	No
§6-27(a)(2)	$100	No
§6-27(a)(3)	$350	No
§6-27(a)(4)	$300	No
§6-28	See chapter 16 of this title	See chapter 16 of this Title
§6-29(b)	Revocation	Yes
§6-29(d)	Revocation	Yes

**Not Applicable

HISTORICAL NOTE

Section added City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Section amended City Record June 26, 1998 eff. July 26, 1998.

Penalty column heading amended City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-02(b)(3) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-04(a) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-04(b)(4)(ii) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-04(e) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-04(h)(1) so designated (former §6-04(i)(1)) City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-04(h)(2) so designated (former §6-04(i)(2)) City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-04(h)(3) so designated (former §6-04(i)(3)) City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-04(h)(4) so designated (former §6-04(i)(4)) City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-04(h)(5) so designated (former §6-04(i)(5)) City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-04(i)(1) so designated (former §6-04(j)(1)) and amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-04(i)(1) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

§6-04(i)(2) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

§6-04(i)(3) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

§6-04(i)(4) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

§6-04(i)(5) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

§6-04(j) added City Record Jan. 31, 2000 §2, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

§6-05(e) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(a)(6) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(a)(7) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(a)(8) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(b)(5) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(b)(6) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(d) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(f) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-06(g)(1) added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

§6-06(g)(2) added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

§6-07(a) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-07(e) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§6-07(f) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-07(f) added City Record Dec. 19, 2000 §2, eff. Jan. 18, 2001. [See T35 §6-07 Note 1]

§6-07(g) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-07(j) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-07(k) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-09(c) added City Record May 23, 2008 §4, eff. June 22, 2008. [See T35 §6-09 Note 1]

§6-11(a) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-11(b) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-11(b) amended City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-11(c) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-11(d)(4) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Notes 1, 2]

§6-11(d)(4)(a)(b) or (c) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §6-11 Note 1]

§6-11(d)(5) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-40 Note 1]

§6-11(g)(1) added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

§6-11(g)(2) added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

§6-11(m) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-11(o) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-11(r) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(a) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(c) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(e)(2) added City Record Apr. 13, 2006 §2, eff. May 13, 2006. [See T35 §6-12 Note 3]

§6-12(e)(4) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(f) amended City Record Sept. 20, 1999 §2, eff. Oct. 20, 1999. [See T35 §6-12 Note 1]

§6-12(f)(1)(i) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(f)(1)(ii) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(f)(3) or (4) added City Record May 23, 2007 §9, eff. June 22, 2007. [See T35 §1-35 Note 1]

§6-12(j) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(k) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(k)(1) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(k)(2) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(k)(3) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(k)(3) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§6-12(l) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(m)(1) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(m)(2) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(n) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(n) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §6-11 Note 1]

§6-12(o) repealed City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12(o) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-12.1(a)(1) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(a)(2) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(a)(3) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(b) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(c)(1) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(c)(2) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(d) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(e) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(f) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(h) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(i) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(j) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-12.1(k) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-13(c) added City Record Apr. 23, 2007 §7, eff. May 23, 2007. [See T35 §1-17 Note 4]

§6-15(a)(2) amended City Record Nov. 2, 2006 §13, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

§6-15(h) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-16(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§6-16(b)(2) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§6-16(b)(3) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§6-16(c)(1) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-21 Note 1]

§6-16(e) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(h) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-25 Note 2]

§6-16(j) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §6-18 Note 1]

§6-16(l) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§6-16(o) amended City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(t) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-02 Note 3]

§6-16(u) added City Record May 27, 1999 §6, eff. June 26, 1999. [See T35 §2-25 Note 1]

§6-16(u)(1) amended City Record Dec. 30, 2009 §10, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

§6-16(v)(3) added (replaces §6-16(v)) City Record Feb. 14, 2006 §5, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

§6-16(v) added (temporarily) City Record Nov. 21, 2005 §4, eff. Nov. 21, 2005 until Mar. 21, 2006 per Charter §1043(h) and 60 day extension notice in City Record Jan. 6, 2006. [See T35 §2-19 Note 2]

§6-16(w) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(x) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(y) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(z) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(aa) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-16(bb) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-18(a) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§6-18(f) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§6-18(g) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-86 Note 1]

§6-18(i) amended City Record June 26, 1998 eff. July 26, 1998. [See T35 §1-86 Note 2]

§6-18(d)(1) amended City Record Aug. 10, 1998 §6, eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

§6-18(d)(2) added City Record Aug. 10, 1998 §6, eff. Sept. 9, 1998. [See T35 §1-60 Note 1]

§6-18(g) amended City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

§6-18(j) added City Record June 26, 1998 eff. July 26, 1998. [See T35 §6-18 Note 1]

§6-25(a) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-25(b) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-26(a)(1) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-26(a)(2) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-26(a)(3) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-26(a)(4) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-26(a)(5) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-26(a)(6) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-27(a)(1) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-27(a)(2) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-27(a)(3) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

§6-27(a)(4) added City Record Nov. 22, 2006 §9, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Endnote added City Record Feb. 14, 2006 §5, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

§6-28 added City Record Nov. 23, 2007 §13, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

§6-29(b) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

§6-29(d) added City Record June 2, 2009 §29, eff. July 2, 2009. [See T35 §6-12 Note 4]

Endnote added City Record Nov. 21, 2005 §4, eff. Nov. 21, 2005 until Jan. 20, 2006 per Charter §1043(h). [See T35 §2-19 Note 2]

DERIVATION

Section derived from former §6-09.

Section amended City Record Mar. 27, 1997 eff. May 1, 1997. [See T35 §6-02 Note 1 and §6-06 Note 2]

Section renumbered (formerly §6-07) City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

§§6-07(e), 6-16(o)-(q) added City Record July 8, 1997 §21, eff. Aug. 11, 1997. Language juxtaposed and amended by Taxi and Limousine Commission, pursuant to authority of City Corporation Counsel, to reflect major amendments and renumbering to Chapter 6 in City Record Apr. 29, 1997 and erroneously overlooked. [See T35 §4-01 Note 1]

Sections repealed and added as newly numbered by rule changes City Record Sept. 27, 1996 eff. Oct. 30, 1996. [See T35 §6-04 Note 3]

Sections amended City Record July 1, 1996 eff. Aug. 1, 1996. [See Note 1]

§6-03(ee) added (as 6-03(cc)) City Record Sept. 28, 1994 eff. Oct. 31, 1994.

§6-04(t) added City Record Sept. 28, 1994 eff. Oct. 31, 1994.

NOTE

1. Statement of Basis and Purpose in City Record July 1, 1996:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the

business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The purpose of the amendments is to increase penalties for violation of for-hire rules which impact upon the safety of the vehicle. Vehicles which are not satisfying the requirement that they be inspected three times a year will be suspended.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 6-23

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 6 FOR HIRE VEHICLES

§6-23 Program for Persistent Violators of For-Hire Vehicle Rules.

(a) Any driver who has been found guilty of three or more violations that occurred within a fifteen month period and whose license has not been revoked will accumulate one point on his for-hire vehicle driver's license.

(b) Any driver who has accumulated six or more points against his for-hire vehicle driver's license within a fifteen month period and whose license has not been revoked shall have his license suspended for thirty days.

(c) Any driver who has accumulated ten or more points against his for-hire vehicle driver's license within a fifteen month period shall have his license revoked.

(d) For the purpose of subdivisions (a) through (c) of this section, a driver who has been found guilty of multiple violations arising from a single incident shall be deemed guilty of the single violation with the highest point total for purposes of this section.

(e) The penalties set forth herein will be imposed following the hearing where the driver has been found in violation of the rules that bring his accumulated point total to the level described in subdivision (b) and (c). These penalties will be added to those imposed for the underlying rule violations.

(f) The minimum penalties set forth in subdivision (a) through (c) of this section shall not preclude the imposition by the Commission of additional or more severe penalties in accordance with Rules of the Commission.

(g) The Schedule of Points is as follows:

Rule No.	Points	Reference Description
§6-15(a)(1)	2	Driver not licensed by Commission
§6-15(a)(2)	2	Driver not in possession of valid driver's license
§6-16(a)	4	Dangerous driving
§6-16(b)	4	Leaving scene of accident
		Speeding:
§6-16(c)(3)(i)	3	1 to 10 miles above posted speed limit
	4	11 to 20 miles above posted speed limit
	5	21 to 30 miles above posted speed limit
	6	31 to 40 miles above posted speed limit
	8	41 or more miles above speed limit
§6-16(c)(3)(ii)	5	Failing to stop for school bus
§6-16(c)(3)(iii)	4	Following too closely
§6-16(c)(3)(iv)	4	Inadequate brakes (own vehicle)
§6-16(c)(3)(v)	2	Inadequate brakes (employer's vehicle)
§6-16(c)(3)(vi)	3	Failing to yield right of way
§6-16(c)(3)(vii)	3	Traffic signal violation
§6-16(c)(3)(viii)	3	Stop sign violation
§6-16(c)(3)(ix)	3	Yield sign violation
§6-16(c)(3)(x)	3	Railroad crossing violation
§6-16(c)(3)(xi)	3	Improper passing
§6-16(c)(3)(xii)	3	Unsafe lane change
§6-16(c)(3)(xiii)	3	Driving left of center
§6-16(c)(3)(xiv)	3	Driving in wrong direction
§6-16(c)(3)(xv)	3	Leaving scene of an accident involving property damage or injury to animal
§6-16(d)	3	Operating an unlicensed vehicle
§6-16(e)	2	Operating FHV without Permit
§6-16(g)	2	Accepting passengers at taxi stand
§6-16(i)(1)	3	Violation of Port Authority Rules
§6-16(i)(2)	3	Accepting passengers by other than prearrangement
§6-16(i)(3)	2	Violation of TLC rules at Port Authority facilities
§6-16(u)	2	Prohibited telephone use
§6-16(u)(1)	3	Prohibited use of portable or hands-free electronic device; first offense or second offense within any 15-month period
	4	Prohibited use of portable or hands-free electronic device; third offense committed within any 15-month period
§6-18(b)	6	Failure to report bribery
§6-18(c)	6	Bribery
§6-18(d)(1)	4	Fraud, larceny
§6-18(d)(2)	3	Action against public interest
§6-18(e)	2	Failure to cooperate with law enforcement
§6-18(f)	4	Threat or physical force
§6-18(g)	2	Failure to comply with TLC directive
§6-18(i)	3	Threatening, harassment, abuse
§6-18(j)	2	Discourtesy

(h) Any licensee who voluntarily attends and satisfactorily completes a remedial or refresher course approved by the Commission, and who furnishes the Commission with proof that the course was completed on or before August 31, 1999, shall have two (2) points deducted from the total number of points assessed for the purpose of determining any

suspension or revocation pursuant to this Rule. No point reduction shall affect any suspension or revocation action which may be taken pursuant to these Rules prior to the completion of the course; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

(i) Any licensee who voluntarily attends and satisfactorily completes a remedial or refresher course approved by the Commission, and who furnishes the Commission with proof that the course was completed on or after September 1, 1999, shall have two (2) points deducted from the total number of points assessed pursuant to this Rule. No point reduction shall affect any suspension or revocation action which may be taken pursuant to these Rules prior to the completion of the course. No person shall receive a point reduction pursuant to this subdivision more than once in any five year period; and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

(j) It shall be an affirmative defense that the act which formed the basis for the violation was beyond the control and influence of the for-hire vehicle driver.

HISTORICAL NOTE

Section added City Record June 26, 1998 eff. July 26, 1998. [See T35 §2-70 Note 1]

Subds. (a), (b), (c) amended City Record Jan. 31, 2000 §4, eff. Mar. 1, 2000. [See T35 §2-07 Note 1]

Subd. (g) repealed and added City Record Jan. 31, 2000 §5, eff. Mar. 1, 2000. [See T35 §2-07 Note 1]

Subd. (g) schedule Rule 6-16(c)(3) amended City Record Oct. 21, 1998 §2, eff. Nov. 20, 1998. [See T35 §2-70 Note 2]

Subd. (g) schedule Rule 6-16(u) added City Record May 27, 1999 §5, eff. June 26, 1999. [See T35 §2-25 Note 1]

Subd. (g) §6-16(u)(1) amended City Record Dec. 10, 2009 §11, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Subds. (h), (i), (j) added City Record Jan. 31, 2000 §4, eff. Mar. 1, 2000. [See T35 §2-07 Note 1]

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35 RCNY 6-24

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CHAPTER 6 FOR HIRE VEHICLES

§6-24 Information Sharing with Qualified Jurisdictions.

The Commission shall maintain a dedicated phone line or read-only access to an electronic database to make available to qualified jurisdictions the information required to be shared pursuant to §498(3)(e) of the New York State Vehicle and Traffic Law.

HISTORICAL NOTE

Section added City Record Nov. 22, 2006 §10, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

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35 RCNY 6-25

RULES OF THE CITY OF NEW YORK

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CHAPTER 6 FOR HIRE VEHICLES

§6-25 Log Book.

(a) The holder of a for-hire vehicle permit issued by the Commission under this chapter for a vehicle that is used in transportation between New York City and an issuing jurisdiction and the holder of an issuing jurisdiction vehicle license issued by a qualified jurisdiction that is used in transportation between New York City and such qualified jurisdiction shall ensure that a record of each trip between New York City and such issuing jurisdiction is made prior to the commencement of the trip in a log carried in the vehicle. Such record shall be kept for a period of no less than one year after such trip. The record of each such trip shall be written legibly in ink and include the following information:

(1) passenger's name or other identifier;

(2) time of scheduled pick up of passenger;

(3) location of scheduled pick up of passenger;

(4) the locations of any intermediate stops at which the passenger is picked up and/or dropped off;

(5) final destination of passenger; and

(6) at the completion of the transport, the time of completion of the transport shall be added to the record.

(b) The log required in subdivision (a) of this section shall be kept in the vehicle during any trip between New York City and an issuing jurisdiction, including a trip through either New York City or an issuing jurisdiction, and shall be presented for inspection on request to any police officer or peace officer acting pursuant to his or her special duties or

other person authorized by the Commission or by the issuing jurisdiction. Failure to present such a log maintained in the manner prescribed in subdivision (a) of this section when requested by any such authorized person shall be presumptive evidence of unlicensed operation.

HISTORICAL NOTE

Section added City Record Nov. 22, 2006 §10, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

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35 RCNY 6-26

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§6-26 Reciprocal Recognition of Vehicles Licensed by Qualified Jurisdictions.

(a) A vehicle for which an issuing jurisdiction vehicle license has been issued by a qualified jurisdiction shall be eligible for reciprocity as set forth in subdivision (b) of this section provided that the vehicle meets all of the following requirements:

(1) Evidence of a current, valid issuing jurisdiction vehicle license from the qualified jurisdiction must be attached to the windshield of the vehicle;

(2) Such vehicle must be operated by a driver who holds a valid New York State chauffeur's license or a valid license of equivalent class of the state of which the driver is a resident, and such license must be neither probationary, suspended, revoked, conditional nor restricted as to use;

(3) Such vehicle must be operated by a driver who (i) holds a valid, current issuing jurisdiction driver's license issued by the qualified jurisdiction and such driver is carrying proof of such valid license or permit while operating within New York City which will be displayed on request or is posted within the vehicle and (ii) otherwise meets the requirements of §6-27 of this chapter;

(4) Such vehicle must be validly registered in New York State or the state of the vehicle owner's residence, and evidence of such registration in the form of the certificate or a legible photostat thereof must be carried in the vehicle;

(5) Such vehicle must contain a trip log meeting the requirements of §6-25 of this chapter which log must demonstrate that any trip including travel within New York City was established by pre-arrangement and show that

either the origin or final destination of such travel is outside New York City and which record must be maintained for a year following the trip;

(6) Such vehicle must carry a valid inspection sticker indicating the date of last inspection and/or expiration date of such inspection issued pursuant to the laws of New York State or the state of the vehicle's registration; and

(7) Recognition of such vehicle's authority to operate within New York City has not been suspended pursuant to §6-12(o) of this chapter.

(b) A vehicle meeting the requirements of subdivision (a) of this section and providing pre-arranged transportation shall be eligible for reciprocity and shall be allowed, without any license or permit issued by or any fee paid to the Commission, to:

(1) pick up passengers in the vehicle's qualified jurisdiction for travel to or through New York City;

(2) pick up passengers in New York City for travel to the vehicle's qualified jurisdiction;

(3) in the course of transportation provided to passengers that meets the requirements of subdivisions (b)(1) or (2) of this section, temporarily discharge and temporarily pick up such passengers within New York City provided that all such stops must occur within 24 hours of the initial pick up of the passengers; and

(4) transit through New York City for travel beginning and ending outside New York City.

(c) The owner of a vehicle who does not hold a for-hire vehicle permit issued by the Commission and whose vehicle provides transportation for hire other than through pre-arrangement or which provides transportation for hire between two points within New York City shall be subject to all penalties applicable under this chapter for unlicensed operation.

HISTORICAL NOTE

Section added City Record Nov. 22, 2006 §10, eff. Dec. 22, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 22, 2006:

The rules amend previously existing rules to implement the reciprocity provisions recently enacted as §498 to the New York State Vehicle and Traffic Law (the "VTL"). Pursuant to that enactment, promulgation of these rules is intended to qualify the City of New York for reciprocity, thereby entitling for-hire vehicles and drivers licensed by the New York City Taxi & Limousine Commission (the "TLC") to (1) pick up passengers in New York City for travel to or through Westchester or Nassau Counties; (2) pick up passengers in Westchester or Nassau for travel to New York City; and (3) transit through Westchester and Nassau for travel beginning and ending elsewhere.

Under the amendments to the VTL, in order for drivers and vehicles licensed by one of the above-mentioned jurisdictions to qualify for reciprocity, the regulations regarding transportation for hire of the vehicles and drivers licensed by such jurisdiction must meet certain minimum requirements. Vehicles must be marked as being licensed by their home jurisdiction and must, among other things, maintain trip logs in the vehicles which contain records of interjurisdictional travel. Drivers of such vehicles must be licensed to operate such vehicles by their home jurisdictions and must be subject by their home jurisdictions, among other things, to fingerprinting and a criminal background check and an annual drug test. Any qualified jurisdiction is authorized to order the repair or replacement of any vehicle, including those licensed by other qualified jurisdictions, and failure to comply within ten days can lead to suspension of the recognition of such vehicle's home jurisdiction license in any other qualified jurisdiction. Each qualified jurisdiction must notify the other jurisdictions of its continuing status as a qualified jurisdiction at least every three years, must

maintain a dedicated phone line or electronic database sharing certain vehicle license information with other qualified jurisdictions, and must notify other qualified jurisdictions of the issuance and dispositions of summonses to such jurisdictions' licensees. The rules amend existing TLC rules to assure that TLC rules regarding for-hire vehicles and operators comply with the requirements of §498 of the VTL, among other things by affording reciprocity to vehicles and drivers licensed by qualified jurisdictions.

Finally, the amendments to the VTL eliminate tier 2 and tier 3 permits; the rules implement this change by repealing rules regarding tier 2 and tier 3 permits. Outstanding tier 2 and tier 3 permits became void upon the effective date of §498 of the VTL, which is November 14, 2006.

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35 RCNY 6-27

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§6-27 Reciprocal Recognition of Drivers Licensed by Qualified Jurisdictions.

(a) A driver holding a current, valid issuing jurisdiction driver's license issued by a qualified jurisdiction shall be eligible for reciprocity as set forth in subdivision (b) of this section provided that the driver meets all of the following requirements:

(1) Such driver is operating a vehicle meeting the requirements of §6-26(a) of this chapter;

(2) Such driver holds a valid New York State chauffeur's license or a valid license of equivalent class of the state of which the driver is a resident, and such license must be neither probationary, suspended, revoked, conditional nor restricted as to use;

(3) Such driver's issuing jurisdiction driver's license is neither suspended nor revoked and such driver is carrying proof of such valid license or permit while operating within New York City which will be displayed on request or is posted within the vehicle; and

(4) Such driver maintains and completes the trip log required by §6-25 of this chapter for transportation provided into, out of, or through New York City.

(b) A driver meeting the requirements of subdivision (a) of this section is eligible for reciprocity and may operate such vehicle in providing transportation as set forth in §6-26(b) of this chapter without any license or permit issued by or fee paid to the Commission.

(c) A driver providing pre-arranged transportation for hire in New York City pursuant to this §6-27 shall comply with the provisions of §§6-16(a) through (d), (g) through (r) and (t) through (u) of this chapter while operating within New York City as if such driver were licensed by the Commission.

(d) A driver who does not hold a for-hire vehicle operator's permit issued by the Commission and who provides transportation for hire other than through pre-arrangement or who provides transportation for hire between two points within New York City shall be subject to all penalties applicable under this chapter for unlicensed operation.

(e) Notwithstanding any other provision of this chapter, a driver who does not hold a for-hire vehicle operator's permit issued by the Commission and who provides transportation for hire within New York City and who does not meet the requirements set forth in either or both of subdivisions (a)(2) or (a)(3) of this section shall be subject to all penalties applicable under §19-506 of the Administrative Code of the City of New York for unlicensed operation.

HISTORICAL NOTE

Section added City Record Nov. 22, 2006 §10, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

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35 RCNY 6-28

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CHAPTER 6 FOR HIRE VEHICLES

§6-28 Wheelchair accessible liveries.

(a) A wheelchair accessible livery must be

(i) a livery; and

(ii) either an accessible vehicle as defined in section 6-01 of this chapter, or a vehicle that meets the requirements of an accessible taxicab pursuant to section 3-03.2(a)-(d) of this title; and

(iii) equipped with a taximeter meeting the requirements of section 3-04 of this title. Such taximeter may be used only during rides subject to chapter 16 of this title.

(b) The owner of any livery that meets the requirements of subdivision (a) of this section may opt to participate in the dispatch program for wheelchair accessible vehicles as set forth in chapter 16 of this title. Any wheelchair accessible livery whose owner has opted into the dispatch program must remain in such program as long as such vehicle continues in service, or while the program continues, whichever is shorter. The owner may opt into the program by providing a written request to the Commission and providing proof that the vehicle which is the subject of such request meets the requirements of subdivision (a) of this section. Any livery meeting the requirements of subdivision (a) of this section will be accepted for participation upon the option of its owner.

(c) An owner of a wheelchair accessible livery must comply with chapter 16 of this title, and with the taximeter requirements of sections 1-20, 1-21, 1-22 and 1-23 of this title.

(d) A driver of a wheelchair accessible livery must comply with chapter 16 of this title. Such a driver of a wheelchair accessible livery must also, while operating pursuant to a dispatch as provided in chapter 16 of this title, comply with the requirements of sections 2-30, 2-31, 2-32, 2-33, 2-34 and 2-35 of this title.

(e) A base station with an affiliated wheelchair accessible livery must comply with the provisions of chapter 16 of this title.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §12, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

35 RCNY 6-29

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§6-29 Penalty Points for Bases and For-Hire Vehicles.

A base or the holder of a for-hire vehicle permit will accumulate penalty points as penalties for violation of certain rules as specified in section 6-22.

(a) When a penalty point is imposed upon a for-hire vehicle, the base with which the for-hire vehicle is affiliated will be given notice of the imposition of the point by first class mail to the base address on file with the Commission.

(b) The permit of any for-hire vehicle that accumulates four penalty points for occurrences during any license term shall be revoked.

(c) The base affiliated with any for-hire vehicle for which the for-hire vehicle permit is revoked pursuant to subdivision (b) of this section shall accumulate one penalty point.

(d) The license of any base that accumulates six penalty points for occurrences during any license term shall be revoked.

(e) The revocation of any license or permit required by this section shall occur at any time the required number of penalty points have been accumulated, even if the permit or license has been renewed subsequent to the term for which such points have been accumulated.

(f) Revocation required under this section may be imposed as part of the decision imposing the final point necessary for revocation, or the Chairperson may commence revocation proceedings against any licensee which has

accumulated sufficient points to require revocation proceedings at any other time. At any time base revocation is mandated and the last penalty point arises from for-hire vehicle permit revocation pursuant to subdivision (b) of this section, revocation must be imposed following a separate revocation proceeding. Any revocation proceeding required by this section shall proceed under section 8-15 of this title.

(g) The Chairperson shall develop a point reduction program applicable to vehicles and bases.

(h) This section shall take effect on August 1, 2009, and no penalty points shall be imposed for violations occurring before that date.

HISTORICAL NOTE

Section added City Record June 2, 2009 §30, eff. Aug. 1, 2009 per subd. (h). [See T35 §6-12

Note 4]

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§6-30 [Reserved]

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§6-31 [Reserved]

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§6-32 [Reserved]

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§6-33 [Reserved]

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§6-34 [Reserved]

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§6-35 [Reserved]

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§6-36 [Reserved]

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§6-37 [Reserved]

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§6-38 [Reserved]

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§6-39 [Reserved]

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§6-40 [Reserved]

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§6-41 [Reserved]

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§6-42 [Reserved]

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§6-43 [Reserved]

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§6-44 [Reserved]

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§6-45 [Reserved]

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§6-46 [Reserved]

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§6-47 [Reserved]

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§6-48 [Reserved]

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§6-49 [Reserved]

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35 RCNY 6-50

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§6-50 Inter-Municipal For-Hire Vehicle Operation-Permit Required. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

Subd. (c) par (4) amended City Record July 12, 1993 eff. Aug. 11, 1993.

Subd. (c) par (5) added City Record July 12, 1993 eff. Aug. 11, 1993.

Subd. (c) par (6) renumbered (former par (5)) City Record July 12, 1993 eff. Aug. 11, 1993.

Subd. (c) par (6) amended City Record July 5, 2002 §5, eff. Aug. 4, 2002. [See T35 §6-11 Note 1]

Subd. (c) par (7) added City Record July 5, 2002 §5, eff. Aug. 4, 2002. [See T35 §6-11 Note 1]

Subd. (e) amended City Record July 12, 1993 eff. Aug. 11, 1993.

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35 RCNY 6-51

RULES OF THE CITY OF NEW YORK

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§6-51 Display of Permit. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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35 RCNY 6-52

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§6-52 Unlawful Activity. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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§6-53 Logbook. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1.Despite the unambiguous Commission regulation requiring that "for hire" vehicle drivers keep a trip log in the vehicle, livery driver conceded that he did not begin to keep a trip sheet at the time of an alleged misconduct by police officer. **Police Dep't v. Moneta,** OATH Index No. 468/00 (Mar. 2, 2000).

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35 RCNY 6-54

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§6-54 Inspections. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

Subd. (e) added City Record July 5, 2002 §6, eff. Aug. 4, 2002. [See T35 §6-11 Note 1]

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§6-55 Service of Summons and Notice. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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35 RCNY 6-56

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§6-56 Drivers. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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§6-57 Administrative Fees. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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35 RCNY 6-58

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§6-58 Bases. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

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35 RCNY 6-59

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§6-59 Penalties for Violation of Inter-Municipal Transport Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Nov. 22, 2006 §1, eff. Dec. 22, 2006. [See T35 §6-26 Note 1]

Section added City Record Dec. 18, 1992 eff. Jan. 17, 1993.

Subd. (a) amended City Record July 5, 2002 §7, eff. Aug. 4, 2002. [See T35 §6-11 Note 1]

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35 RCNY 7-01

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CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-01 Definitions.

Administrative Law Judge ("ALJ"). Administrative Law Judge is an attorney admitted to practice law in the State of New York who conducts administrative hearings for the Commission.

Bridge. Bridge is the area and work unit within the Adjudications Section of the Commission that coordinates the assignment of cases to be heard by administrative law judges for the Commission.

Client. A client is a respondent in a proceeding before the agency who has engaged the services of a representative.

Commission. Commission means the New York City Taxi and Limousine Commission or its designee.

Mailing Address. Mailing address means the address designated by a representative for the mailing of all notices and correspondence from the commission and for notification of charges concerning the representative pursuant to §7-10 of these rules.

Representative. A representative is a person granted permission by the Commission to represent for compensation a respondent in a proceeding before the agency. The term "representative" shall not include an individual duly admitted to the practice of law in the State of New York.

Respondent. A respondent is an individual, corporation or other entity who has applied for a license, has a license, or to whom a summons has been issued returnable at a Commission authorized facility.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Administrative Law Judge amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Client amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Representative amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Respondent amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

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35 RCNY 7-02

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CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-02 General Provisions for Representatives.

(a) An individual who desires to be granted permission to appear before the Commission as a representative shall be:

(1) at least eighteen (18) years of age;

(2) of good moral character; and

(3) possess a familiarity with all Commission rules and procedures.

(b) Applications for authorization to appear before the Commission as a representative shall be made on forms provided by the Commission.

(c) An applicant shall provide a mailing address.

(d) A representative shall notify the Commission immediately of any change in the representative's mailing address.

(e) An application for authorization to appear before the Commission as a representative will not be accepted unless such applicant shall have been sponsored by an attorney duly admitted to the practice of law in the State of New York. The attorney sponsor shall undertake that he or she will directly supervise and review the work product of the applicant and shall assume legal responsibility for the conduct of such applicant before the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Subd. (e) added City Record June 26, 1998 eff. July 26, 1998, expiring July 26, 1999 unless

extended by the Commission. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 26, 1998:

The regulation promulgated herein by the New York City Taxi and Limousine Commission ("TLC") is authorized under section 2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 2303(c) of such Charter, authorizing the TLC to establish and regulate conduct at its adjudications tribunal, and under section 19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The regulation requires that representatives authorized to appear before the Commission's tribunal be sponsored by an attorney licensed to practice in New York State who agrees to directly supervise the work product and conduct of the representative.

The purpose of the regulation is to ensure that representatives appearing before the Commission on a regular basis are supervised by an attorney who shall assume ultimate responsibility for the representative's performance. The Commission's tribunal adjudicates matters involving the application and interpretation of Commission rules, the provisions of the Administrative Code and the Vehicle and Traffic Law as they apply to persons engaged in activities subject to Commission regulation. Substantial penalties, including fines, and suspension or revocation of licenses, may be imposed. Respondents who appear before the TLC tribunal are entitled to a fair hearing and competent representation. In many cases, they rely upon non-attorney representatives to appear on their behalf. These representatives are required to be familiar with the rules and procedures of the Commission; however, such representatives are not subject to the same standards of conduct imposed upon licensed attorneys. Requiring attorney oversight and supervision of a representative's work product and conduct will protect the interests of respondents appearing before the TLC tribunal by assisting them in obtaining competent representation directed and supervised by a member of the Bar.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-03 Conduct and Character.

(a) No representative shall engage in any of the following conduct: (1) Disorderly behavior, breach of the peace, or other disturbance which directly or indirectly tends to disrupt or interrupt the proceedings at the Commission.

(2) Willful disregard of an Administrative Law Judge's authority prior to, during or after the course of an administrative hearing conducted at the Commission.

(3) Actions, gestures or verbal conduct which show disrespect for the proceedings of the Commission.

(b) A representative shall not leave a hearing in progress without the express permission of the Administrative Law Judge presiding.

(c) A representative shall, at all times, cooperate with all law enforcement officers, authorized representatives of the Commission and the New York City Department of Investigation, and shall comply with all their reasonable requests.

(d) A representative shall promptly and truthfully answer and comply as directed with all questions, communications, directives and summonses from the Commission or its representatives and the New York City Department of Investigation or its repre- sentatives.

(e) A representative shall not offer or give any gift, gratuity or thing of value to any employee or member of the

Commission, or to any other public servant. A representative shall immediately report to the Commission and the New York City Department of Investigation any request or demand for any gift, gratuity or thing of value by any employee or member of the Commission or any other public servant.

(f) A representative shall supply the bridge with a written list of all cases to be handled by that representative no later than 3:30 p.m. of the day before the day in which such cases are scheduled to be heard. There shall be no additions to this list without the express permission of the Legal Director of Adjudications or his/her designee.

(g) (1) A representative shall not operate any Commission computer terminal or other equipment at any time.

(2) A representative shall not enter any non-public service area at the Commission unless accompanied or authorized by a Commission manager or supervisor.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Subd. (h) repealed City Record Sept. 13, 1993 eff. Oct. 13, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The respondent, a non-attorney representative appearing before the Commission's tribunal pursuant to this chapter, engaged in a pattern of misconduct in violation of this section-disrupting hearings, showing disrespect toward the Commission's administrative law judges, and failing to comply with their requests-for which the penalty imposed was revocation of permission to practice before the tribunal. Taxi and Limousine Commission v. Falese, OATH Index No. 169/98 (Dec. 8, 1997), as modified by Comm'n Decision (Jan. 14, 1998).

¶ 2. A non-attorney representative registered to appear before the Commission did not violate standards of conduct, namely section 7-03(c) (refusal to cooperate with a reasonable request made by an authorized representative of the Commission) when he voiced an objection to a Commission hearing officer's order to leave the hearing room when the hearing officer told the representative that the hearing would be continued in his absence. The hearing officer's order was unreasonable because it did not allow the client sufficient time to secure alternative representation; therefore, the non-attorney representative could not be sanctioned for failing to comply without voicing his objection. The facts did not establish that the representative disrupted the proceedings in violation of section 7-03(a)(1) or that he displayed a disregard for the hearing officer's authority in violation of section 7-03(a)(2). In a separate incident, the non-attorney representative did not violate section 7-03(c) when he failed to comply with the request of a Commission inspector to go back to the representative's area because the inspector's request was unreasonable. The OATH administrative law judge found that the inspector forcibly separated the representative from his client during recess in order to personally serve the client with a summons that could have been served by mail (**see** section 1-85(b)). **Taxi and Limousine Comm'n v. Dickens,** OATH Index No. 1455/98 (June 2, 1998).

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-04 Misrepresentation and Related Matters.

(a) A representative shall not hold himself or herself out as an attorney at law. It shall be a representative's affirma-tive obligation to inform his/her clients or prospective clients that he/she is not an attorney at law.

(b) A representative shall not refer to himself or herself by any title other than "representative."

(c) All advertising by a representative shall clearly and conspicuously state that he or she is not an attorney at law.

(d) Advertising or other publicity generated or otherwise permitted by a representative shall not contain any false or misleading statement.

(e) A representative shall not induce or encourage any witness in a proceeding before an ALJ to make a false statement.

(f) A representative shall not make a statement or allow the introduction of evidence in a proceeding before an ALJ which he or she knows, or reasonably should have known, to be false, fraudulent or misleading.

(g) A representative shall not offer into evidence any document in a proceeding before an ALJ unless he or she has examined the document carefully and has satisfied himself or herself that it is genuine, true, and accurate.

(h) A representative shall not call any witness in a proceeding before an ALJ unless he or she has interviewed such witness and satisfied himself or herself that the testimony which the witness intends to offer is not misleading or false.

(i) If any witness in a proceeding before an ALJ makes any statement or offers into evidence any document which the representative knows is misleading or false, the representative shall immediately inform the Administrative Law Judge.

(j) No representative shall knowingly allow any false statement to be made by such representative's client or by a witness called by such representative on administrative appeal of an Administrative Law Judge's determination.

(k) In connection with the representaion of a respondent in an adjudication, a representative is guilty of misconduct when he or she is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the agency or any party.

(l) In connection with the representation of a client before the agency, a representative shall not make any untrue statement of fact. In connection with the issuance of agency documents, the representative shall state all material facts.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Subd. (k) repealed and added City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Subd. (l) added City Record Sept. 13, 1993 eff. Oct. 13, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Paragraph (c) of this section, requiring non-attorney representatives appearing before the Commission's tribunal to state clearly on all advertising that they are not attorneys at law, did not provide adequate notice to such representatives that their business cards must so state. Taxi and Limousine Commission v. Falese, OATH Index No. 169/98 (Dec. 8, 1997), modified on other grounds, Comm'n Decision (Jan. 14, 1998).

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***** Current through December 2009 ****

35 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-05 Solicitation.

(a) A representative shall not solicit clients, or permit the solicitation of clients by another person on the representative's behalf, on the premises of the Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) repealed City Record Sept. 13, 1993 eff. Oct. 13, 1993.

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***** Current through December 2009 ****

35 RCNY 7-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-06 Conflict of Interest.

(a) No representative shall represent more than one person, partnership, corporation, or association in connection with any matter in which the interests of such persons, partnerships, corporations or associations are in conflict with one another.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) repealed City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 7-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-07 Competent Representation.

(a) No representative shall undertake the representation of a client unless he or she is able to provide competent representation. A representative must, at a minimum:

(1) be thoroughly familiar with the facts of his or her client's particular case;

(2) have a thorough understanding of the rule or rules of the Commission involved in such case; and

(3) be thoroughly familiar with all applicable procedures.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) repealed City Record Sept. 13, 1993 eff. Oct. 13, 1993.

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35 RCNY 7-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-08 Assignment of Administrative Law Judges.

(a) No representative shall attempt to influence an employee of the Commission concerning the selection of an Administrative Law Judge to hear a particular case.

(b) Once a representative has been assigned to a hearing room, the representative shall not leave such room until all cases assigned to him or her have been adjudicated or the ALJ has given permission to the representative to leave for a stated reason or a specific period of time.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) repealed and added City Record Sept. 13, 1993 eff. Oct. 13, 1993.

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***** Current through December 2009 ****

35 RCNY 7-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-09 Suspension or Revocation.

(a) Any representative who violates these rules may be barred from representing clients before the Commission for such time and subject to such conditions as may be determined by an administrative law judge after a hearing and a finding of violation, as provided for in §7-10.

(b) Notwithstanding any inconsistent provision of this section, a representative's authorization to appear before the Commission may be suspended or revoked if it is determined that he/she has committed an act evidencing lack of good moral character which, had such act occurred prior to the time application was made to the Commission, would have served as a basis for denying such application.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) repealed and added City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 7-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 7 STANDARDS OF CONDUCT FOR REPRESENTATIVES APPEARING BEFORE THE COMMISSION TRIBUNAL

§7-10 Procedures in the Event of a Violation of Commission Rules.

(a) Upon an allegation of a violation of any of these rules by a representative, the Commission may institute proceedings to suspend or revoke such representative's authorization to appear before the Commission. Such proceedings shall be commenced by notifying the representative by both certified and first class mail of the formal written charges against him/her. Such charges shall be specific and shall advise the representative that a finding of guilty will result in the suspension or revocation of the authorization to appear before the Commission as a representative. A written notice shall accompany the charge, stating the date, time and place of the scheduled hearing of the charges.

This hearing shall be held at, and under the auspices of, the New York City Office of Administrative Trials and Hearings (also known as OATH), before an administrative law judge specially designated by OATH to conduct such a hearing. At the conclusion of the hearing, the judge will prepare and submit to the Chairperson a report containing his or her findings of fact and conclusions of law together with any recommended penalties. The Chairperson shall make the final agency decision as to findings of fact, conclusions of law, and penalties.

(b) If the Commission finds that emergency action is required to ensure public health, safety or welfare, it may order the summary suspension of the representative's authorization to appear before the Commission, pending a hearing on written charges held pursuant to §7-10(a). Such order shall be served upon the representative by both certified and first class mail at his/her last mailing address of record.

HISTORICAL NOTE

Section amended City Record Feb. 27, 1997 eff. Apr. 1, 1997. [See Note 1]

Section amended City Record Sept. 13, 1993 eff. Oct. 13, 1993.

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Feb. 27, 1997:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; and under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter.

The promulgated rules provide that hearings to determine whether representatives violated the rules governing their conduct will be conducted by the Office of Administrative Trials and Hearings, rather than by the Commission tribunal. OATH would make a recommendation as to findings and penalties to the Chairperson, who will then make the final decision.

The purpose of the promulgated rules is to provide a forum separate from the one in which representatives appear on a daily basis.

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***** Current through December 2009 ****

35 RCNY 8-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-01 Definitions.

(a) Administrative Law Judge ("ALJ"). An attorney admitted to practice law in the State of New York and duly appointed by the Commission to conduct administrative hearings for the Commission, or an Administrative Law Judge duly appointed to conduct administrative hearings for the Office of Administrative Trials and Hearings ("OATH").

(b) Appeal. The procedure for review of a decision of an ALJ pursuant to §8-13 of these Rules, or a decision of the Chairperson pursuant to §8-14(k) of these Rules.

(c) Authorized industry representative. A non-attorney authorized by the Commission to represent respondents before the Commission's Adjudications Tribunal as a Representative pursuant to 35 RCNY Chapter 7.

(d) Chairperson. The member of the Commission designated by the Mayor as the Chair and Chief Executive Officer pursuant to §2301(c) of the New York City Charter.

(e) Commission. The New York City Taxi and Limousine Commission.

(f) Commission Adjudications Tribunal ("Tribunal"). The administrative tribunal established pursuant to §2303(c) of the New York City Charter and authorized to adjudicate charges of violations of provisions of the Administrative Code and regulations promulgated thereunder.

(g) Discretionary revocation. A penalty of revocation which may be imposed at the option of the Chairperson upon the recommendation of an ALJ of the Commission or by the New York City Office of Administrative Trials and

Hearings (OATH).

(h) Hearing. A procedure for the presentation and consideration of evidence before an Administrative Law Judge, after which the ALJ makes findings of fact and conclusions of law regarding any charge alleging a violation of the Administrative Code or any Commission Rule.

(i) Inquest. A procedure for the determination of the guilt or innocence of a respondent, and the imposition of penalties in the event of a finding of guilt, wherein the respondent has failed to appear for a scheduled hearing.

(j) License. A license issued by the Commission, including, but not limited to: a license to operate a taxicab, a for-hire vehicle, a commuter van or a paratransit vehicle; to own a taxicab, for-hire vehicle, commuter van, or paratransit vehicle; or to own and/or operate a for-hire vehicle base, a commuter van service, or a taximeter business; or a license to act as a taxicab broker or taxicab agent. Within the context of these Rules a "License" also includes the privilege to accept passengers by prearrangement for trips outside the City of New York, pursuant to 35 RCNY §6-50, et seq.

(k) Licensee. An individual, partnership or corporation issued a license by the Commission. Unless the context of these rules dictate otherwise, a licensee shall include an individual, partnership or corporation whose license has been suspended.

(l) Mandatory revocation. A penalty of revocation imposed for the violation of any specified Rules or Administrative Code provisions, which penalty may not be reduced or modified by an ALJ. Mandatory revocation includes, but may not be limited to, a revocation mandated by the Administrative Code or the Rules of the Commission, as a result of prior convictions, as a result of an accumulation of points pursuant to the Persistent Violator Program or Critical Driver Program, or as otherwise provided for as a penalty under these Rules or the Administrative Code.

(m) Motion to vacate. A procedure to reconsider a determination resulting from an inquest.

(n) Respondent. An individual, partnership or corporation named on a summons, a notice of violation, petition, or any other form of administrative charges wherein the respondent is charged with a violation of the Administrative Code or a Commission Rule. A respondent need not be a licensee of the Commission. In the case of a fitness hearing conducted pursuant to Commission Rules, a respondent may be either a licensee or an applicant for a license who is the subject of a fitness review.

(o) Rule. A rule of the Commission adopted in accordance with §§1043 and 2303 of the New York City Charter.

HISTORICAL NOTE

Section repealed and added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8

footnote]

Section amended City Record Sept. 28, 1994 eff. Oct. 31, 1994.

Subd. (a) amended City Record Sept. 18, 2008 §1, eff. Oct. 18, 2008. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 18, 2008:

The promulgated rules implement Local Law 16 of 2008 by making several changes to Taxi and Limousine Commission adjudications procedures.

First, the rules codify the Commission's existing practice of referring discretionary revocation cases to the Office of Administrative Trials and Hearings ("OATH").

Second, these rules specifically allow Commission prosecutors to call witnesses by teleconference or videoconference when they are unable to appear at the hearing in person. This provision will enhance the credibility determination when, for example, the complainant is a foreign tourist who is unable to travel to New York to appear personally at a hearing.

Third, the rules codify the Commission's existing practice of summarily suspending a license only when continued licensure poses a direct and substantial threat to public health or safety.

Fourth, these rules increase the time for respondents to vacate inquest determinations from 120 days to two years and require that the Commission maintain a record detailing how the respondent was informed of the inquest determination. That record will be available to the respondent upon request.

Fifth, these rules require exedited appeals decisions where the administrative appeal is taken from a decision imposing a license suspension or revocation, and provide that fines imposed after a hearing are stayed pending decision of the administrative appeal.

Finally, the rules provide that, if the Commission fails to produce a timely copy of the recording of the hearing in response to a timely request filed by a respondent seeking to appeal, the decision appealed from must be dismissed. Given the Commission's recent conversion from audiocassette recording to digital recording of hearings, copies of recordings are available promptly and reliably.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 1, 1999. Note Statement of Basis from City Record Dec. 1, 1999.

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, empowering the TLC to regulate and supervise the business and industry of the transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations as are necessary to exercise the authority conferred upon it by the Charter; under §19-506 of said Code, authorizing the Commission to impose fines, suspend or revoke licenses for violations of Commission rules; and under §19-528 of said Code, authorizing the Commission to impose additional penalties for unlicensed activities.

The rules repeal the existing Chapter Eight of the Rules of the TLC, relating to Adjudications Procedures, as well as other sections of Title 35 of the Rules of the City of New York ("RCNY"), relating to procedures to be followed in the event of a violation of Commission Rules. A new Chapter Eight, setting forth procedures to be followed in the event of a violation of the Administrative Code or Commission rules has been enacted to replace these repealed sections. This new Chapter also includes changes in adjudications procedures necessary to conform with Administrative Code amendments that were enacted into law on May 26, 1999.

The purpose of these amendments is to clarify the Commission's adjudications procedures. Presently, each Chapter contained within Title 35 has its own section describing procedures to be followed in the event of a

violation of TLC Rules. These amendments will create a unified, comprehensive set of procedures applicable to all Commission Rules and Administrative Code violations adjudicated before the Commission.

On May 26, 1999, amendments to the Administrative Code were enacted into law. These amendments adopted specific time periods which must be followed in the case of a summary suspension of a taxicab or for-hire vehicle license, or where a respondent is charged with taximeter tampering. Procedures mandated by the Administrative Code have been incorporated into these Rules. In addition to unifying procedures with respect to the adjudication of summonses, these Rules also establish clear procedures to be followed with respect to the review of the fitness of licensees and applicants to obtain a license from the Commission and procedures to be followed in the event the Commission seeks the discretionary revocation of a license.

Several changes were made to the text of the Proposed Rules published in the City Record on August 23, 1999. These changes were made in response to written comments and public statements received by the TLC at or prior to the Public Hearing. The changes to the proposed Rules, as adopted by the TLC:

· Increase the time during which a respondent may file an appeal from twenty-one (21) to thirty (30) days;

· Provide that a respondent served with a summons alleging a rule violation, by personal service upon a driver as agent, will not be suspended upon a failure to appear until at least ten (10) days after the default has occurred;

· Respondents in discretionary revocation proceedings may appeal the final Agency decision of the Chairperson to the full Commission.

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35 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-02 Scope of this Chapter.

(a) Pursuant to §2303(c) of the New York City Charter, there shall be established a Commission Adjudications Tribunal. Except as otherwise provided herein, this Tribunal shall have conferred upon it original jurisdiction over:

(i) violations of Title 19, Chapter 5 of the Administrative Code, including, but not limited to violations where a penalty of license revocation may be imposed;

(ii) violations of Commission Rules including, but not limited to violations wherein a penalty of license revocation may be imposed; and

(iii) review of the fitness of an applicant or a licensee regarding licensing determinations made by the Commission pursuant to the Administrative Code or Commission Rules.

(b) The hearing procedures set forth herein apply to all hearings conducted before the Commission Adjudications Tribunal pursuant to this Chapter, as applied to licensees and non-licensees.

(c) The Commission may, in its discretion, seek the adjudication of any violation of the Administrative Code or Commission Rules before the New York City Office of Administrative Trials and Hearings (OATH). In this event, the Rules governing the procedures for the conduct of such hearings before OATH shall govern. The determination of OATH with respect to penalty shall be a recommendation to the Chairperson.

(d) ALJs of the Commission Adjudications Tribunal shall render final decisions that shall include findings of fact

and conclusions of law, except with respect to the following proceedings, in which case the decision of the ALJ shall be a recommended decision:

(i) Licensing determinations as to the fitness of licensees or license applicants, which shall be recommended decisions as set forth in §8-15;

(ii) Proceedings pursuant to §19-528(b) of the Administrative Code, which shall be recommended decisions to the Chairperson;

(iii) Summary suspension recommendations made pursuant to §8-16, which shall be recommended decisions to the Chairperson; or

(iv) Reserved.

HISTORICAL NOTE

Section repealed and added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8

footnote]

Subd. (c) amended City Record Sept. 18, 2008 §2, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

Subd. (d) par (iv) repealed City Record Sept. 18, 2008 §3, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

DERIVATION

Former §8-02 Adjudications Conducted by the Office of Administrative Trials and Hearings

amended City Record Feb. 27, 1997 eff. Apr. 1, 1997. [See T35 §7-10 Note 1]; amended City

Record Sept. 28, 1994 eff. Oct. 31, 1994.

Subd. (a) amended City Record Apr. 29, 1997 eff. June 1, 1997. [See T35 §6-06 Note 1]

Subd. (b) amended City Record Apr. 29, 1997 eff. June 1, 1997.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pursuant to subsection (c) of this section, any case that is referred to the Office of Administrative Trials and Hearings (OATH) is to be decided by report and recommendation to the Commission Chair. **Taxi & Limousine Comm'n v. Nitram Cab Corp.**, Comm'r/Chair's dec. (Sept. 8, 2008), **adopting,** OATH Index No. 2809/08 (Aug. 4, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 1, 1999. Note Statement of Basis from City Record Dec. 1, 1999.

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, empowering the TLC to regulate and

supervise the business and industry of the transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations as are necessary to exercise the authority conferred upon it by the Charter; under §19-506 of said Code, authorizing the Commission to impose fines, suspend or revoke licenses for violations of Commission rules; and under §19-528 of said Code, authorizing the Commission to impose additional penalties for unlicensed activities.

The rules repeal the existing Chapter Eight of the Rules of the TLC, relating to Adjudications Procedures, as well as other sections of Title 35 of the Rules of the City of New York ("RCNY"), relating to procedures to be followed in the event of a violation of Commission Rules. A new Chapter Eight, setting forth procedures to be followed in the event of a violation of the Administrative Code or Commission rules has been enacted to replace these repealed sections. This new Chapter also includes changes in adjudications procedures necessary to conform with Administrative Code amendments that were enacted into law on May 26, 1999.

The purpose of these amendments is to clarify the Commission's adjudications procedures. Presently, each Chapter contained within Title 35 has its own section describing procedures to be followed in the event of a violation of TLC Rules. These amendments will create a unified, comprehensive set of procedures applicable to all Commission Rules and Administrative Code violations adjudicated before the Commission.

On May 26, 1999, amendments to the Administrative Code were enacted into law. These amendments adopted specific time periods which must be followed in the case of a summary suspension of a taxicab or for-hire vehicle license, or where a respondent is charged with taximeter tampering. Procedures mandated by the Administrative Code have been incorporated into these Rules. In addition to unifying procedures with respect to the adjudication of summonses, these Rules also establish clear procedures to be followed with respect to the review of the fitness of licensees and applicants to obtain a license from the Commission and procedures to be followed in the event the Commission seeks the discretionary revocation of a license.

Several changes were made to the text of the Proposed Rules published in the City Record on August 23, 1999. These changes were made in response to written comments and public statements received by the TLC at or prior to the Public Hearing. The changes to the proposed Rules, as adopted by the TLC:

· Increase the time during which a respondent may file an appeal from twenty-one (21) to thirty (30) days;

· Provide that a respondent served with a summons alleging a rule violation, by personal service upon a driver as agent, will not be suspended upon a failure to appear until at least ten (10) days after the default has occurred;

· Respondents in discretionary revocation proceedings may appeal the final Agency decision of the Chairperson to the full Commission.

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35 RCNY 8-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-03 Penalties.

(a) Whenever a respondent is charged with a violation of any Commission Rule or Administrative Code Section, he may be subject to civil penalties in accordance with the appropriate schedule of penalties set forth in the Commission Rules or the Administrative Code.

(b) In the alternative to any of the specific penalties set forth in the Commission Rules, the Commission may, in its discretion, impose a penalty of license revocation, license suspension of up to six (6) months and/or a fine:

(i) not to exceed $10,000 for each violation against the owner of a licensed taxicab or for-hire vehicle, base, commuter van service or vehicle, paratransit service or vehicle, taximeter business, taxicab broker or taxicab agent; or

(ii) not to exceed $1,000 for each violation against a licensed driver.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 1, 1999. Note Statement of Basis from City Record Dec. 1, 1999.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-04 Preliminary Procedure in the Event of a Violation of the Administrative Code or Commission Rules: Summons or Notice of Violation.

Unless otherwise set forth herein, a respondent shall be served with a summons and/or a notice of violation, setting forth the nature of the violation charged. In the case of a fitness hearing, as described in §8-02(a)(iii), a respondent shall be served with a notice which sets forth the basis for the Commission's charge that the respondent is not fit to possess a license.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-05 Service of Summonses and Notices.

(a) Service of a summons or other notice upon a licensee may be accomplished by any of the following methods:

(i) by personal service; or

(ii) by first class mail in a postpaid envelope addressed to the last mailing address filed with the Commission; or

(iii) if the licensee is the owner of a taxicab, for-hire vehicle, paratransit service vehicle or commuter van, by personal service upon the driver of such licensed vehicle. Said driver shall promptly forward said summons or notice to the owner or agent and the failure to do so shall be considered a failure to comply with a directive of the Commission; or

(iv) if the licensee is a commuter van service, for-hire vehicle base, paratransit base, taxicab agent, or taximeter business, by personal service upon a person of suitable age and discretion employed by or acting as an agent of the licensee at the licensee's place of business.

(b) Service of a summons or other notice upon a respondent who is not a licensee may be accomplished by any of the following methods, consistent with the requirements set forth in the Civil Practice Law and Rules:

(i) by personal service; or

(ii) by first class mail in a postpaid envelope addressed to the address set forth on the respondent's state issued driver's license or vehicle registration; or

(iii) if the respondent is the registered owner of a vehicle, by personal service upon the driver of the vehicle; or

(iv) if the respondent is charged with operating an unlicensed commuter van service, for-hire vehicle base, paratransit base, taxicab agent, or taximeter business, by personal service upon a person of suitable age and discretion employed by or acting as an agent of the respondent at the respondent's place of business.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Commissioner/Chair determined that directive was served in accordance with this section. Affidavit of service attesting that the directive had been placed on a particular date in a depository maintained for pick-up by the Commission's mail room was sufficient proof of both that it was mailed by first-class mail and that it was mailed on the day it was placed in the depository or within one business day thereafter. The Chair held that the Commission was entitled to rely upon a rebuttable presumption of regularity to establish timely service. **Taxi & Limousine Comm'n v. Nitram Cab Corp.**, Comm'r/Chair's dec. (Sept. 8, 2008), **adopting,** OATH Index No. 2809/08 (Aug. 4, 2008).

¶ 2. Commissioner/Chair held that proof of actual notice is a complete substitute for proof of technically correct service. **Taxi & Limousine Comm'n v. Nitram Cab Corp.**, Comm'r/Chair's Decision (Sept. 8, 2008), **adopting,** OATH Index No. 2809/08 (Aug. 4, 2008).

¶ 3. The Chair rules no additional certification, beyond that provided by the attorney who initially certified that he deposited the notice addressed to the respondent with the TLC mail service, is required to establish proper service. **Taxi & Limousine Comm'n v. Henry**, Comm'r/Chair's Decision (Sept. 9, 2008), **adopting with modification** OATH Index No. 245/09 (Aug. 4, 2008).

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-06 Contents of Summons or Notice of Violation.

(a) A summons or notice of violation shall contain, at a minimum, the following information:

(i) the date, time and location of the alleged violation;

(ii) a description of the nature of the violation sufficient to inform the respondent of the conduct proscribed;

(iii) the Rule or Administrative Code Section alleged to have been violated; provided, however, that if there is a conflict between the Rule or Code Section cited and the description of the violation, the description shall be dispositive.

(b) A notice for a fitness hearing, as described in §8-15 herein, shall set forth the basis for the Commission's charge that the respondent is not fit to possess or retain a license issued by the Commission.

(c) If a respondent claims at a hearing that the summons or notice of violation fails to provide the information specified in subdivisions (a) or (b), the respondent will be provided with the missing information and may be granted an adjournment of the hearing if the ALJ determines that the lack of information unduly prejudices the respondent. If the summons or notice of violation is dismissed solely because the information set forth in subdivision (a) has not been provided, the Commission may issue an amended summons or notice of violation.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-07 Guilty Pleas and Scheduling of Hearings.

(a) The Commission Rules may set forth violations for which a personal appearance is not required. With respect to any summons issued for such violation, the respondent may plead guilty at or prior to a scheduled hearing, and pay the scheduled fine in person or by mail. By pleading guilty, the respondent admits the charges contained in the summons or notice of violation, and waives any right to appeal the ALJ's determination, including but not limited to the assessment of fines, imposition of points and penalties pursuant to the Persistent Violator or the Critical Driver Programs, or other penalties. If the respondent does not choose to plead guilty prior to the hearing date, he shall be required to appear at the scheduled hearing.

(b) A summons or notice of violation may inform the respondent of the date, time and location of the scheduled hearing on the summons or notice. In such case, no further notice to the respondent shall be provided. If the respondent does not plead guilty pursuant to subdivision (a), or if the summons or violation requires a personal appearance, the respondent shall appear for a hearing at the location, date and time indicated on the summons or notice of violation.

(c) If the summons or notice of violation does not inform the respondent of the date, time and location of the scheduled hearing, and if the violation is one for which a personal appearance is not required, the respondent may request a hearing by pleading not guilty to the summons or by otherwise following the instructions contained on the notice from the Commission. Upon receipt of a not guilty plea, the Commission will schedule a hearing and inform the respondent of the date, time and location of the hearing by first class mail. The failure to enter a plea of not guilty in a timely manner shall constitute a default to the charges and subject the respondent to penalties which may include license suspension or revocation as set forth therein.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-08 Failure to Prosecute by the Commission.

If, for one (1) year after the date of the issuance of a summons or notice of violation and without any delay or default on the part of the respondent, there has been no hearing or adjudication, the Commission shall dismiss the charges.

HISTORICAL NOTE

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Rules of the City of New York

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35 RCNY 8-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-09 Adjournment Requests.

A respondent who is unable to appear at a scheduled hearing must notify the Commission at least five (5) business days in advance of the hearing in order to request an adjournment. An adjournment will be granted only upon a showing of an inability to attend the scheduled hearing. A respondent shall be entitled to only one adjournment. Adjournment requests made upon less than five (5) business days notice shall be made in person by the respondent and decided by an ALJ on the date of the request.

HISTORICAL NOTE

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-10 Attendance at Hearing.

(a) A respondent who is a licensee may be represented at a hearing by an attorney or by a non-attorney representative duly authorized by the Commission. If the respondent is a corporation, it may also be represented by an officer, director, or employee of the respondent corporation designated as an agent for the respondent. If the respondent is a partnership, it may also be represented by any partner. Any individual appearing who is not a respondent shall provide proof of his relationship to the respondent.

(b) A respondent who is not a licensee must appear personally at a hearing and provide the ALJ with suitable identification. If the non-licensee respondent is a corporation or partnership, an officer, director, employee or partner must appear with proof of his relationship to the respondent. A non-licensee may be accompanied and represented by an attorney or a non-attorney representative duly authorized by the Commission.

(c) All hearings shall be conducted in English. A respondent, other than a licensed taxicab driver, who does not speak or understand English, may appear at a hearing with a translator who is not a party, representative of the respondent or a witness to the proceeding.

(d) A respondent may present witnesses at a hearing. A respondent shall be entitled to be present throughout the entire hearing; however, witnesses shall be excluded from the hearing room except while actually testifying.

(e) The Commission may, for cause, deny any non-attorney the opportunity to appear at a hearing.

(f) In the event that the Commission is unable to produce a complaining witness in person at the hearing, where

such witness's credibility is relevant to the charges made in the notice of violation, the Commission shall make reasonable efforts to make such witness available during the hearing by videoconferencing or teleconferencing. If the complaining witness is not available to testify at the hearing in person, or by videoconference or teleconference, the Commission shall produce a statement outlining its efforts to produce such witness. The ALJ must determine whether the Commission's efforts to produce the complaining witness were reasonable and if found to be inadequate, the ALJ shall dismiss the notice of violation.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

Subd. (f) added City Record Sept. 18, 2008 §4, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-11

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-11 Hearing Procedure.

(a) No licensee shall be permitted to appear at a hearing unless he or she shows a valid photo ID to the Commission prior to the hearing.

(b) All hearings shall be conducted before an ALJ who shall consider all relevant testimony and review documentary evidence submitted at the hearing. Evidence at a hearing may include affidavits or affirmations submitted under penalties of perjury and may also include the records of the Commission or of another governmental body maintained in the regular course of business. Failure of the respondent to produce at a hearing any document either requested by the Commission or required to be maintained by the respondent pursuant to Commission Rules shall lead to a rebuttable presumption that the document, if produced, would have been adverse to the respondent. Although the formal rules of evidence do not apply, all witnesses shall testify under oath.

(c) All hearings shall be recorded. The record of the hearing and the written decision of the ALJ shall constitute the only official record of the hearing. No individual may record or photograph the hearing without prior written permission from the Commission.

(d) At the conclusion of the hearing, the ALJ shall issue a decision which shall include findings of fact and conclusions of law. If the ALJ finds a violation has been committed, the appropriate penalties shall be imposed, which may include a fine, and/or suspension or revocation of the respondent's license. In the event a suspension for a specified period of time is imposed, such suspension period will not include any period of time during which the respondent's license is not in the possession of the Commission.

HISTORICAL NOTE

Section amended City Record Nov. 2, 2006 §14, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

FOOTNOTES

1

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-12

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-12 Procedures in the Event of a Failure to Appear.

(a) In the event that a respondent fails to appear at a scheduled hearing, the Commission shall conduct an inquest on any violation of the Administrative Code or the Commission Rules. At said inquest, to be conducted on or after the hearing date, the ALJ shall impose any penalties deemed appropriate, including additional penalties for the failure to appear at such hearing imposed upon licensees pursuant to Commission Rules.

(b) The Commission shall inform the respondent of the determination of the inquest by regular, first class mail to the address of the respondent on file with the Commission. The Commission shall prepare a record containing the name of the person who mailed the notice, and the date and time of the mailing of the notice. The Commission shall make this record available upon request to the respondent.

(c) If the penalty imposed at the inquest includes the suspension of a license as a result of a violation of a Commission Rule or the Administrative Code, said suspension shall not commence until ten (10) days after the mailing of the ALJ's decision with respect to the inquest conducted herein.

(d) A respondent may move to vacate the inquest determination within two (2) years of the date of the inquest. Said motion must be made in writing unless otherwise authorized by the Executive Director of Adjudications or his designee and shall be filed in accordance with the Commission procedures for the submission of such motions. In support of this motion to vacate, the respondent shall present written evidence as to:

(i) the reasons for his failure to appear at the hearing; and

(ii) a defense to the charge, which, if established and proven at a hearing, would result in the dismissal of the summons.

If the respondent fails to make a timely motion to vacate the default, any penalties imposed pursuant to Rule 2-70 or 6-23 shall be assessed and the respondent shall be notified of this determination by regular, first class mail.

(e) If the ALJ determines that the respondent has established both a valid excuse for his failure to appear at the hearing and a defense to the violation which, if proven, would be legally sufficient, the inquest determination shall be vacated and the respondent shall be entitled to a hearing de novo. Any suspension or revocation imposed at the inquest shall be vacated.

(f) If the ALJ denies the motion to vacate, the penalties imposed at the inquest shall be assessed. In addition, the ALJ shall impose any appropriate penalty required pursuant to §2-70 or §6-23 of the Commission Rules.

HISTORICAL NOTE

Section amended City Record Nov. 2, 2006 §15, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

Subd. (b) amended City Record Sept. 18, 2008 §5, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

Subd. (d) amended City Record Sept. 18, 2008 §5, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

FOOTNOTES

1

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-13

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-13 Procedures on Appeal.

(a) The respondent may appeal the decision of an ALJ as follows:

(i) An appeal must be addressed to the Deputy Commissioner for Legal Affairs/General Counsel and received within thirty (30) calendar days of the date of the decision to be appealed. If a respondent timely files an appeal, any fines imposed by the Tribunal shall be stayed until a decision is made in such appeal; however, the Commission shall not be required to refund any fines paid before respondent made his or her appeal unless such appeal is successful.

(ii) The appeal must be accompanied by a copy of the ALJ decision.

(iii) The respondent may request a copy of the recording of the hearing within seven (7) calendar days of the ALJ's determination. Such request must be made in writing on a form to be prescribed by the Chairperson. Such form shall be completed and submitted in accordance with instructions to be printed on the form. If, for the purposes of appealing a decision, a respondent requests a copy of the hearing recording, such recording shall be produced to such respondent within thirty (30) days after receipt of a written request from such respondent. If the Commission cannot produce the recording to the resondent within the thirty (30) day period the determination being appealed shall be dismissed without prejudice. An appeal must be received by the Commission within twenty-one (21) days of the issuance of the requested copy by the Commission, whether by mailing or otherwise.

(b) If the ALJ's decision resulted in the suspension or revocation of a license, the determination of the appeal shall be expedited. If the ALJ's decision resulted in the suspension of a license, the Deputy Commissioner for Legal Affairs/General Counsel or his designee may, in his discretion, issue a temporary license after an appeal has been filed

which may remain in effect pending the determination of the appeal. In making the determination as to whether or not to issue a temporary license, the following factors may be considered: the respondent's record, the seriousness of the charges, the likelihood of the success of the appeal and the significance of the issues raised on appeal.

(c) The Commission may seek review of a determination by an Administrative Law Judge by filing an appeal with the Deputy Commissioner for Legal Affairs/General Counsel within thirty (30) calendar days of such determination. If a Commission appeal is filed, the respondent will be notified by mail. The appeal will include a written statement setting forth the basis for the appeal. The respondent may respond to the appeal within twenty-one (21) calendar days of the mailing of the appeal. The respondent may request a copy of the recording of the hearing within seven (7) calendar days of the notice of appeal. Such request must be in writing on a form to be prescribed by the Chairperson. Such form shall be completed and submitted in accordance with instructions to be printed on the form. If a respondent requests a copy of the recording of the hearing, his or her time to respond to the notice of appeal is extended until twenty-one (21) calendar days after the issuance of the requested copy by the Commission, whether by mailing or otherwise.

(d) Review of an ALJ's decision shall be limited to the issues of law raised in the appeal submitted. Upon appeal, the determination of the ALJ may be affirmed, reversed in whole or in part, or modified. In the event that a decision on appeal results in the reversal of a decision by an ALJ to dismiss a summons, the matter shall be remanded to the Commission Adjudications Tribunal for a new hearing. If a decision on appeal affirms a determination of guilt by an ALJ, but modifies a penalty which had been incorrectly imposed, the decision may correct the penalty, without remand for a new hearing.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

Subd. (a) amended City Record Apr. 11, 2006 §1, eff. May 11, 2006. [See Note 1]

Subd. (a) pars (i), (ii), (iii) amended City Record Sept. 18, 2008 §6, eff. Oct. 18, 2008. [See T35

§8-01 Note 1]

Subd. (b) amended City Record Sept. 18, 2008 §6, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

Subd. (c) amended City Record Apr. 11, 2006 §1, eff. May 11, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Apr. 11, 2006:

The rule allows for digital recording of hearings conducted in the administrative tribunal of the Taxi and Limousine Commission ("TLC"). Previously, hearings were tape recorded, and §8-13 of the TLC's rules contains numerous references to tape recordings and cassette tapes. The TLC is upgrading from audiotape to digital recording of hearings, and the rule change makes the appropriate technical changes in §8-13.

Prior to the present amendment, respondents who requested copies of tape recordings were required to supply blank cassette tapes with the requests. The amended rule provides that a form to be prescribed by the TLC Chairperson will contain instructions on the submission of requests for copies of recordings. Those instructions will direct respondents to submit any blank recording medium that may be required. However, it is anticipated that in most cases copies of digital recordings of hearings will be e-mailed to respondents who request copies of such recordings. It is also anticipated that a respondent who is unable to receive e-mail may be required to submit a blank CD-ROM.

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-14

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-14 Discretionary Revocation Proceedings.

(a) The Commission may institute proceedings to seek the revocation of any license for the violation of any Commission Rule, whether or not the penalty of revocation is provided therein.

(b) If the Commission seeks the penalty of revocation for a Rule violation not providing for mandatory revocation as a penalty, as provided for in §8-03(b), said proceeding must be commenced before the Office of Administrative Trials and Hearings (OATH). The Commission shall not commence such a proceeding unless the Chairperson makes a determination that the continued licensure of the respondent presents a threat to the public health, safety or welfare.

(c) The Commission shall notify the respondent of such proceeding by serving a written summons or notice detailing the charged misconduct and warning the respondent that a finding of guilt could result in the revocation of his license.

(d) Said written charges shall be served upon the respondent in accordance with §8-05, if the hearing is to be conducted before the Commission's Tribunal. If the hearing is to be conducted before OATH, the respondent shall be served with charges according to the procedures adopted by OATH.

(e) Said charges shall inform the respondent of the location, date and time of any scheduled hearing.

(f) If the hearing is commenced before OATH, it shall be conducted by an ALJ assigned by OATH, and the procedures of OATH shall govern with respect to the conduct of the hearing. If the hearing is commenced at the Commission's Adjudications Tribunal, the procedures set forth in this Chapter shall apply. The affirmative defenses set

forth in subdivision b of §19-512.1 of the Administrative Code may be available in any such hearing.

(g) If the proceeding is conducted by OATH, the ALJ, upon a finding of guilt, may recommend to the Chairperson license revocation, license suspension for a period up to six (6) months, and/or a fine not to exceed $10,000 for each offense for which a taxicab owner, base owner, taximeter business owner, taxicab broker or taxicab agent is found guilty and/or a fine not to exceed $1,000 for each offense for which any other licensee is found guilty.

(h) If the proceeding is conducted by the Commission Adjudications Tribunal, the decision of the ALJ shall be a Recommended Decision to the Chairperson. In such case, the ALJ will prepare and submit to the Chairperson a Recommended Decision containing his findings of fact, conclusions of law and recommended penalties.

(i) Upon the issuance of a Recommended Decision in accordance with either subsection (g) or (h), containing findings of fact, conclusions of law and any recommended penalty, the respondent shall be provided with an opportunity to provide a written response to said Recommendation, limited to the record of the hearing and the determination of the ALJ with respect to penalty only.

(j) The Recommended Decision issued in accordance with either subsection (g) or (h) will be submitted for consideration to the Chairperson. The Chairperson shall consider any written comments submitted pursuant to subsection (i) and shall determine whether to accept, modify or reject the Recommendation of the ALJ.

(k) A final decision of an ALJ may be appealed to the Deputy Commissioner for Legal Affairs/General Counsel pursuant to the provisions of §8-13. The final decision of the Chairperson, affirming, modifying or rejecting the Recommendation of an ALJ rendered pursuant to this Section may be appealed to the TLC Commissioners. The respondent may appeal the Chairperson's decision within thirty (30) calendar days of the date of the Chairperson's final decision by filing a written appeal, setting forth the basis for the appeal and all statements and arguments made in support thereof, with the Deputy Commissioner for legal Affairs/General Counsel. The Chairperson may prescribe the form for the conduct and filing of such appeals. Review of the Chairperson's decision shall be limited to the issues of law raised in the appeal submitted, and whether the decision of the Chairperson and the recommended decision of the ALJ is supported by substantial evidence. The Commissioners may not review findings of fact or determinations of credibility by an ALJ. The Agency may submit a written response to any appeal received by the Deputy Commissioner for Legal Affairs/General Counsel. The respondent shall be afforded the opportunity to respond in writing to the Agency's written submission. The Commissioners shall receive a copy of the ALJ's Recommendation, the Chairperson's decision, the appeal, and any responses filed by the Commission or the respondent. The Commission shall, by majority vote of the Commission at a meeting at which a quorum is present and in which it is acting in a quasi-judicial capacity, either affirm, modify, or reject the Chairperson's decision and penalty. The Chairperson shall not vote on such appeals. The results of the vote and action taken by the Commission shall be communicated at a public meeting. The Commission shall also have the authority, where appropriate, to remand the matter to the ALJ for further consideration prior to rendering a decision.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

Subd. (b) amended City Record Sept. 18, 2008 §7, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Respondent's motion to dismiss license revocation proceeding based upon prior adjudication of summonses was denied. The prior adjudications were rendered in error since the license revocation proceeding superseded the summonses and removed the jurisdiction of the TLC tribunal under the procedural rule in effect at the time (§ 6-21(i)). **Taxi and Limousine Comm'n v. Dadon,** OATH Index No. 819/00, mem. dec. (Mar. 27, 2000).

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-15

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-15 Special Procedures Relating to Fitness Hearings.

(a) If the Commission believes that a licensee or applicant for a license (hereinafter referred to as "respondent") does not meet or does not continue to meet the qualifications for licensure, as set forth in Commission Rules, it may direct that such respondent appear for a fitness hearing. Such hearing shall be conducted by an ALJ.

(b) The Commission shall prepare a notice of hearing which shall be served upon the respondent in accordance with §8-05. Such notice shall set forth, at a minimum, the date, time and location of the hearing and the basis for the Commission's charge that the respondent fails to meet the minimum requirements for licensure.

(c) Notwithstanding subdivisions (a) and (b) of this section, the Commission may order the summary suspension of a driver's license to ensure the public safety in cases where the Commission receives notice that a licensee has failed a required drug test. The Commission shall notify the licensee either by personal service or by first class mail of the summary suspension, within five (5) calendar days of the suspension. An expedited fitness hearing shall be scheduled within ten (10) calendar days of such suspension. The hearing shall be conducted by an ALJ in accordance with subdivisions (d) and (e) of this section, and based upon the ALJ's findings, either the suspension shall be lifted or the license shall be revoked.

(d) The hearing shall be conducted before an ALJ who shall review the documentary evidence and testimony submitted by the Commission and afford the respondent an opportunity to respond under oath and to proffer evidence on his or her behalf. The hearing shall be recorded.

(e) The ALJ shall issue a Recommended Decision which shall include a determination as to the respondent's

fitness to possess a license. If the respondent is or has ever been a licensee, the Recommendation shall be issued to the Chairperson. If the respondent is an applicant who has never held a license issued by the Commission, the Recommendations shall be issued to the Deputy Commissioner for Licensing, his or her designee, or any other person designated by the Chairperson. The Chairperson, Deputy Commissioner for Licensing, or designee, may accept, reject or modify said Recommendation. The decision of the Chairperson, Deputy Commissioner for Licensing, or designee shall constitute the final determination of the Commission.

HISTORICAL NOTE

Section amended City Record Nov. 2, 2006 §16, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Commission/Chair revokes license for unfitness under this section based upon licensee's conviction for driving while impaired, which occurred off-duty driving his personal car. Commission/Chair rejected ALJ's finding that license could be revoked under sections 2-61 and 8-14 of this title but not this section because the Commission did not prove that licensee lacked moral character and was thus unfit under this section based upon the conviction for a traffic infraction, where the driver showed remorse at the hearing and had completed a rehabilitation program. **Taxi & Limousine Comm'n v. Pardo**, OATH Index No. 798/08 (Oct. 31, 2007), **adopted on other grounds**, Comm'r/Chair's Decision (Nov. 19, 2007).

¶ 2. ALJ recommends dismissal of charge that probationary licensee lacks moral character based upon conviction for driving private car while under the influence of alcohol, a violation, where licensee candidly admitted his misconduct and showed remorse at the fitness hearing. Nevertheless, license revocation was recommended pursuant to rule 6-14, where conviction occurred during probationary term. **Taxi & Limousine Comm'n v. Alexandridis**, OATH Index No. 202/08 (Aug. 28, 2007). ¶ 3. Taxicab driver's recent conviction for driving while impaired, coupled with his lack of candor at his fitness hearing demonstrated that he lacked fitness to retain his license. **Taxi & Limousine Comm'n v. Chulsky,** OATH Index No. 233/08 (Aug. 28, 2007); **Taxi & Limousine Comm'n v. Corrales**, OATH Index No. 259/08 (Aug. 24, 2007) (same).

¶ 4. Taxi driver who was recently convicted of petit larceny and identity theft lacked moral character required to maintain license. **Taxi & Limousine Comm'n v. Dhillon**, OATH Index No. 364/08 (Sept. 7, 2007).

¶ 5. Taxi driver who was recently convicted of insurance fraud lacked moral character required to maintain license. **Taxi & Limousine Comm'n v. Carpio**, OATH Index No. 395/08 (Sept. 20, 2007); **Taxi & Limousine Comm'n v. Guillca**, OATH Index No. 574/08 (Oct. 10, 2007) (same).

¶ 6. Documentary evidence was found sufficiently reliable, by itself without witness testimony, to establish prima facie case that licensee's urine tested positive for marijuana, which licensee failed to rebut. Documents included an affidavit from a toxicologist, with accompanying chain of custody form, toxicology reports and a confirmation from a medical review officer. Licensee was found unfit, license revocation recommended. **Taxi & Limousine Comm'n v. Shakoor,** OATH Index No. 860/08 (Nov. 30, 2007).

¶ 7. Subsection (a), which authorizes the Commission to direct a licensee to appear for a fitness hearing, does not require an inquiry into the licensee's moral character. **Taxi & Limousine Comm'n v. Liriano-Blanco**, OATH Index No. 1196/08 (Feb. 1, 2008).

¶ 8. When the Commission elects to bring a fitness proceeding, the sole issue is whether the licensee is fit to possess a license. Commission rules do not permit the imposition of a penalty short of revocation once a licensee is found unfit. Driver convicted of criminal possession of forged instruments was found unfit and license revocation was

recommended. **Taxi & Limousine Comm'n v. Feldman**, OATH Index No. 2016/08 (Apr. 8, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 1, 1999. Note Statement of Basis from City Record Dec. 1, 1999.

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, empowering the TLC to regulate and supervise the business and industry of the transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations as are necessary to exercise the authority conferred upon it by the Charter; under §19-506 of said Code, authorizing the Commission to impose fines, suspend or revoke licenses for violations of Commission rules; and under §19-528 of said Code, authorizing the Commission to impose additional penalties for unlicensed activities.

The rules repeal the existing Chapter Eight of the Rules of the TLC, relating to Adjudications Procedures, as well as other sections of Title 35 of the Rules of the City of New York ("RCNY"), relating to procedures to be followed in the event of a violation of Commission Rules. A new Chapter Eight, setting forth procedures to be followed in the event of a violation of the Administrative Code or Commission rules has been enacted to replace these repealed sections. This new Chapter also includes changes in adjudications procedures necessary to conform with Administrative Code amendments that were enacted into law on May 26, 1999.

The purpose of these amendments is to clarify the Commission's adjudications procedures. Presently, each Chapter contained within Title 35 has its own section describing procedures to be followed in the event of a violation of TLC Rules. These amendments will create a unified, comprehensive set of procedures applicable to all Commission Rules and Administrative Code violations adjudicated before the Commission.

On May 26, 1999, amendments to the Administrative Code were enacted into law. These amendments adopted specific time periods which must be followed in the case of a summary suspension of a taxicab or for-hire vehicle license, or where a respondent is charged with taximeter tampering. Procedures mandated by the Administrative Code have been incorporated into these Rules. In addition to unifying procedures with respect to the adjudication of summonses, these Rules also establish clear procedures to be followed with respect to the review of the fitness of licensees and applicants to obtain a license from the Commission and procedures to be followed in the event the Commission seeks the discretionary revocation of a license.

Several changes were made to the text of the Proposed Rules published in the City Record on August 23, 1999. These changes were made in response to written comments and public statements received by the TLC at or prior to the Public Hearing. The changes to the proposed Rules, as adopted by the TLC:

· Increase the time during which a respondent may file an appeal from twenty-one (21) to thirty (30) days;

· Provide that a respondent served with a summons alleging a rule violation, by personal service upon a driver as agent, will not be suspended upon a failure to appear until at least ten (10) days after the default has occurred;

· Respondents in discretionary revocation proceedings may appeal the final Agency decision of the

Chairperson to the full Commission.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 8-16

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-16 Summary Suspension Pending Revocation to Protect the Public Health or Safety.

(a) If the Chairperson finds that emergency action is required to insure public health or safety, he/she may order the summary suspension of a license or licensee, pending revocation proceedings.

(b) Such revocation proceedings shall be initiated within five (5) calendar days of the summary suspension.

(c) Notwithstanding subdivision (b) of this section, the Chairperson may summarily suspend a license subject to the provisions of subdivisions (a) and (d) through (g) of this section based upon an arrest on criminal charges that the Chairperson determines is relevant to the licensee's qualifications for continued licensure. At the hearing pursuant to subdivision (e) of this section, the issue shall be whether the charges underlying the licensee's arrest, if true, demonstrate that the licensee's continued licensure during the pendency of the criminal charges would pose a direct and substantial threat to the health or safety of the public. Revocation proceedings need not be commenced during the pendency of the criminal charges. In such a case, within five (5) calendar days of the Commission's receipt from the licensee of a certificate of disposition of the criminal charges, the Chairperson shall either lift the suspension or commence revocation proceedings.

(d) The Chairperson shall notify the licensee either by personal service or by first class mail of the summary suspension, within five (5) calendar days of the suspension. If the licensee wishes to receive a hearing concerning the suspension, he or she may request a hearing within ten (10) calendar days of receipt of the notice of suspension. Upon receipt of a request for a hearing, the Commission shall schedule a hearing, which shall be held within ten (10) calendar days of the receipt of the request, unless the Commission determines that such hearing will be prejudicial to any ongoing civil or criminal investigation. This subdivision shall not apply, and no summary suspension hearing shall be

required, where the Commission schedules the revocation hearing within fifteen (15) calendar days of the suspension.

(e) A summary suspension hearing conducted pursuant to this section shall be held before an ALJ who shall consider relevant evidence and testimony under oath, according to the hearing procedures set forth in this Chapter. In any such hearing, where applicable, the affirmative defenses may include those set forth in subdivision b of §19-512.1 of the Administrative Code.

(f) Upon the conclusion of the summary suspension hearing, the ALJ shall issue a written Recommended Decision to the Chairperson, who may accept, reject or modify the recommendation. The decision of the Chairperson shall be the final determination of the Commission with respect to the summary suspension.

(g) In the event no decision is rendered by the Chairperson within sixty (60) calendar days of the conclusion of the suspension hearing, the suspension shall be thereafter stayed until such decision is rendered.

HISTORICAL NOTE

Section amended City Record Nov. 2, 2006 §17, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Section added City Record Dec. 1, 1999 §3, eff. Dec. 31, 1999. [See Chapter 8 footnote]

Subd. (c) amended City Record Sept. 18, 2008 §8, eff. Oct. 18, 2008. [See T35 §8-01 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. See Padberg v. McGrath-McKechnie, 2002 WL 826795, N.Y.L.J., May 2, 2002, page 32, col. 1, U.S. Dist.Ct., E.D.N.Y, discussed at note 2 to 35 RCNY 2-61, and L.S. v New York City Taxi and Limousine Commission, N.Y.L.J., Jan. 31, 2002, page 21, col. 4, 2002 WL 338187 (Civ.Ct. New York Co.), discussed at note 3 of 35 RCNY 2-61.

¶ 2. Pursuant to subsection (c) of this section, where the pre-hearing suspension is based upon the licensee's arrest, at the summary suspension hearing "the issue shall be whether the charges underlying the licensee's arrest, if true, demonstrate that the licensee's continued licensure during the pendency of the criminal charges would pose a threat to the health or safety of the public." ALJ found that the licensee posed a threat to the health or safety of the public based upon proof of his arrest for second degree assault and criminal possession of a weapon and she recommended continuation of summary suspension. **Taxi & Limousine Comm'n v. Shahbaz**, OATH Index No. 1014/08 (Nov. 30, 2007).

¶ 3. While rule 8-16 requires that this tribunal consider the arrest charges to be true, there is nothing to prevent the licensee from explaining the facts underlying the arrest should he so wish. **Taxi & Limousine Comm'n v. Chaudhry**, OATH Index No. 1012/08 (Nov. 30, 2007).

¶ 4. In a summary suspension hearing where license was suspended based upon an arrest for assault, under subsection (c) of this rule, ALJ must presume arrest charge is true and then determine whether "the licensee's continued licensure during the pendency of the criminal charges would pose a threat to the health or safety of the public." ALJ had found the Commission did not establish that continued licensure presented a risk to public safety and recommended that the suspension be lifted. Commissioner/Chair found continued licensure of driver who was arrested for third degree assault would pose a threat to public safety. Suspension continued pending the final outcome of his criminal charge. **Taxi & Limousine Comm'n v. Mirakov**, OATH Index No. 1053/08 (Dec. 7, 2007), **rev'd**, Comm'r/Chair Dec. (Jan. 8, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Dec. 1, 1999. Note Statement of Basis from City Record Dec. 1, 1999.

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, empowering the TLC to regulate and supervise the business and industry of the transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations as are necessary to exercise the authority conferred upon it by the Charter; under §19-506 of said Code, authorizing the Commission to impose fines, suspend or revoke licenses for violations of Commission rules; and under §19-528 of said Code, authorizing the Commission to impose additional penalties for unlicensed activities.

The rules repeal the existing Chapter Eight of the Rules of the TLC, relating to Adjudications Procedures, as well as other sections of Title 35 of the Rules of the City of New York ("RCNY"), relating to procedures to be followed in the event of a violation of Commission Rules. A new Chapter Eight, setting forth procedures to be followed in the event of a violation of the Administrative Code or Commission rules has been enacted to replace these repealed sections. This new Chapter also includes changes in adjudications procedures necessary to conform with Administrative Code amendments that were enacted into law on May 26, 1999.

The purpose of these amendments is to clarify the Commission's adjudications procedures. Presently, each Chapter contained within Title 35 has its own section describing procedures to be followed in the event of a violation of TLC Rules. These amendments will create a unified, comprehensive set of procedures applicable to all Commission Rules and Administrative Code violations adjudicated before the Commission.

On May 26, 1999, amendments to the Administrative Code were enacted into law. These amendments adopted specific time periods which must be followed in the case of a summary suspension of a taxicab or for-hire vehicle license, or where a respondent is charged with taximeter tampering. Procedures mandated by the Administrative Code have been incorporated into these Rules. In addition to unifying procedures with respect to the adjudication of summonses, these Rules also establish clear procedures to be followed with respect to the review of the fitness of licensees and applicants to obtain a license from the Commission and procedures to be followed in the event the Commission seeks the discretionary revocation of a license.

Several changes were made to the text of the Proposed Rules published in the City Record on August 23, 1999. These changes were made in response to written comments and public statements received by the TLC at or prior to the Public Hearing. The changes to the proposed Rules, as adopted by the TLC:

· Increase the time during which a respondent may file an appeal from twenty-one (21) to thirty (30) days;

· Provide that a respondent served with a summons alleging a rule violation, by personal service upon a driver as agent, will not be suspended upon a failure to appear until at least ten (10) days after the default has occurred;

· Respondents in discretionary revocation proceedings may appeal the final Agency decision of the Chairperson to the full Commission.

35 RCNY 8-17

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 8 ADJUDICATIONS*1

§8-17 Summary Suspension Pending Compliance with Commission Rules.

(a)(i) If the Chairperson or his or her designee determines that a licensee is not in compliance with the requirements of §2-19(b)(3) or of §6-16(v)(3) of this title, such licensee's TLC-issued license shall be summarily suspended pending an opportunity to be heard.

(ii) Upon a determination made pursuant to paragraph (i) of this subdivision that a TLC-issued license shall be summarily suspended, the Commission shall notify the licensee either by personal service or by first class mail to the last mailing address filed with the Commission that the licensee's TLC-issued license shall be suspended either immediately upon service of such notice if made by personal service, or five (5) days after the date of the mailing of such notice if mailed. Such notice shall contain, at a minimum the following information:

(1) a notice that the licensee's TLC-issued license is being suspended for a violation of the Commission's rules or applicable Administrative Code section;

(2) a description of the nature of the violation;

(3) the rule or Administrative Code section alleged to have been violated; provided, however, that if there is a conflict between the rule or code section cited and the description of the violation, the description shall be dispositive; and

(4) a notice that if the licensee wishes to be heard concerning the suspension, he or she may provide the Commission with a single submission of written documentation refuting the suspension of his or her license within ten

(10) calendar days of the receipt of the notice if notice was given by personal service, or fifteen (15) calendar days of the mailing of the notice of suspension if the notice was mailed.

(iii) The documentation submitted by a licensee refuting the suspension shall be reviewed by an ALJ. Suspension of the TLC-issued license shall continue while documentation is under review by the ALJ. After review of the documentary evidence, the ALJ shall issue a decision which shall include findings of fact and conclusions of law. If the ALJ finds that a violation has been committed, the appropriate penalties shall be imposed, which shall include continued suspension of the driver's license until compliance and may also include a fine. If the ALJ finds that no violation has been committed, the suspension shall be vacated. The decision of the ALJ shall be final, and may be appealed pursuant to §8-13 of this chapter. Where an ALJ decision made pursuant to this subdivision lifting a suspension is reversed on appeal, such matter will be remanded for a new hearing pursuant to this subdivision, and the TLC-issued license shall be suspended until final disposition of the case or until compliance as appropriate.

(iv) In the event that no decision is rendered by the ALJ within sixty (60) calendar days of the receipt of written documentation provided by the licensee, the suspension shall be thereafter stayed until such decision is rendered.

(v) In the event that a licensee does not provide the Commission with written documentation refuting the suspension within ten (10) calendar days of the receipt of the notice if notice was given by personal service, or fifteen (15) calendar days of the mailing of the notice of suspension if the notice was mailed, it shall be deemed that the opportunity to be heard has been waived and a violation has been committed, and the appropriate penalties shall be imposed, which shall include continued suspension of the TLC-issued license until compliance and may also include a fine.

(vi) Suspension of TLC-issued licenses pursuant to this subdivision shall continue until the fines assessed pursuant to paragraph (iii) of this subdivision have been paid and until compliance with the underlying Commission rule or Administrative Code section has been shown to the satisfaction of the Chairperson or his or her designee.

(vii) At any time after a licensee has been notified of suspension, a licensee may pay any applicable fine, comply with the underlying Commission rule or Administrative Code section and furnish proof of such compliance to the satisfaction of the Chairperson or his or her designee. Upon such payment and submission of proof of compliance, the suspension of the TLC-issued license shall be lifted. If the licensee pays any applicable fine and furnishes proof of compliance either in lieu of submitting documentation or after documentation has been submitted but before a decision has been rendered, the suspension shall be lifted and the opportunity to be heard shall be deemed to have been waived.

(b)(i) If the Chairperson or his or her designee determines that a licensee is not in compliance with a rule in this title that provides for summary suspension until compliance, such licensee's TLC-issued license may be summarily suspended until compliance pending an opportunity for a hearing.

(ii) Upon a determination made pursuant to paragraph (b)(i) of this section that a TLC-issued license shall be summarily suspended, the Chairperson shall notify the licensee either by personal service or by first class mail to the last mailing address filed with the Commission that the licensee's TLC-issued license shall be suspended either immediately upon service of such notice if made by personal service, or five (5) days after the date of the mailing of such notice if mailed. Such notice shall contain, at a minimum the following information:

(1) a notice that the licensee's TLC-issued license is being suspended for a violation of the Commission's rules or applicable Administrative Code section;

(2) a description of the nature of the violation;

(3) the rule or Administrative Code section alleged to have been violated; provided, however, that if there is a conflict between the rule or code section cited and the description of the violation, the description shall be dispositive; and

(4) a notice that if the licensee wishes to receive a hearing concerning the suspension, he or she may request a hearing within ten (10) calendar days of receipt of the notice of suspension if notice was given by personal service, or fifteen (15) calendar days of the mailing of the notice of suspension if the notice was mailed.

(iii) Upon receipt of request for a hearing, the Commission shall schedule a hearing, which shall be held within ten (10) calendar days of the receipt of the request, unless adjourned upon consent of the licensee or for good cause by the ALJ. Such summary suspension hearing shall be conducted by an ALJ who shall consider relevant evidence and testimony under oath, according to the hearing procedures set forth in this chapter.

(iv) The ALJ shall issue a decision which shall include findings of fact and conclusions of law. If the ALJ finds that a violation has been committed, the appropriate penalties shall be imposed, which shall include continued suspension of the TLC-issued license until compliance and may also include a fine. If the ALJ finds that no violation has been committed, the suspension shall be vacated. The decision of the ALJ shall be final, and such decision may be appealed pursuant to §8-13 of this chapter. Where an ALJ decision made pursuant to this subdivision lifting a suspension is reversed on appeal, such matter will be remanded for a new hearing pursuant to this subdivision, and the TLC-issued license shall be suspended until final disposition of the case or until compliance as appropriate.

(v) In the event no decision is rendered by the ALJ within sixty (60) calendar days of the receipt of written documentation provided by the licensee, the suspension shall be thereafter stayed until such decision is rendered.

(vi) Suspension of TLC-issued licenses pursuant to paragraph (b)(iv) of this section shall continue until the fines assessed pursuant to that paragraph have been paid and until compliance with the underlying Commission rule or Administrative Code section has been shown to the satisfaction of the Chairperson or his or her designee.

(vii) In the event a licensee does not provide the Commission with a request for a hearing regarding the suspension within ten (10) calendar days of the receipt of the notice if notice was given by personal service, or fifteen (15) calendar days of the mailing of the notice of suspension if the notice was mailed, it shall be deemed that the opportunity to be heard on an expedited basis pursuant to this subdivision has been waived and the licensee shall be scheduled for a hearing on the underlying violation pursuant to the procedures in this chapter. In such an event, the summary suspension of the TLC-issued license shall be continued until either lifted by the ALJ in such regularly scheduled hearing, or until the licensee furnishes proof of compliance to the satisfaction of the Chairperson or his or her designee.

(viii) At any time after a licensee has been notified of suspension, a licensee may pay any applicable fine, comply with the underlying Commission rule or Administrative Code section and furnish proof of such compliance to the satisfaction of the Chairperson or his or her designee. Upon such payment and submission of proof of compliance, the suspension of the TLC-issued license shall be lifted. If the licensee pays any applicable fine and furnishes proof of compliance either in lieu of submitting documentation or after documentation has been submitted but before a decision has been rendered, the suspension shall be lifted and the opportunity to be heard shall be deemed to have been waived.

HISTORICAL NOTE

Section amended City Record Nov. 2, 2006 §18, eff. Dec. 2, 2006. [See T35 §1-07 Note 1] Note internal reference changes for accuracy per Charter §1045(b).

Section added City Record Feb. 14, 2006 §8, eff. Mar. 16, 2006. [See T35 §2-19 Note 3]

Section added (temporarily) City Record Nov. 21, 2005 §5, eff. Nov. 21, 2005 until Mar. 21, 2006 per Charter §1043(h) and 60 day extension notice in City Record Jan. 6, 2006. [See T35 §2-19 Note 2]

FOOTNOTES

1

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· Respondents in discretionary revocation proceedings may appeal the final Agency decision of the Chairperson to the full Commission.

1 of 103 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-01 Definitions.

Commuter van. A "commuter van" is a motor vehicle operated in a commuter van service having a seating capacity of at least nine passengers but not more than twenty passengers and carrying passengers for hire in the city duly licensed as a commuter van by the Commission and not permitted to accept hails from prospective passengers in the street. For purposes of the provisions of Chapter 9 relating to prohibitions against the operation of an unauthorized commuter van service or an unlicensed commuter van and to the enforcement of such prohibitions and to the imposition of penalties for violations of such prohibitions, the term shall also include any common carrier of passengers by motor vehicle not subject to licensure as a taxicab, for-hire vehicle, or wheelchair accessible van or not operating as an authorized bus line pursuant to applicable provisions of law.

Commuter van service. A "commuter van service" is a subclassification of common carrier of passengers by motor vehicles as such term is defined in subdivision seven of section two of the New York State Transportation Law, that provides a transportation service through the use of one or more commuter vans on a prearranged, regular daily basis, over non-specified or irregular routes, between a zone in a residential neighborhood and a location which shall be a work related central location, a mass transit or mass transportation facility, a shopping center, recreational facility or airport. A "commuter van service" shall not include any person who exclusively provides (1) any one or more of the forms of transportation that are specifically exempted from article seven of the transportation law; or (2) any one or more of the forms of transportation regulated under chapter five of title nineteen of the administrative code other than transportation by commuter vans.

Operator. An "operator" is any person, partnership or corporation, other than a lien holder, who is authorized by the Commission to operate a commuter van service.

Owner. An "owner" is any person, firm, partnership, corporation or association, other than a lien holder, having the property in or title to a commuter van. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person and also includes any lessee or bailee of a vehicle having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days. If a vehicle is sold under a contract of sale which reserves a security interest in the vehicle in favor of the vendor, such vendor or his assignee shall not, after delivery of such vehicle, be deemed to be an owner, but the vendee, or his or her assignee, receiving possession thereof, shall be deemed an owner notwithstanding the terms of such contract, until the vendor or his or her assignee shall retake possession of such vehicle. A secured party in whose favor there is a security interest in any vehicle out of his or her possession shall not be deemed to be an owner.

Person with a disability. A "person with a disability" is an individual with a physical or mental impairment or incapacity, including a person who uses a wheelchair, crutches, three-wheeled motorized scooter, other mobility aid, or a service animal, but who can transfer from such a mobility aid to a commuter van with or without reasonable assistance.

Portable or hands-free electronic device. A "portable or hands-free electronic device" is any electronic device able to:

1. make a wireless telephone call

2. send or receive a text message

3. allow its user to speak on the telephone hands-free or operate a device by voice command, even when otherwise allowed by New York State law

4. act as a personal assistant (PDA)

5. send and or receive data from the internet or from a wireless network

6. act as a laptop computer or portable computer

7. receive or send pages

8. allow two-way communications between different people or parties

9. play electronic games

10. play music or video; or

11. make or display images; or

12. any combination of the above

This definition is to be liberally construed in light of its purpose to minimize the distraction of drivers, and in recognition of the rapid development of electronic technologies and proliferation of electronic devices that may be made available in the future that similarly transfer digital images, sounds or messages.

"Portable or hands-free electronic device" does not include: (1) any device the use of which while driving is specifically authorized by TLC rules, or (2) the use of a global positioning navigation system ("GPS") which uses voice functions to convey directions, so long as the driver is not inputting data unless legally standing or parked and the GPS is not capable of being used as a cell phone or other portable or hands-free electronic device.

Security interest. A "security interest" is a security interest as defined by subdivision k of section 2010 of the New

York State Vehicle and Traffic Law.

Service animal. A "service animal" is a guide dog, signal dog or any other animal trained specifically to work or to perform tasks for an individual with a disability, including, but not limited to, guiding individuals with visual impairments, alerting individuals with hearing impairments to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or retrieving dropped items.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Operator added City Record Jan. 15, 2008 §1, eff. Feb. 14, 2008. [See Note 1]

Person with a disability definition added City Record July 8, 1997 §22, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Portable or hands-free electronic device added City Record Dec. 30, 2009 §12, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Service animal definition added City Record July 8, 1997 §22, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 15, 2008

The rule implements three changes to the TLC rules.

First, the rule implements Local law 48/2007, codified as §19-529.4(b) of the Administrative Code of the City of New York. In compliance with that legislation, the rule amends existing TLC rules to increase from one to four the number of decals owners of commuter vans and operators of commuter van services would be required to have affixed to TLC-licensed commuter vans, one on the lower right corner of the windshield, one on each rear side window of the commuter van, and one centered on the rear of the commuter van.

When a commuter van license is first granted and each time it is renewed or transferred, the operator of the commuter van service and the owner of the commuter van is responsible for bringing the commuter van to the TLC's inspection facility where TLC staff will affix the commuter van decals to the commuter van.

The purpose of this aspect of the rule is to enhance the ability of the riding public, as well as law enforcement officers, to identify legitimate, licensed commuter vans, and to better distinguish those commuter vans from illegal, unlicensed vans.

Second, the rule modifies existing rules requiring the placement of a placard inside each commuter van. Specifically, the rule updates the notice to the passengers on the placards posted inside commuter vans, to incorporate the current passenger complaint mechanisms: a telephone call to the City's government services line at 311, and the TLC website, **http://nyc.gov/taxi.**

The purpose of this amendment is to facilitate the receipt of passenger questions, feedback or complaints.

Third, the rule modifies the penalty for a violation of §9-11(a), the commuter van decal rule, for failure to have the decals affixed to the commuter van at the Commission inspection facility (which would mean no commuter van license

has been issued), to increase the penalty from $100 to $500 for a first offense within twelve months; and $1,000 for a second offense and subsequent offenses within a twelve-month period; and, for a commuter van operator, to provide for revocation of the operator's authorization in the event of a third offense within a twelve month period; and suspension of the commuter van license until compliance. Personal appearance is not required except for proceedings to revoke an operator's authorization. These penalties accord with the penalties for a violation of 35 RCNY §6-12(a), the for-hire vehicle decal rule, which is comparable to this commuter van decal rule.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Base station owner was found to have operated a commuter van service without a license. The administrative law judge rejected owner's argument that the vehicle, a limousine with a seating capacity of ten, did not fit within the definition of either a luxury limousine (which is defined in section 6-01(a) as a for-hire vehicle designed to carry fewer than nine passengers) or a commuter van (which is defined in section 9-01 as a for-hire motor vehicle having a seating capacity of at least nine passengers but not more than twenty passengers). The administrative law judge ruled that seating capacity, not physical shape of the vehicle, is the determinative factor. **Taxi and Limousine Comm'n v. Absolute Class Limousine, Inc.,** OATH Index No. 995/98 (Apr. 22, 1998).

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-02 Authorization to Operate a Commuter Van Service.

(a) No person shall operate a commuter van service wholly within the boundaries of the City of New York ["the City"] or partly within the City if the partial operation consists of the pick up and discharge of passengers wholly within the City without first obtaining an authorization from the Commission to operate such commuter van service.

(b) An applicant for an authorization to operate a commuter van service or for renewal thereof shall demonstrate to the satisfaction of the Commission that he or she is fit, willing and able to provide the transportation for which authorization is sought.

(c) An applicant for an authorization to operate a commuter van service, or for renewal thereof for a term for which a new determination as to public convenience and necessity must be made pursuant to subsection (j) of this section, shall be fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services. The applicant shall pay any processing fee required by the State. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a partnership; the officers, principals, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation. If subsequent to the fingerprinting of the applicant or during the term of the authorization, one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this subdivision is changed or added, such applicant shall, within five days of such change or addition, file with the Commission an application for an approval of the change or addition of partners, officers, principals or stockholders on such forms as are prescribed by the Commission, and such new partners, officers, principals or stockholders shall be fingerprinted in accordance with this subdivision. Alter- natively, an applicant who plans to change or add one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this subdivision may

request that such fingerprinting be done prior to the change or addition of such new partner, officer, principal or stockholder.

(d) An applicant for an authorization to operate a commuter van service or for a renewal thereof shall not have engaged in any conduct that would be a basis for suspension or revocation of such authorization pursuant to this chapter.

(e) An applicant for an authorization to operate a commuter van service or for renewal thereof shall be in compliance with the conditions of operation relating to commuter vans set forth in §9-11 of this chapter and the insurance requirement set forth in §9-12 of this chapter.

(f) No application for authorization to operate a commuter van service shall be approved if the applicant has been found guilty of operating a commuter van service without authorization to operate such commuter van service two times within a six-month period prior to the date of application, provided that such violations were committed on or after March 27, 1995.

(g) An application for an authorization to operate a commuter van service or for renewal thereof shall be signed by the applicant and filed by the owner in person with the Commission, on the forms provided by the Commission. An applicant shall agree to designate each and every driver who operates pursuant to an authorization to operate a commuter van service as agent for service of any and all legal process that may be served on such commuter van service by the City of New York or any department thereof, or any other person or entity authorized to make such service.

(h) An applicant for an authorization to operate a commuter van service or for renewal thereof shall certify annually that such commuter van service is in compliance with Title III of the Federal Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and any regulations promulgated thereunder, as such act and regulations may be amended. Such certification shall be in the form of an affidavit.

(i) An applicant for an authorization to operate a commuter van service or for renewal thereof shall certify annually that such commuter van service is in compliance with such provisions of section 5 of the Federal Omnibus Transportation Testing Act of 1991 (49 U.S.C. App. Section 2717) and any regulations promulgated thereunder, as that act and regulations may be amended, as are applicable to such commuter van service. Such certification shall be in the form of an affidavit.

(j) (1) The applicant shall have the burden of demonstrating that the service proposed will be required by the present or future public convenience and necessity. The Commission shall not issue an authorization to operate a commuter van service unless the Commissioner of the New York City Department of Transportation determines that the service proposed will be required by the present or future public convenience and necessity. Such determination that the service proposed will be required by the present or future public convenience and necessity shall be in effect for six years after the date of issuance of such authorization, unless such authorization has not been renewed or has been revoked by the Commission prior to the end of such six-year period in which case such determination shall be in effect only until the expiration or revocation of such authorization. After the expiration or revocation of such determination of public convenience and necessity, no authorization to operate a commuter van service shall be renewed unless a new determination is made by the Commissioner of Transportation that the service proposed will be required by the present or future public convenience and necessity.

(2) When such a determination by the Commissioner of Transportation is required by §19-504.2(e) of the Administrative Code of the City of New York, the application for authorization to operate a commuter van service shall set forth the geographic area proposed to be served by the applicant and the maximum number of vehicles to be operated and the capacity of each such vehicle, and the Commission shall forward a copy of such application to the Commissioner of Transportation.

(3) The Commissioner of Transportation, after consultation with the New York State Department of

Transportation, shall make a determination whether the service proposed in the application will be required by the present or future public convenience and necessity. The Commissioner of Transportation may request that the applicant provide any additional information relevant to such determination. The Commissioner of Transportation shall notify the New York City Transit Authority and all City Council members and community boards representing any portion of the geographic area set forth in the application for the purpose of obtaining comment on the present or future public convenience and necessity for any proposed service. The Commissioner of Transportation shall provide for publication in the City Record of a notice of any such application and shall allow for public comment on such application for a period not to exceed sixty days after the date of publication of such notice. If any such application is protested by a bus line operating in the City or by the New York City Transit Authority, and such bus line and/or transit authority has timely submitted objections to the application to the Commissioner of Transportation, the Commissioner shall, in making such determination, evaluate such objections in accordance with the following criteria:

(i) the adequacy of the existing mass transit and mass transportation facilities to meet the transportation needs of any particular segment of the general public for the proposed service; and

(ii) the impact that the proposed operation may have on any existing mass transit or mass transportation facilities.

(4) Any determination by the Commissioner that the service proposed will be required by the present or future public convenience and necessity shall specify the geographic area where service is authorized and the number of commuter vans authorized to be used in providing such service.

(k) The Commission, after consultation with the New York State Department of Transportation, shall approve or disapprove such application for authorization to operate a commuter van service within one hundred eighty days after the date a completed application has been filed. The failure to approve or disapprove such completed application within such one hundred eighty- days period shall be deemed a disapproval of such application.

(l) The Commission shall not issue a temporary authorization to operate a commuter van service. An authorization to operate a commuter van service shall not be assignable or transferable unless otherwise provided by the Commission.

(m) In the event of the loss, mutilation or destruction of any authorization to operate a commuter van service the owner shall file such statement and proof of the facts as the Commission may require, with a fee not to exceed twenty-five dollars for each authorization, and the Commission may issue a duplicate or substitute authorization.

(n) In addition to any other basis for denial of an authorization to operate a commuter van service pursuant to this section, the Commission may deny an application where the applicant has made a material false statement or concealed a material fact in connection with the filing of such application.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-03 Term of Authorization to Operate a Commuter Van Service.

(a) An authorization to operate a commuter van service issued to a new applicant shall expire two years after such authorization was issued.

(b) An authorization to operate a commuter van service issued to a renewing applicant shall expire two years after the date on which the previous authorization expired.

(c) A person who engages in any activity for which an authorization is required pursuant to §9-02(a) of this Chapter after the expiration date of such authorization and before the issuance of a renewal authorization is in violation of such section and shall be subject to the penalties provided in this chapter for such violation.

HISTORICAL NOTE

Section amended City Record Apr. 12, 1999 §1, eff. May 12, 1999. [See Note 1]

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

NOTE

1. Statement of Basis and Purpose in City Record Apr. 12, 1999:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise

the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §19-504(a)(1) of the Administration Code of the City of New York, authorizing the TLC to issue commuter van licenses for a period of at least one, but not more than two years; under §19-504.2(g) of such Code, authorizing the TLC to issue commuter van service authorizations for a period of at least one, but not more than two years; and under §19-505(g) of such Code, authorizing the TLC to issue commuter van driver's licenses for a period of at least one, but not more than three years.

The rules of the Commission currently provide that all commuter van authorizations and licenses expire one year after issuance, and are renewable for additional one-year periods. The rules further provide that all licenses expire on the last day of each month, irrespective of the date issued.

These amendments provide that new and renewal licenses and authorizations will be issued and renewed for a two-year period. The rule also provides that a license expiration date would be linked to the date of license issuance, instead of the last day of the month of issuance.

The existing rules place an unreasonable administrative burden upon the Licensing Division of the Commission and upon licensees, by requiring licenses and authorizations to be renewed annually. These amendments would conform the commuter van rules to the rules adopted in February 1999, which provide for the issuance of two year new and renewal taxicab driver's licenses, for-hire and paratransit vehicle licenses. There is no regulatory purpose which would be served by requiring the renewal of commuter van licenses and authorizations for a one-year period. The adoption of two-year licensing will enable the Commission to better serve the public and provide for the better utilization of resources.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-04 Continuation of Operating Authority for State Approved Van Service Pursuant to Agreement with State Department of Transportation.

(a) (1) In accordance with the agreement between the State Department of Transportation and the City of New York (the "Agreement"), a commuter van service which on September 26, 1994 holds a valid certificate of operating authority granted by the State Department of Transportation covering the operations of one or more commuter vans in the City of New York, and which commuter van service is in compliance with such operating authority as of that date, shall be authorized to continue such operations in the City of New York on and after September 26, 1994 provided that on or before the date specified in paragraph two of this subdivision, such commuter van service submits to the Commission an application for an interim authorization to operate a commuter van service pursuant to subdivision (b) of this section. If a commuter van service fails to submit an application for an interim authorization to operate a commuter van service by the date specified in paragraph two of this subdivision or if a commuter van service fails to satisfy the requirements of subdivision (b) of this setion, the commuter van service shall not be authorized to continue operating in the City of New York after such date specified in paragrpah two, or, in the case of a failure to satisfy the requirements of subdivision (b), after the date that such commuter van service received notification of such failure, unless and until such commuter van service has obtained an authorization in accordance with the requirements of §9-02 of this chapter.

(2) The date for submission of an application for an interim authorization to operate a commuter van service shall be November 15, 1994 or, where the Chairperson of the Commission determines that it is in the public interest to extend such date, the date shall be extended by providing notification by regular mail of such extension to all commuter van services subject to the provisions of this subdivision, provided, however, that in no event shall the date be extended

beyond December 30, 1994.

(b) An application for an interim authorization to operate a commuter van service shall be filed by the owner of such commuter van service in person with the Commission on the forms to be provided by the Commission. Such application shall be signed by the applicant. Such application shall include such forms as may be required by the Commission to be completed and signed by the owner of any commuter van to be operated pursuant to such interim authorization and by the drivers who operate or will operate any such commuter van. In accordance with the Agreement, the Commission shall not issue an interim authorization to operate a commuter van service unless:

(1) the applicant presents to the Commission a current, valid certificate of operating authority granted by the State Department of Transportation covering the operations of such commuter van service in the City of New York and such Department certifies that on September 26, 1994 such commuter van service held a current, valid certificate of operating authority;

(2) the applicant demonstrates to the satisfaction of the Commission that:

(i) each commuter van which is operated pursuant to such State operating authority or is intended to be operated pursuant to such interim authorization (i) has been inspected by the State Department of Transportation in accordance with the requirements of the State Transportation Law and any rules or regulations promulgated thereunder, (ii) is insured in accordance with the requirements contained in Part 750 of Title 17 of the New York City Code of Rules and Regulations, and (iii) is in compliance with the registration requirements of the Vehicle and Traffic Law;

(ii) each driver who operates or will operate any such commuter van possesses a commercial driver's license which pursuant to the Vehicle and Traffic Law is valid for the operation of a commuter van for the transportation of passengers for-hire and each such driver is in compliance with the provisions of Article 19-A of the Vehicle and Traffic Law; and

(iii) the applicant is in compliance with the provisions of Article 19-A of the Vehicle and Traffic Law;

(3) the applicant has not engaged in any conduct that would be a basis for suspension or revocation of an interim authorization pursuant to subdivision (f) of this section; and

(4) the applicant agrees to designate each and every driver who operates pursuant to an interim authorization as agent for service of any and all legal process that may be issued against such commuter van service by the Commission or any other person or entity authorized to enforce the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans.

(c) An interim authorization to operate a commuter van service issued by the Commission pursuant to this section shall authorize the commuter van service to operate in the geographic areas and upon the terms and conditions set forth in the State certificate of operating authority held by such commuter van service and in accordance with any limits established by the State Department of Transportation on the maximum number of vehicles authorized to be operated; provided, however, that where such State operating authority does not contain a provision regarding the maximum number of vehicles authorized to be operated and the State Department of Transportation has not established a vehicle limit applicable to such commuter van service, such commuter van service shall be authorized to operate the number of vehicles for which such commuter van service held current, valid State Department of Transportation inspection certificates on September 26, 1994. The geographic areas, the terms and conditions set forth in such State operating authority and any vehicle limit established by the State Department of Transportation or pursuant to this subdivision and the requirements set forth in subparagraphs (a), (b), and (c) of paragraph two of subdivision (b) of this section shall be deemed to be terms and conditions upon which interim authorization shall be issued.

(d) (1) Where the Commission has issued an interim authorization to operate a commuter van service pursuant to this section, the Commission shall issue an identification sticker for each commuter van operated or to be operated

pursuant to such interim authorization. In accordance with the Agreement, no commuter van shall be operated pursuant to an interim authorization unless such van has affixed thereto an identification sticker issued by the Commission. If subsequent to the issuance of an interim authorization and identification stickers for such commuter vans a commuter van service intends to put into operation a new commuter van which may lawfully be operated pursuant to such interim authorization, such commuter van service shall be required to demonstrate to the Commission compliance with the requirements set forth in subparagraph (a) of paragraph two of subdivision (b) of this section prior to the Commission's issuance of an identification sticker.

(2) Where the Commission has issued an interim authorization to operate a commuter van service pursuant to this section, the Commission shall issue an identification card to each driver who operates or will operate a commuter van pursuant to such interim authorization. In accordance with the Agreement, no commuter van shall be operated pursuant to an interim authorization unless the driver of such van carries an identification card issued by the Commission. A driver of any such commuter van shall produce such identification card upon demand of any person authorized to enforce the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans. If subsequent to the issuance of an interim authorization, and identification card for each driver a commuter van service or commuter van owner intends to employ or retain a new driver, such commuter van service or owner shall be required to demonstrate to the Commission compliance with the requirements set forth in subparagraph (b) of paragraph two of subdivision (b) of this section prior to the Commission's issuance of an identification card for such driver.

(e) An interim authorization to operate a commuter van service issued by the Commission pursuant to this section shall expire on September 26, 1995; provided, however, that if an application for the conversion of such interim authorization is submitted to the Commission on or before March 24, 1995 pursuant to §9-05 of this chapter, such interim authorization shall remain in effect after September 26, 1995 until it is either converted to a full authorization to operate a commuter van service or the application for conversion is disapproved.

(f) (1) During the period commencing on September 26, 1994 and ending on September 26, 1995, every commuter van service which is authorized to continue to operate a commuter van service in the City of New York on and after September 26, 1994 pursuant to this section shall comply with the following:

(i) the insurance requirements contained in Part 750 of Title 17 of the New York Code of Rules and Regulations;

(ii) the requirements contained in subdivision 1 of section 140 of the Transportation Law and Parts 720(3) through 720(25) and Parts 720(27) and 720(28) of Title 17 of the New York Code of Rules and Regulations;

(iii) section 141 of the Transportation Law;

(iv) section 147 of the Transportation Law;

(v) any other provisions of the Transportation Law and any rules and regulations of the State Department of Transportation applicable to commuter van services;

(vi) the terms and conditions upon which such interim authorization has been issued as provided in subdivision (c) of this section;

(vii) Article 19-A of the Vehicle and Traffic Law;

(viii) the requirements contained in paragraph one of subdivision (d) of this section that commuter vans operating pursuant to an interim authorization have identification stickers issued by the Commission affixed thereto; and

(ix) the requirements contained in paragraph two of subdivision (d) of this section that drivers of such commuter vans carry and produce on demand an identification card issued by the Commission.

(2) Whenever any of the provisions described in subparagraphs (i) through (v) of paragraph one of this subdivision require that specific information, statements, reports or other material be filed with or submitted to the State Department of Transportation, such information, statements, reports or other material shall be filed with the Com- mission.

(3) Any commuter van service which has violated any of the provisions described in paragraph one of this subdivision shall be punishable in accordance with the penalty schedule set forth in §9-17 of this chapter. Such violation shall be adjudicated and any penalty imposed therefor in accordance with the provisions of §9-16 of this chapter.

(4) In addition to any other penalties that may be imposed pursuant to this section, the Commission may, after due notice and an opportunity to be heard, suspend or revoke any interim authorization to operate a commuter van service upon the occurrence of any one or more of the following:

(i) the holder of an interim authorization or any of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has been found by the Commission to have violated any of the provisions described in paragraph one of this subdivision; or

(ii) the holder of an interim authorization or any of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has knowingly made a material false statement or concealed a material fact in connection with filing of an application for interim authorization pursuant this section or;

(iii) the holder of an interim authorization or any of its officers, principals, directors, or stockholders owning more than ten percent of the outstanding stock of the corporation has not paid any penalty duly imposed pursuant to this chapter for a violation of any of the provisions described in paragraph one of this subdivision.

(5) Notwithstanding the provisions of paragraph (4) of this subdivision, the Chairperson of the Commission may immediately suspend any interim authorization to operate a commuter van service issued pursuant to this section without a prior hearing where the Chairperson determines that the continued possession of such interim authorization poses a serious danger to the public health, safety or welfare. After such suspension an opportunity for a hearing shall be provided on an expedited basis, within a period not to exceed fourteen days.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994, and renumbered internally by the

Law Department per Charter §1045(b).

FOOTNOTES

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[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-05 Conversion of Interim Authorization Pursuant to Agreement with State Department of Transportation.

(a) (1) In accordance with an agreement between the State Department of Transportation and the City of New York (the "Agreement"), any interim authorization to operate a commuter van service issued pursuant to §9-04 of this chapter may be converted into a full authorization to operate a commuter van service in accordance with the provisions of this section. A commuter van service which holds such interim authorization shall submit an application for conversion to the Commission pursuant to this section on or before March 24, 1995.

(2) The application for conversion shall be filed by the owner of such commuter van service in person with the Commission on the forms provided by the Commission. Such application shall be signed by the applicant.

(3) The applicant for conversion shall demonstrate to the satisfaction of the Commission that he or she is fit, willing and able to provide the transportation for which a full authorization is sought.

(4) The applicant for conversion shall be fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services. Such applicant shall pay any processing fee required by the State. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a partnership; the officers, principals, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation. If subsequent to the fingerprinting of the applicant or during the term of an authorization, one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this paragraph is changed or added, such applicant shall, within five days of such change or addition, file with the Commission an application for an approval of the change or addition of partners, officers, principals or stockholders on such forms as are prescribed by the Commission, and such new partners, officers,

principals or stockholders shall be fingerprinted in accordance with this paragraph. Alternatively, an applicant who plans to change or add one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this paragraph may request that such fingerprinting be done prior to the change or addition of such new partner, officer, principal or stockholder.

(5) The applicant for conversion shall be in compliance with the conditions of operation relating to commuter vans set forth in §19-504.3 of the Administrative Code and §9-11 of this chapter and the insurance requirements set forth in §9-12 of this chapter by September 26, 1995, and the applicant shall not have engaged in any conduct that would be a basis for suspension or revocation of an authorization to operate a commuter van service pursuant to this chapter.

(6) The applicant for conversion shall agree to designate each and every driver who operates pursuant to an authorization to operate a commuter van service as agent for service of any and all legal process that may be issued against such commuter van service by the Commission or any other person or entity authorized to enforce the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans.

(7) The applicant for conversion shall certify as of September 26, 1995 that the commuter van service is in compliance with Title III of the Federal Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and any regulations promulgated thereunder, as such act and regulations may be amended. Such certification shall be in the form of an affidavit.

(8) The applicant for conversion shall certify as of September 26, 1995 that the commuter van service is in compliance with such provisions of section 5 of the Federal Omnibus Transportation Testing Act of 1991 (49 U.S.C. App. Section 2717) and any regulations promulgated thereunder, as that act and regulations may be amended, as are applicable to such commuter van service. Such certification shall be in the form of an affidavit.

(9) Any interim authorization which has been converted into a full authorization pursuant to this section shall authorize the commuter van service to operate (a) the maximum number of vehicles authorized to be operated under the State Department of Transportation certificate of operating authority or pursuant to any vehicle limit established by the State Department of Transportation, or if such State Department of Transportation operating authority does not contain a provision relating to the number of vehicles and the State Department of Transportation has not established a vehicle limit applicable to such commuter van service, such commuter van service shall be authorized to operate the number of vehicles for which such commuter van service held current, valid State Department of Transportation inspection certificates on September 26, 1994, and (b) in the geographic areas set forth in such State Department of Transportation operating authority.

(10) The Commission, after consultation with the State Department of Transportation, shall approve or disapprove such application within one hundred eighty days after the date a completed application has been filed.

(11) In addition to any other basis for denial of a full authorization to operate a commuter van service pursuant to this section, the Commission may deny a full authorization when the applicant has made a material false statement or concealed a material fact in connection with the filing of an application for conversion pursuant to this section.

(12) Any interim authorization which has been converted into a full authorization pursuant to this section shall have the same force and effect and shall be subject to the same provisions of law and rules as an authorization to operate a commuter van service issued pursuant to §19-504.2 of the Administrative Code of the City of New York and provisions of this chapter promulgated pursuant thereto. Such authorization may be renewed annually in accordance with this chapter, and the renewal of such authorization for the term that commences in the year 2000 shall be subject to a determination by the City Commissioner of Transportation that the service will be required by the present or future public convenience and necessity pursuant to the provisions of subdivision e of §19-504.2 of the Administrative Code of the City of New York and subdivision (j) of §9-02 of this chapter.

(b) An application for conversion shall be accompanied by an application for a commuter van license for each

commuter van sought to be operated pursuant to a full authorization to operate a commuter van service. Any such application for a commuter van license shall be submitted in accordance with

§19-504 of the Administrative Code of the City of New York and any provisions of this chapter promulgated pursuant thereto and shall be accompanied by the fee provided in this chapter for such license.

(c) An application for conversion shall be accompanied by an application for a commuter van driver's license submitted by each driver of any commuter van sought to be operated pursuant to a full authorization to operate a commuter van service. Any such application shall be submitted in accordance with §19-505 of the Administrative Code of the City of New York and any provisions of this chapter promulgated pursuant thereto and shall be accompanied by the fee provided in this chapter for such license.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-06 Commuter Van License.

(a) No commuter van shall be operated within the City of New York unless it is operated as part of a current, valid authorization to operate a commuter van service duly issued by the Commission and unless the owner thereof has obtained a commuter van license issued by the Commission pursuant to this section.

(b) No commuter van license shall be issued or renewed unless the following conditions are satisfied:

(1) such commuter van is operated as part of a current, valid authorization to operate a commuter van service issued by the Commission;

(2) an applicant demonstrates to the satisfaction of the Commission that such applicant is fit, willing and able to operate a commuter van;

(3) an applicant has been fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services. The applicant shall pay any processing fee required by the State. Fingerprints shall be taken of the individual owner if the applicant is a sole proprietorship; the general partners if the applicant is a partnership; the officers, principals, and stockholders owning more than ten percent of the outstanding stock of the corporation if the applicant is a corporation. If subsequent to the fingerprinting of the applicant or during the term of the license, one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this paragraph is changed or added, such applicant shall, within five days of such change or addition, file with the Commission an application for an approval of the change or addition of partners, officers, principals or stockholders on such forms as are prescribed by the Commission, and such new partners, officers, principals or

stockholders shall be fingerprinted in accordance with this paragraph. Alternatively, an applicant who plans to change or add one or more partners, officers, principals or stockholders who are required to be fingerprinted pursuant to this paragraph may request that such fingerprinting be done prior to the change or addition of such new partner, officer, principal or stockholder.

(4) an applicant has not engaged in any conduct that would be a basis for suspension or revocation of such license pursuant to this chapter; and

(5) an applicant demonstrates compliance with the conditions of operation relating to commuter vans set forth in §9-11 of this chapter and the insurance requirements set forth in §9-12 of this chapter.

(c) An application for a commuter van license or renewal thereof shall be signed by the applicant and filed by the owner in person with the Commission on the forms provided by the Commission. An applicant shall agree to designate each and every driver who operates such commuter van as agent for service of any and all legal process that may be issued against such commuter van service by the Commission or any othr person or entity authorized to enforce the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans.

(d) The Commission shall approve or disapprove an application for a commuter van license within 180 days after the completed application is filed. The failure to approve or disapprove such completed application within such time shall be deemed a disapproval of such application.

(e) A commuter van license shall be issued on the condition that the application is in compliance with the registration and insurance requirements set forth in this chapter. The failure to comply with either such registration or insurance requirements shall render the commuter van license suspended on and after the date of such noncompliance and during the period of such noncompliance, and any person using such commuter van in the course of operations of a commuter van service during such period of noncompliance shall be deemed to be operating without a license as required by this chapter.

(f) A commuter van license shall not be assignable or transferable.

(g) In addition to any other basis for denial of a commuter van license pursuant to this section, the Commission may deny an application where the applicant has made a material false statement or concealed a material fact in connection with the filing of such application.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-07 Term of Commuter Van License.

(a) A commuter van license issued to a new applicant shall expire two years after the license was issued.

(b) A license issued to a renewing applicant shall expire two years after the date on which the previous license expired.

(c) A person who engages in any activity for which a license is required pursuant to §9-06(a) of this Chapter after the expiration date of a commuter van license and before the issuance of a renewal of such license is in violation of such section and shall be subject to the penalties provided in this chapter for such violation.

HISTORICAL NOTE

Section amended City Record Apr. 12, 1999 §2, eff. May 12, 1999. [See T35 §9-03 Note 1]

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

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[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-08 Commuter Van Driver's License.

(a) No person shall drive a commuter van that is regulated by the provisions of Chapter 5 of Title 19 of the Administrative Code within the City without first obtaining a commuter van driver's license from the Commission.

(b) The Commission shall not issue or renew a commuter van driver's license unless the applicant:

(1) demonstrates to the satisfaction of the Commission that he or she is fit and able to drive the commuter van for which the license is sought;

(2) has been fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services for which the applicant shall pay any processing fee required by the State;

(3) possesses a commercial driver's license which pursuant to the New York State Vehicle and Traffic Law is valid for the operation of such commuter van for the transportation of passengers for-hire;

(4) submits a copy of the affidavit filed with the State Department of Motor Vehicles indicating that the applicant has met the qualifications set forth in Article 19-A of the New York State Vehicle and Traffic Law for the operation of a bus as defined in such article;

(5) has not engaged in any conduct that would be a basis for suspension or revocation of such license pursuant to this chapter; and

(6) has not had a commuter van driver's license revoked pursuant to this chapter at any time during the one year

period immediately preceding the date of application.

(c) The Commission shall approve or disapprove an application for the issuance of a commuter van driver's license within 180 days after the completed application is filed. The failure to approve or disapprove such application within such time shall be deemed a disapproval of such application.

(d) In addition to any other basis for denial of a commuter van driver's license pursuant to this section, the Commission may deny an application where the applicant has made a material false statement or concealed a material fact in connection with the filing of such application.

(e) A commuter van driver's license shall be issued on the condition that the applicant possesses a commercial driver's license and complies with Article 19-A of the New York State Vehicle and Traffic Law as described in paragraphs (3) and (4) of subdivision (b) of this section during the time that such commuter van driver's license is in effect. Notwithstanding any other provision of law, suspension or revocation of such commercial driver's license pursuant to the New York State Vehicle and Traffic Law or noncompliance with such Article 19-A shall render the commuter van driver's license suspended on and after the date of the suspension or revocation of such commercial driver's license or noncompliance with such Article 19-A and during the period of such suspension, revocation or noncompliance, and any person who drives a commuter van that is required to be licensed pursuant to subdivision (a) of this section during the period of such suspension, revocation or noncompliance shall be deemed to be driving a commuter van without a license as required by this section.

(f) A commuter van driver's license shall not be assignable or transferable.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

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[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-09 Term of Commuter Van Driver's License.

(a) A commuter van driver's license issued to a new applicant shall expire two years after the license was issued.

(b) A license issued to a renewing applicant shall expire two years after the date on which the previous license expired.

(c) A person who drives a commuter van that is regulated by the provisions of Chapter 5 of Title 19 of the Administrative Code after the expiration date of a commuter van driver's license and before the issuance of a renewal license is in violation of §9-08(a) of this chapter and shall be subject to the penalties provided in this chapter for such violation.

HISTORICAL NOTE

Section amended City Record Apr. 12, 1999 §3, eff. May 12, 1999. [See T35 §9-03 Note 1]

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

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[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-10 Conditions of Operation for Commuter Van Drivers.

(a) A commuter van driver shall not operate a commuter van unless such van is licensed by the Commission and is operating pursuant to a current, valid authorization to operate a commuter van service.

(b) A commuter van driver shall not operate a commuter van unless the following are present in the vehicle:

(1) the commuter van license;

(2) the driver's commuter van driver's license;

(3) the authorization to operate a commuter van service, or legible photocopy thereof; (4) the vehicle registration and evidence of current liability insurance; and

(5) a passenger manifest.

(c) A commuter van driver shall keep the passenger manifest required by subdivision (b) of this section in the van and shall enter the name of each passenger to be picked up legibly in ink prior to the boarding of each passenger.

(d) A commuter van driver shall not provide transportation service to a passenger unless such service is on the basis of a telephone contract or other prearrangement and such prearrangement is evidenced by the records required by Rule 9-11(l)(2).

(e) A commuter van driver shall not pick up or discharge passengers, or permit or authorize the pick up or

discharge of passengers:

(1) outside of the geographic area set forth in the authorization to operate a commuter van service issued pursuant to this chapter; or

(2) at stops of, or along a route which is traveled upon by a bus line which is operated by the New York City Transit Authority or the City or a private bus company which has been approved by the City to operate pursuant to a local law or Charter provision enacted in accordance with subdivision five of section 80 of the Transportation Law. The prohibition contained in this paragraph shall not apply to the pick up or discharge of passengers along bus routes in the borough of Manhattan south of Chambers Street by drivers for commuter van services which on July 1, 1992 had authority from the New York State Department of Transportation to pick up or discharge passengers along bus routes in such area, provided that the scope of operations by such commuter van services along bus routes in such area shall not exceed the scope of such operations prior to July 1, 1992.

(f) A commuter van driver shall not use or attempt to use physical force against a person while performing his duties and responsibilities as a van driver or in connection with the operation of a commuter van. A commuter van driver shall not distract, harm or use physical force against or attempt to distract, harm or use physical force against a service animal accompanying a person with a disability.

(g) A commuter van driver shall: (1) answer truthfully all questions and comply as directed with all communications, directives and summonses from the Commission or any other person or entity authorized to enforce the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans;

(2) produce any documents required by this section to be kept in the commuter van upon the demand of any such authorized person or entity; and

(3) produce any document required by this chapter to be kept by such driver no later than 10 days following a request from the Commission for such document.

(h) A commuter van driver shall be responsible for notifying the Commission within five calendar days after any criminal conviction (felony or misdemeanor) of such van driver. Such notification shall be in writing and must be accompanied by a certificate of disposition issued by the clerk of the court.

(i) A commuter van driver or any person acting on his or her behalf shall not offer or give any gift, gratuity or thing of value to any employee, representative or member of the Commission or any public servant who is charged with the administration or enforcement of this chapter or any traffic rule or law. Any administrative hearing to adjudicate a violation of this subdivision shall be referred to the New York City Office of Administrative Trials and Hearings.

(j) A commuter van driver shall immediately report to the Commission and to the New York City Department of Investigation any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the Commission or any public servant who is charged with the administration or enforcement of this chapter or any traffic rule or law. Any administrative hearing to adjudicate a violation of this subdivision shall be referred to the New York City Office of Administrative Trials and Hearings.

(k) A commuter van driver shall not charge or attempt to charge a fare above the preapproved rate of fare quoted by the dispatcher. A commuter van driver shall not impose or attempt to impose any additional charge for transporting a person with a disability, a service animal accompanying a person with a disability or a wheelchair, three-wheeled motorized scooter or other mobility aid.

(l) (1) A commuter van driver shall not refuse by words, gestures or any other means, without justifiable grounds set forth in subdivision (m) of this section, to provide transportation, when dispatched, for a person who has prearranged the trip and the destination is within the geographical area set forth in the authorization to operate a commuter van

service. This includes a person with a disability and any service animal accompanying such person.

(2) A commuter van driver shall not require a person with a disability to be accompanied by an attendant. However, where a person with a disability is accompanied by an attendant, a commuter van driver shall not impose or attempt to impose any charge in addition to the authorized rate of fare for transporting the attendant.

(3) A commuter van driver shall not refuse to transport a passenger's wheelchair, crutches or other mobility aid.

(m) Justifiable grounds for conduct otherwise prohibited by subdivision (l) of this section shall be the following:

(1) the passenger is carrying, or is in possession of any article, package, case or container, other than a wheelchair, three-wheeled motorized scooter or other mobility aid, which the commuter van driver may reasonably believe will cause damage to the interior of the commuter van, impair its efficient operation, or cause it to become stained or foul smelling;

(2) the passenger is escorted or accompanied by an animal which is not properly or adequately secured in a kennel case or other suitable container. This provision shall not apply to service animals accompanying people with disabilities;

(3) the passenger is disorderly or intoxicated. Provided, however, that a commuter van driver shall not refuse to provide service to a person with a disability solely because such person's disability results in an appearance or involuntary behavior which may offend, annoy or inconvenience the driver; or

(4) if the passenger has refused a request by the commuter van driver to obey the no-smoking requirement of law, the driver may discharge the passenger after asking the passenger to cease smoking in the commuter van. Provided, however, that, if the driver discharges the passenger, it must be at a safe location.

(n) (1) A driver shall not use a portable or hands-free electronic device while operating a commuter van, unless such commuter van shall be lawfully standing or parked. "Use" of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver's ear.

A driver may offer as an affirmative defense that he or she was using a portable or hands-free electronic device while operating a commuter van for the sole purpose of communicating with an emergency response operator that there exists an imminent threat to life or property, and that it was impossible for the driver to safely stop the vehicle before placing the call. The driver must provide documentary proof that the electronic communication was to an emergency response operator.

(2) Additional penalties for use of a portable or hands-free electronic device while operating a commuter van.

(i) For purposes of this paragraph (n)(2), "portable or hands-free electronic device violation" shall mean a violation of §9-10(n)(1) of this chapter or a violation of any state law or rule prohibiting or restricting the use of a portable or hands-free electronic device while driving, such violation having been adjudicated by a court or other tribunal having jurisdiction over such violations.

(ii) Any commuter van driver who commits a portable or hands-free electronic device violation is required to attend and satisfactorily complete an authorized course of training in the dangers of driving while distracted by portable or hands-free electronic devices. The course shall be a minimum of one hour and shall include a review of the rules governing the use of portable or hands-free devices, and the dangers of driving while distracted. The course must be completed and verification of course completion provided by the designated school within sixty days of TLC's issuance of a directive to the commuter van driver that he or she is required to take such course.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Subd. (f) amended City Record July 8, 1997 §23, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (k) added City Record July 8, 1997 §24, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (l) added City Record July 8, 1997 §24, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (m) added City Record July 8, 1997 §24, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (n) amended City Record Dec. 30, 2009 §13, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Subd. (n) added City Record May 27, 1999 §8, eff. June 26, 1999. [See T35 §2-25 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-11

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-11 Conditions of Operation Relating to Commuter Vans.

An operator and an owner shall be responsible for compliance with the following provisions and shall be liable for violations thereof:

(a) Upon the issuance and upon each renewal or transfer of a commuter van license, the commuter van shall be presented to the Commission at its inspection facility where the Commission shall affix four decals to the commuter van. The four decals shall be placed on the lower right corner of the windshield, each rear-most side window, and the center of the rear of the vehicle. Licensure of the commuter van is not complete until such decals are affixed.

(b) No commuter van shall be used in the course of operations of a commuter van service unless the van shall at all times carry the following inside the vehicle while it is in operation:

(1) the commuter van license;

(2) the driver's commuter van driver's license;

(3) the authorization to operate a commuter van service, or legible photocopy thereof; (4) the vehicle registration and evidence of current liability insurance; and

(5) a passenger manifest as described in subdivision (c) of §9-10 of this chapter.

(c) No commuter van shall be used in the course of operations of a commuter van service unless the driver holds:

(1) a commercial driver's license which pursuant to the New York State Vehicle and Traffic Law is valid for the operation of such commuter van for the transportation of passengers for-hire, and

(2) a commuter van driver's license issued pursuant to this chapter.

(d) No commuter van service and no person who owns or operates a commuter van shall provide, permit or authorize the provision of transportation service to a passenger unless such service to a passenger is on the basis of a telephone contract or other prearrangement and such prearrangement is evidenced by the manifest described in Rule 9-10(c). Where a driver of a commuter van has violated Rule 9-10(d), the commuter van service and the owner of such vehicle shall also be liable for a violation of this Rule 9-11(d).

(e) No commuter van service and no person who owns or operates a commuter van shall pick up or discharge passengers, or permit or authorize the pick up or discharge of passengers:

(1) outside of the geographical area set forth in the authorization to operate a commuter van service issued pursuant to this chapter; or

(2) at stops of, or along a route at stops of, or along a route which is traveled upon by a bus line which is operated by the New York City Transit Authority or the City or a private bus company which has been approved by the City to operate pursuant to a local law or Charter provision enacted in accordance with subdivision four of section 80 of the Transportation Law. The prohibition contained in this paragraph shall not apply to the pick up or discharge of passengers along bus routes in the borough of Manhatten south of Chambers Street by commuter van services who on July 1, 1992 had authority from the New York State Department of Transportation to pick up or discharge passengers along bus routes in such area, provided that the scope of operations by such commuter van services along bus routes in such area shall not exceed the scope of such operations prior to July 1, 1992.

Where a driver of a commuter van has violated Rule 9-10(e), the commuter van service and the owner of such vehicle shall also be liable for a violation of this Rule 9-11(e).

(f) No commuter van shall be used in the course of operations of a commuter van service unless such vehicle is in compliance with the registration requirements of the New York State Vehicle and Traffic Law.

(g) No commuter van shall be used in the course of operations of a commuter van service unless such vehicle:

(1) is inspected by the New York State Department of Transportation as provided under Section 140 of the New York State Transportation Law or any rules or regulations promulgated thereunder or as provided under any agreement between the New York State Department of Transportation and the Commission entered into pursuant to subparagraph one of paragraph a of subdivision five of section eighty of the New York State Transportation Law, and

(2) displays the certificate evidencing an inspection, and

(3) meets the vehicle safety standards prescribed by rule or regulation of the New York State Commissioner of Transportation pursuant to Section 140 of the New York State Transportation Law.

(h) No commuter van shall be used in the course of operations of commuter van service unless such vehicle is in compliance with the insurance requirements set forth in Rule 9-12.

(i) No commuter van shall be used in the course of operations of a commuter van service unless the van shall have the following information conspicuously painted on each longitudinal side of the exterior of the vehicle in letters of at least 3 inches in height: the exact name and address of the operator and the word OPERATOR adjacent thereto; the owner's exact name and the word OWNER adjacent thereto; and a permit number. In addition, a placard with the same information required above shall be placed in the interior of the commuter van clearly visible from all passenger seats of

the commuter van. Such placard shall include a statement that any complaints regarding the commuter van may be submitted to the Taxi and Limousine Commission by telephone to 311 or via the Commission's website, http://nyc.gov/taxi.

(j) A commuter van shall not be used in the course of operations of a commuter van service if the van is in appearance, in whole or in part, any shade of taxicab yellow.

(k) No commuter van that utilizes a two-way radio or other communications system shall be used in the course of operations of a commuter van service unless such commuter van service and the owner of such commuter van are in compliance with all regulations of the Federal Communications Commission applicable to such use.

(l) A commuter van service shall be responsible for ensuring that the following records are kept for all dispatched calls:

(1) the passenger manifest as described in subdivision (c) of section 9-10 of this chapter.

(2) records maintained at the business premises of such service containing the records of requests for service and trips; and

(3) a list of all current vehicles operating pursuant to the authorization to operate a commuter van service, which includes information regarding the owner of the vehicle, including but not limited to the owner's name, mailing address, and home telephone number, the vehicle's registration number, the vehicle's commuter van license number, the Department of Motor Vehicles license plate number of the vehicle, the name of the vehicle's insurance carrier and the policy number, and the dates of inspection of the vehicle and the outcome of each such inspection.

An owner of a commuter van shall also be responsible for ensuring that the records described in subparagraph (a) and (b) of this paragraph be kept for all dispatched calls. The records required to be kept by this paragraph shall be kept for a period of one year. Such records shall be subject to inspection by authorized officers or employees of the Commission during regular business hours.

(m) A commuter van service and a commuter van owner shall:

(1) answer truthfully all questions and comply as directed with all communications, directives and summonses from the Commission or any other person or entity authorized to enforce the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans;

(2) produce or be responsible for instructing the driver of any commuter van to produce any documents required by this section to be kept in the commuter van upon the demand of any such authorized person or entity;

(3) produce any other document required by this chapter to be maintained no later than 10 days following a request from the Commission for such document; and

(4) have an affirmative duty to aid the Commission in obtaining information sought by the Commission regarding any driver or vehicle operating pursuant to the authorization of such van service or owned by such owner.

(n) Neither a commuter van service owner nor a commuter van owner shall use or attempt to use physical force against any person while performing his duties and responsibilities as a van service owner or van owner or in connection with the operation of such commuter van service. Neither a commuter van service owner nor a commuter van owner shall distract, harm or use physical force against or attempt to distract, harm or use physical force against a service animal accompanying a person with a disability.

(o) A commuter van service owner and a commuter van owner shall be responsible for notifying the Commission within five calendar days after any criminal conviction (misdemeanor or felony) of the van service owner or the

commuter van owner; if the commuter van service or the commuter van owner is a partnership or a coporation, the Commission must be notified of the criminal conviction of any partner, or any officer, principal or stockholder owning more than ten percent of the outstanding stock of the corporation, who is required to be fingerprinted pursuant to this chapter. Such notification shall be in writing and must be accompanied by a certificate of disposition issued by the clerk of the court.

(p) A commuter van service owner and a commuter van owner or any person acting on his or her behalf shall not offer or give any gift, gratuity or thing of value to any employee, representative or member of the Commission or any public servant who is charged with the administration or enforcement of this chapter or any traffic rule or law. Any administrative hearing on this matter will be referred to the New York City Office of Administrative Trials and Hearings.

(q) A commuter van service owner and a commuter van owner shall immediately report to the Commission and to the New York City Department of Investigation any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the Commission or any public servant who is charged with the administration or enforcement of this chapter or any traffic rule or law. Any administrative hearing on this matter will be referred to the New York City Office of Administrative Trials and Hearings.

(r) A commuter van service owner and a commuter van owner shall not instruct, authorize or permit a commuter van driver to discriminate unlawfully against people with disabilities. Such discrimination includes, but is not limited to, refusing to serve people with disabilities, refusing to load and unload the mobility aids of people with disabilities, and imposing any charge in addition to the authorized fare for the transportation of people with disabilities, service animals, wheelchairs, or other mobility aids. Where a commuter van driver has violated §9-10(k) or (l), the commuter van service and the owner of such vehicle shall also be liable for a violation of this §9-11(r).

(s) A commuter van service which purchases or leases any new commuter van, as defined by this chapter, shall ensure that such vehicle complies with all applicable provisions of law regarding accessibility to people with disabilities.

(t) A commuter van service and a commuter van owner shall comply with all provisions of the New York State Workers' Compensation Law and regulations promulgated thereunder with respect to the provision of coverage and benefits to eligible persons.

(u)(1) A commuter van service and a commuter van owner shall maintain on file with the Commission a current telephone number (which must be connected to an answering machine or recording device), pager number, answering service telephone number or similar means of telephone contact, so that the van or service owner may be reached by the Commission on a twenty-four hour basis.

(2) Such service or owner must respond to any telephone or pager contact from the Commission within forty-eight hours, seven days a week.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Open par amended City Record Jan. 15, 2008 §2, eff. Feb. 14, 2008. [See T35 §9-01 Note 1]

Subd. (a) amended City Record Jan. 15, 2008 §2, eff. Feb. 14, 2008. [See T35 §9-01 Note 1]

Subd. (i) amended City Record Jan. 15, 2008 §2, eff. Feb. 14, 2008. [See T35 §9-01 Note 1]

Subd. (n) amended City Record July 8, 1997 §25, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (r) added City Record July 8, 1997 §26, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (s) added City Record July 8, 1997 §26, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (t) added City Record Jan. 31, 2000 §3, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

Subd. (u) added City Record Jan. 31, 2000 §6, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

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35 RCNY 9-12

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-12 Insurance Relating to Commuter Vans.

(a) A commuter van service and an owner of a commuter van shall be responsible for compliance with the following provisions and shall be liable for violations thereof:

(1) Every person operating one or more commuter vans under an authorization issued by the Commission pursuant to §9-02 of this chapter shall, in accordance with the provisions of this section, procure and maintain and file with the Commission a surety bond or policy of insurance approved as to form by the Commission in a solvent and responsible company authorized to do business in this State and approved by the Superintendent of Insurance covering each commuter van operated pursuant to such authorization, conditioned for the payment of all claims and judgments for damages or injuries caused in the operation, maintenance, use or the defective construction of such commuter van in at least the following amounts:

(i) if the commuter van has a carrying capacity of twelve passengers or less: for personal injury or death to one person, $100,000; for personal injury or death to all persons in one accident, $300,000, with a maximum of $100,000 for each person; and for property damage, $50,000; or

(ii) if the commuter van has a carrying capacity of more than twelve passengers and less than twenty-one pasengers: for personal injury or death to one person, $100,000; for personal injury or death to all persons in one accident, $500,000, with a maximum of $100,000 for each person; and for property damage, $50,000.

(2) No commuter van shall be used in the course of operations of a commuter van service unless a surety bond or policy of insurance as described in paragraph one of this subdivision is maintained covering such commuter van.

(b) Surety bonds and certificates of insurance shall specify that coverage thereunder will remain in effect continuously until terminated as provided herein.

(c) Surety bonds or certificates of insurance which have been accepted by the Commission under this section may be replaced by other surety bonds or certificates of insurance, and the liability of the retiring surety or insurer under such surety bonds or certificates of insurance shall be considered as having terminated as of the effective date of the replacement surety bond or certificate of insurance, provided that such replacement surety bond or certificate meets all of the following conditions:

(1) it must be acceptable to the Commission under this section;

(2) it must be accompanied by a letter of authorization, in duplicate, signed by the commuter van service involved or an authorized employee of such van service, authorizing such replacement and verifying the effective date thereof; and

(3) its effective date must coincide with the effective date specified in the letter of authorization and such date may not be more than 30 days prior to the date of receipt by the Commission of the letter of authorization and replacement certificate.

(d) Every surety bond or certificate of insurance shall contain a provision for a continuing liability notwithstanding any recovery thereunder.

(e) Every surety bond or certificate of insurance shall provide that cancellation thereof shall not be effective until at least 30 days' notice in writing of intention to cancel has been delivered to the Commission; such cancellation notice shall be in the form set forth in Appendix B of this title, **infra,** designated "Form K-Uniform Notice of Cancellation of Motor Carrier Insurance Policies" or "Form L-Uniform Notice of Cancellation of Motor Carrier Surety Bonds." If such cancelled insurance policy or bond is reinstated, a new certificate, in the form provided by this section, shall be filed with the Commission, except there shall be typed or printed thereon, in capital letters, the words "REINSTATEMENT OF INSURANCE POLICY" or "REINSTATEMENT OF BOND", as may be appropriate.

(f) Certificates of Insurance shall be in accordance with the forms set forth in Appendix B of this title, **infra,** designated "Form E-Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance." When a certificate of insurance designated Form E is filed, there shall be attached to the original policy of insurance, an endorsement in the form set forth in Appendix B of this title, **infra,** and marked "Form F-Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement."

(g) When a surety bond is filed in lieu of a certificate evidencing insurance, the bond shall be in the form set forth in Appendix B of this title, **infra,** and designated "Form G-Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond."

(h) No surety bond or certifiate of insurance shall be filed with the Commission unless a direct contractual relationship exists between the authorization or license holder and the insurance or bonding company making the filing.

(i) The Commission may at any time refuse to accept any surety bond or certificate of insurance if in its judgment it does not provide adequate protection for the public.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

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35 RCNY 9-13

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-13 Advertising.

(a) No person shall operate or permit to be operated any vehicle bearing the words "commuter van service," "van service," "commuter van," "van" or other designation of similar import unless the vehicle is licensed as a commuter van and is operated pursuant to an authorization to operate a commuter van service and the driver has an appropriate driver's license under this chapter. No person shall advertise or hold himself or herself out as doing business as a "commuter van service," "van service," "commuter van," or "van" or other designation of similar import unless such person is authorized to operate a commuter van service and a commuter van license is in effect for each vehicle used therefor as required by this chapter.

(b) No person who is required to obtain authorization to operate a commuter van service or is required to operate pursuant to such authorization under this chapter shall advertise in print or in a broadcast medium the activity for which authorization is required without conspicuously stating in such advertising the commuter van service authorization number and that the activity is licensed by the Commission.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-14

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-14 Renewal, Suspension and Revocation of Authorization to Operate a Commuter Van Service, Commuter Van License and Commuter Van Drivers' License.

(a) An authorization to operate a commuter van service shall be revoked after the holder of such authorization has had an opportunity for a hearing and upon the occurrence of any one or more of the following conditions:

(1) Where each commuter van comprising a number of commuter vans equaling at least thirty percent of the total number of commuter vans operating as part of the same current, valid authorization rounded up to the next whole number, has failed to maintain the required liability insurance at least three times within a twelve month period; or

(2) Where each commuter van comprising a number of commuter vans equaling at least thirty percent of the total number of commuter vans operating as part of the same current, valid authorization, rounded up to the next whole number, has operated without complying with any safety inspection requirement arising from any applicable law, rule or regulation at least three times within a twelve month period; or

(3) Where a commuter van driver has had his or her license revoked pursuant to subdivision (c) of this section while operating as part of such authorization and thereafter is found to be operating a commuter van as part of such authorization without a commuter van driver's license required by this chapter three times within a six month period; or

(4) Where the number of violations of paragraph 5 of subdivision a of §19-504.3 of the Administrative Code occurring within a twelve month period is equal to the following: ninety percent of the number of commuter vans authorized to operate as part of such authorization, rounded up to the next whole number, or five, whichever is greater.

(b) A commuter van license shall be revoked after the holder of such license has had an opportunity for a hearing and after which the holder of such license is found guilty of any of the following:

(1) Failure to maintain the liability insurance required by paragraph 4 of subdivision a of §19-504.3 of the Administrative Code and §9-12 of this chapter three times within a period of one year; or

(2) Operating without complying with any safety inspection requirements arising from any applicable law, rule or regulation three times within a period of one year.

(c) A commuter van driver's license shall be revoked after the holder of such license has had an opportunity for a hearing and such holder is found to have failed to comply with subdivision (e) and/or (f) of §9-10 of this chapter three times within a period of six months.

(d) A commuter van driver's license shall be revoked after the holder of such license has had an opportunity for a hearing and the Commission finds that the holder's commuter van driver's license has been suspended on two occasions within a three year period pursuant to subdivision o of §19-505 of the Adminis- trative Code, based on such driver's disqualification pursuant to paragraph d of subdivision 2 of §509-c of Article 19-A of the Vehicle and Traffic Law by reason of the accumulation of nine or more points on his or her driving record for acts occurring during an eighteen month period.

(e) The Commission may refuse to renew any authorization to operate a commuter van service or any commuter van license or commuter van driver's license required by these rules and, after due notice and an opportunity to be heard, may suspend or revoke any such authorization or license upon the occurrence of any one or more of the following conditions:

(1) the holder of an authorization or a license or any of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has been found by the Commission to have violated any of the provisions of Chapter 5 of Title 19 of the Administrative Code relating to commuter vans or this chapter; or

(2) the holder of an authorization or a license or any of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has made a material false statement or concealed a material fact in connection with the filing of any application or certification pursuant to this chapter or has engaged in any fraud or misrepresentation in connection with rendering transportation service; or

(3) the holder of an authorization or a license or any of its officers, principals, directors, or stockholders owning more than ten percent of the outstanding stock of the corporation has not paid any penalty duly imposed pursuant to the provisions of this chapter; or

(4) the holder of an authorization or a license or any of its officers, principals, directors, or stockholders owning more than ten percent of the outstanding stock of the corporation has been convicted of a crime which, in the judgment of the Commission has a direct relationship to such person's fitness or ability to perform any of the activities for which an authorization or a license is required pursuant to this chapter, or has been convicted of any other offense which under the provision of Article 23-A of the New York State Correction Law, would provide a basis for the Commission to refuse to renew, or to suspend or revoke, such authorization or license; or

(5) the holder of an authorization or a license has failed to maintain the conditions of operation applicable to the particular authorization or license as provided in this chapter; or

(6) the holder of an authorization or a license or any of its officers, principals, directors, employees, or stockholders owning more than ten percent of the outstanding stock of the corporation has been found to have violated any of the provisions of §8-107 of the Administrative Code of the City of New York concerning unlawful

discriminatory practices in public accommodations in the operation of a commuter van service or a commuter van.

(f) Notwithstanding the foregoing provisions, the Chairperson of the Commission may immediately suspend any authorization to operate a commuter van service or commuter van license or commuter van driver's license issued under these rules without a prior hearing where the Chairperson determines that the continued possession of such authorization or license poses a serious danger to the public health, safety or welfare. After such suspension an opportunity for a hearing shall be provided on an expedited basis, within a period not to exceed fourteen days.

(g) Where the Commission suspends or revokes an authorization to operate a commuter van service pursuant to this chapter:

(1) Any commuter van license which has been issued as part of such authorization shall be deemed suspended or revoked, as the case may be, where the suspension or revocation of the authorization to operate a commuter van service was based, in whole or in part, upon the operation of such commuter van; or

(2) Any commuter van license which has been issued as part of such authorization shall continue to be valid in accordance with its terms where the suspension or revocation of the authorization to operate a commuter van service was not based, in whole or in part, upon the operation of such commuter van; provided, however, that such commuter van shall not be operated in the course of operations of such commuter van service unless and until such commuter van operates as part of a current, valid authorization to operate a commuter van service; provided, further that any such commuter van which operates without being part of a current, valid authorization to operate a commuter van service shall be deemed to be operating without a commuter van license and shall be subject to any and all of the penalties that may be imposed under the Administrative Code of this chapter for the unlicensed operation of commuter vans, including seizure and forfeiture.

(h) Notwithstanding any other provision of law, any person who has had authorization to operate a commuter van service revoked by the Commission pursuant to this section shall not be permitted to apply for an authorization to operate a commuter van service for a period of six months after the day of revocation.

(i) Notwithstanding any other provision of law, any person who has had a commuter van driver's license revoked by the Commission pursuant to this section shall not be permitted to apply for a commuter van driver's license pursuant to this chapter for a period of one year after the date of such revocation.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-15

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-15 License Fees.

(a) In accordance with §19-504(o) of the Administrative Code of the City of New York, the fee for a commuter van license shall be two hundred seventy-five dollars ($275) annually, to be paid at the time of filing the application for issuance or renewal of such license. Such fee shall not be refunded in the event of disapproval of the application; provided, however, that where such disapproval is based on the disapproval of an application for issuance or renewal of an authorization to operate a commuter van service, such fee shall be refunded.

(b) (1) In accordance with §19-505(j) of the Administrative Code of the City of New York, the fee for a commuter van driver's license shall be sixty dollars ($60) annually, to be paid at the time of filing the application for issuance or renewal of such license. Such fee shall not be refunded in the event of disapproval of the application.

(2) In accordance with §19-505(j) of the Administrative Code of the City of New York, there shall be an additional fee of twenty-five dollars ($25) for late filing of a commuter van driver's license renewal application where such filing is permitted by the Commission.

(c) In accordance with §§19-504(c), 19-504(2)(i) and 19-505(j) of the Administrative Code, there shall be an additional fee of twenty-five dollars ($25) for each license or authorization issued to replace a lost or mutilated license or authorization.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-16

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-16 Procedures in the Event of a Violation of this Chapter. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See Chapter 8 footnote]

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Subd. (b) par (5) subpar (a) amended City Record May 15, 1995 §4, eff. June 19, 1995. [See T35 §1-85 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-17

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-17 Penalties for Violation of Rules Governing Commuter Vans.

(a)

Rule No.	Penalty All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	Personal Appearance Required
§9-02(a)	$500-first violation $1,000-subsequent violation within twenty-four months	Yes
§9-03(c)	$500-first violation $1,000-subsequent violation within twenty-four months	Yes
§9-04(f)(1)(i)	$100-500	Yes
§9-04(f)(1)(ii)	$50-300	Yes
§9-04(f)(1)(iii)	$50	No
§9-04(f)(1)(iv)	$50	No
§9-04(f)(1)(v)	$50-300	Yes
§9-04(f)(1)(vi)	$75-500	Yes
§9-04(f)(1)(vii)	$100-300	Yes
§9-04(f)(1)(viii)	$100	No
§9-04(f)(1)(ix)	$100	No
§9-06(a)	$500-first violation $1,000-subsequent violation within twenty-four months	Yes

§9-06(e)	$500-first violation$1,000-subsequent violation within twenty-four months	Yes
§9-08(a)	$300	No
§9-08(e)	$300	No
§9-10(a)	$300	No
§9-10(b)(1-4)	$25 per missing item; maximum penalty $50	No
§9-10(c)	$25	No
§9-10(d)	$50	No
§9-10(e)	$75-first and second violationRevocation for third violation within a six month period	No
§9-10(f)	$50-350 and/or suspension or revocation	Yes
§9-10(g)(1)	$200 and suspension until compliance	Yes
§9-10(g)(2)	$50	No
§9-10(g)(3)	$75-350 and/or suspension until compliance	Yes
§9-10(h)	$50-250	Yes
§9-10(i)	$1,000 and/or suspension or revocation	Yes
§9-10(j)	$1,000 and/or suspension or revocation	Yes
§9-10(k)	$100-250 and order restitution for any overcharge to the passenger	Yes
§9-10(l)(1)	$200-350 for the first violation $350-500 for each subsequent violation within thirty-six months	Yes
§9-10(l)(2)	$100-250 and order restitution for any overcharge to the passenger	Yes
§9-10(l)(3)	$200-350	Yes
9-10(n)(1)	$200	No
§9-11(a)	For failure to have decals affixed or for operating a commuter van with damaged or missing decal(s):$500-for the first offense in 12 months;$1000-for the second offense and subsequent offenses within a 12-month period, and suspension of the commuter van license until compliance.Operator authorization revocation for the third offense within a 12-month period.	No, exceptfor operatorauthorizationrevocation
§9-11(b)	$25 per missing item; maximum penalty $50	No
§9-11(c)(1)	$300 and suspension of the commuter van license until compliance	Yes
§9-11(c)(2)	$300 and suspension of the commuter van license until compliance	Yes
§9-11(d)	$50	No
§9-11(e)	$75	No
§9-11(f)	$300 and suspension of the commuter van license until compliance	Yes
§9-11(g)(1)	$300	No
§9-11(g)(2)	$100	No
§9-11(g)(3)	$100-500 and/or suspension or revocation of commuter van license	Yes
§9-11(h)	$300 and/or suspension or revocation of commuter van license	Yes
§9-11(i)	$50	No
§9-11(j)	$100	No
§9-11(k)	$100	No
§9-11(l)(1)	$50	No
§9-11(l)(2)	$100	No
§9-11(l)(3)	$300	No
§9-11(m)(1)	$200 and suspension until compliance	Yes
§9-11(m)(2)	$50-150	Yes
§9-11(m)(3)	$75-350 and/or suspension until compliance	Yes
§9-11(m)(4)	$75-350 and/or suspension until compliance	Yes
§9-11(n)	$50-350 and/or suspension or revocation	Yes

§9-11(o)	$100	No
§9-11(p)	$1,000 and/or suspension or revocation	Yes
§9-11(q)	$1,000 and/or suspension or revocation	Yes
§9-11(r)	$200-350	Yes
§9-11(s)	$200-350	Yes
§9-11(t)	$25 for each day of non-compliance, and either suspension until compliance or license revocation.	Yes
§9-11(u)(1)	$100	No
§9-11(u)(2)	$500	No
§9-12(a)(2)	$300 and suspension until compliance	No
§9-13(a)	$500-first violation$1,000-subsequent violation within twenty-four months	Yes
§9-13(b)	$50	No

(b) A penalty of $200 and suspension shall be imposed*2 for default.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Subd. (a) Penalty column heading amended City Record Nov. 2, 2006 §19, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (a) §9-10(g)(1) amended City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

Subd. (a) §9-10(k) added City Record July 8, 1997 §27, eff. Aug. 11, 1997. [See T35 §4-01 Note 1]

Subd. (a) §9-10(l)(1) added City Record July 8, 1997 §27, eff. Aug. 7, 1997. [See T35 §4-01 Note 1]

Subd. (a) §9-10(l)(2) added City Record July 8, 1997 §27, eff. Aug. 7, 1997. [See T35 §4-01 Note 1]

Subd. (a) §9-10(l)(3) added City Record July 8, 1997 §27, eff. Aug. 7, 1997. [See T35 §4-01 Note 1]

Subd. (a) §9-10(n) added City Record May 27, 1999 §9, eff. June 26, 1999. [See T35 §2-25 Note 1]

Subd. (a) §9-01(n)(1) amended City Record Dec. 30, 2009 §14, eff. Jan. 29, 2010. [See T35 §2-25.1 Note 1]

Subd. (a) §9-11(a) amended City Record Jan. 15, 2008 §3, eff. Feb. 14, 2008. [See T35 §9-01 Note 1]

Subd. (a) §9-11(m)(1) amended City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

Subd. (a) §9-11(r) added City Record July 8, 1997 §27, eff. Aug. 7, 1997. [See T35 §4-01 Note 1]

Subd. (a) §9-11(s) added City Record July 8, 1997 §27, eff. Aug. 7, 1997. [See T35 §4-01 Note 1]

Subd. (a) §9-11(t) added City Record Jan. 31, 2000 §4, eff. Mar. 1, 2000. [See T35 §6-04 Note 1]

Subd. (a) §9-11(u)(1) added City Record Jan. 31, 2000 §7, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

Subd. (a) §9-11(u)(2) added City Record Jan. 31, 2000 §7, eff. Mar. 1, 2000. [See T35 §1-55 Note 1]

Subd. (b) amended City Record Dec. 1, 1999 §5, eff. Dec. 31, 1999. [See T35 §2-86 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

2

[Footnote 2]: * So in original. No change indicated in City Record Dec. 1, 1999.

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35 RCNY 9-18

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-18 Seizure of Commuter Vans.

(a) In accordance with §1-529(2) of the Administrative Code of the City of New York, a police officer or agent of the Commission may, upon service of a notice of violation upon the owner or operator of a commuter van, seize a vehicle which such police officer or agent of the Commission has reasonable cause to believe is being operated as a commuter van service by or on behalf of a person who is not operating pursuant to a current, valid authorization or operating as a commuter van without a commuter van license as required by this chapter. All persons in any such seized vehicle shall be left in or transported to a location which is readily accessible to other means of public transportation. A vehicle seized pursuant to §19-529(2) of the Administrative Code shall be removed to a designated secured facility.

(b) Within one business day after the seizure of a vehicle pursuant to subdivision (a) of this section, notice of such seizure and a copy of the notice of violation shall be mailed to the owner of such vehicle at the address for such owner set forth in the records maintained by the New York State Department of Motor Vehicles, or, for vehicles not registered in New York State, such equivalent record in such state of registration.

(c) A hearing to adjudicate the violation underlying the seizure shall be held before the administrative tribunal of the Commission within five business days after the date of the seizure. The adjudication shall be conducted pursuant to the procedures set forth in chapter 8 of the Rules of the Commission, except that where the procedures set forth in such Chapter are inconsistent with any provisions of the section, this section shall govern. The administrative tribunal of the Commission shall, within one business day of the conclusion of the hearing, render a determination as to whether the vehicle has been operated by or on behalf of a person who is not the holder of a current, valid authorization or has been operated without a commuter van license required by this chapter.

(d) An owner shall be eligible to obtain release of the vehicle prior to such hearing if such owner has not previously been found liable in an administrative or judicial proceeding for operating a vehicle as a commuter van service without a current, valid authorization or operating a commuter van without a commuter van license as required by this chapter, which violation was committed within a five year period prior to the violation resulting in the seizure. The vehicle shall be released to an eligible owner upon the posting of a bond in a form satisfactory to the Commission in the amount of the maximum civil penalty which may be imposed for the violation underlying the seizure and all reasonable costs for removal and storage of such vehicle.

(e) Where the Administrative Tribunal of the Commission, after adjudication of the violation underlying the seizure, shall find that the vehicle has been operated as a commuter van by or on behalf of a person who is not the holder of a current, valid authorization or operated as a commuter van without a commuter van license:

(1) If the vehicle is not subject to forfeiture pursuant to §19-529(3) of the Administrative Code of the City of New York, the Commission shall release such vehicle to an owner upon payment of the applicable civil penalties and all reasonable removal and storage costs; or

(2) If the vehicle is subject to forfeiture pursuant to §19-529(3) of the Administrative Code, the Commission may release such vehicle to an owner upon payment of the applicable civil penalties and all reasonable removal and storage costs, or may commence a forfeiture action pursuant to §19-529(3) within ten days after the owner's written demand for such vehicle.

(f) Where the Administrative Tribunal of the Commission, after adjudication of the violation underlying the seizure, finds that the charge of operating without an authorization or commuter van license has not been sustained, the vehicle shall be released to the owner.

(g) If an owner or representative of such owner has not sought to reclaim a seized vehicle within thirty days after mailing of notice to such owner of the final adjudication by the Administrative Tribunal of the Commission of the violation underlying the seizure, such vehicle shall be deemed by the Commission to be abandoned. Such vehicle shall be disposed of by the City pursuant to §1224 of the New York State Vehicle and Traffic Law; provided, however, that notwithstanding any inconsistent provision of §1224 of such law, if an owner seeks to reclaim such vehicle pursuant to §1224 of such law, such owner shall be deemed to have made a written demand for such vehicle and the Commission shall take such action as may be authorized by subdivisions (e) or (f) of this section.

(h) The vehicle removal fee shall be one hundred fifty dollars ($150).

(i) The vehicle storage fee shall be fifteen dollars ($15) per day.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Subd. (c) amended City Record Dec. 1, 1999 §5, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-19

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-19 Forfeiture of Commuter Vans.

(a) In addition to the penalties, sanctions and remedies provided in Chapter 5 of Title 19 of the Administrative Code and this chapter or in subdivisions 6 and 7 of §145 of the New York State Transportation Law, a vehicle seized pursuant to §19-529(2) of the Administrative Code, and all rights, title and interest therein, shall be subject to forfeiture to the City in accordance with the provisions of §19-529(3) of the Administrative Code upon judicial determination thereof, if the owner of such vehicle has been found liable at least two times in an administrative or court proceeding for operating a commuter van or other such common carrier by or on behalf of a person who is not the holder of a current, valid authorization or operating a commuter van without a commuter van license as required by this chapter, both of which violations were committed within a five-year period.

(b) A forfeiture action which is commenced pursuant to §19-529(3) shall be commenced by filing of a summons with notice or a summons and complaint pursuant to the New York Civil Practice Law and Rules, and such summons with notice or summons and complaint shall be served pursuant to subdivision (c) of this section. A vehicle which is the subject of such an action shall remain in the custody of the City pending the final determination of the forfeiture action.

(c) Service of a summons with notice or a summons and complaint shall be made:

(1) by personal service pursuant to the New York Civil Practice Law and Rules upon all owners of the vehicle listed in the records maintained by the New York State Department of Motor Vehicles, or for vehicles not registered in New York State, in the records maintained by the state of registration;

(2) by first class mail upon all individauls who have notified the Administrative Tribunal of the Commission that

they are an owner of the vehicle; and

(3) by first class mail upon all persons holding a security interest in such vehicle which security interest has been filed with the New York State Department of Motor Vehicles pursuant to the provisions of Title 10 of the New York State Vehicle and Traffic Law, at the address set forth in the records of the New York State Department of Motor Vehicles, and for vehicles not registered in New York State, all persons holding a security interest in such vehicle which security interest has been filed with the state of registration at the address provided by such state of registration.

(d) Any owner who receives notice of the institution of a forfeiture action who claims an interest in the vehicle subject to forfeiture shall assert a claim for the recovery of the vehicle or satisfaction of the owner's interest in such vehicle by intervening in the forfeiture action in accordance with the New York Civil Practice Law and Rules. Any persons with a security interest in such vehicle who receives a notice of the institution of the forfeiture action who claims an interest in such vehicle subject to forfeiture shall assert a claim for satisfaction of such person's security interest in such vehicle by intervening in the forfeiture action in accordance with the New York Civil Practice Law and Rules.

(e) No vehicle shall be forfeited pursuant to §19-529(3), to the extent of the interest of a person who claims an interest in the vehicle, if such person shall plead and prove as an affirmative defense that:

(1) the use of the vehicle for the conduct that was the basis for the seizure occurred without the knowledge of such person, or, if such person had knowledge of such use, without the consent of such person, and that such person did not knowingly obtain such interest in the vehicle in order to avoid the forfeiture of such vehicle; or

(2) the conduct that was the basis for the seizure was committed by any person other than such person claiming an interest in the vehicle, while such vehicle was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

(f) For purposes of subdivision (e) of this section, if such person claiming an interest in the vehicle had knowledge of the use of the vehicle for the conduct that was the basis for such seizure, such person shall be deemed to have consented to the unlawful conduct unless such person establishes that he or she did all that could reasonably have been done to prevent the use of the vehicle for such unlawful conduct.

(g) The City, after judicial determination of forfeiture, shall, at its discretion, either:

(1) retain such vehicle for the official use of the City; or

(2) by public notice of at least twenty (20) days, sell such forfeited vehicle at public sale. The net proceeds of any such sale shall be paid into the general fund of the City.

(h) At any time within six months after the forfeiture, any person claiming an interest in a vehicle which has been forfeited pursuant to §19-529.3 who was not sent notice of the commencement of the forfeiture action pursuant to subdivisions (b) or (c) of this section or who did not otherwise receive actual notice of the forfeiture action may assert, in an action commenced before the Justice of the Supreme Court before whom the forfeiture action was held, such claim as could have been asserted in such forfeiture action pursuant to §19-529.3. The court may grant the relief sought upon such terms and conditions as it deems reasonable and just if such person claiming an interest in the vehicle establishes that he or she was not sent notice of the commencement of the forfeiture action and was without actual knowledge of the forfeiture action and establishes either of the affirmative defenses set forth in subdivision (e) of this section.

(i) In any action commenced pursuant to subdivisions (b) or (h) of this section, where the court awards a sum of money to one or more persons in satisfaction of such person's or persons' interest or interests in the forfeited vehicle, the total amount awarded to satisfy such interest or interest shall not exceed the amount of the net proceeds of the sale of the forfeited vehicle, after deduction of the lawful expenses incurred by the City, including the reasonable costs of

removal and storage of the vehicle between the time of seizure and the date of sale.

HISTORICAL NOTE

Section added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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35 RCNY 9-20

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-20 Critical Driver Program.

(a) The commuter van driver's license of any driver, who, within a period of fifteen months, accumulates six or more points against his license issued by the Department of Motor Vehicles, or an equivalent license issued by the driver's state of residence, unless previously revoked, shall be suspended for thirty days.

(b) The commuter van driver's license of any driver who, within a period of fifteen months, accumulates ten or more points against his license issued by the Department of Motor Vehicles, or an equivalent license issued by the driver's state of residence, shall be revoked.

(c) The Commission may at any time review the fitness of a driver to be licensed by the Commission in view of any moving violation, accident, or other driving related incident. Nothing contained herein shall preclude the imposition by the Commission of additional or more severe penalties, or any other action deemed appropriate, in accordance with the Rules of the Commission.

(d) For the purpose of this Rule, the points assigned by the Department of Motor Vehicles for any violation shall be deemed to have been accumulated as of the date of occurrence of the violation.

(e) The relevant fifteen-month period to be used for calculating any suspension or revocation imposed under subsection (a) or (b) herein shall be calculated from the date of the most recent occurrence which led to a conviction of a violation carrying points; provided however, that no action under subsection (a) or (b) shall be taken with regard to any violation carrying points which occurred prior to the effective date of this Rule.

(f) For the purpose of calculating penalties pursuant to subsection (a) or (b) herein, a driver who has accumulated points for multiple violations arising from a single incident shall be deemed to have accumulated points for the single violation with the highest point total.

(g) Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the Department of Motor Vehicles, and who furnishes the Commission with proof that the course was completed after the effective date of this Rule shall have two (2) points deducted from the total number of points assessed pursuant to this Rule. No point reduction shall affect any suspension or revocation action taken pursuant to these Rules prior to the completion of the course. No person shall receive a point reduction pursuant to this subdivision more than once in any eighteen-month period, and no person shall receive a point reduction unless attendance at the course is voluntary on the part of the licensee.

HISTORICAL NOTE

Section added City Record Sept. 20, 1999 §2, eff. Oct. 20, 1999. [See T35 §4-17 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9-21

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 9*1 COMMUTER VANS

§9-21 Special Procedures Relating to Unlicensed Commuter Van Operations.

Where the Commission or an administrative tribunal thereof finds an owner liable for operating a vehicle as a commuter van without an authorization to operate a commuter van service or without a commuter van license, the Commission shall notify the New York State Commissioner of Motor Vehicles pursuant to subparagraph 4 of paragraph a of subdivision 5 of §80 of the New York State Transportation Law of such finding. The Commissioner of Motor Vehicles may take such action as required pursuant to such subparagraph 4, including the suspension of the registration of such vehicle and the denial any application for the registration of such vehicle or any application for the renewal thereof pursuant to subdivision 5-a of §401 of the Vehicle and Traffic Law until such time as the Commission may give notice that the violation has been corrected to its satisfaction. The Commission shall also notify the Department of Finance where it finds an owner liable for operating a vehicle as a commuter van without an authorization to operate a commuter van service or without a commuter van license.

HISTORICAL NOTE

Section added City Record Dec. 1, 1999 §2, eff. Dec. 31, 1999. [See T35 ch. 8 footnote]. Section renumbered by the Law Department per Charter §1045(b).

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 9 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

APPENDIX A*1 FORM K UNIFORM NOTICE OF CANCELLATION OF MOTOR CARRIER INSURANCE POLICIES

APPENDIX A*1 FORM K UNIFORM NOTICE OF CANCELLATION OF MOTOR CARRIER INSURANCE POLICIES

(EXECUTED IN TRIPLICATE)

Check Type Canceled

BI and PD

Cargo

Filed with _____ (NAME OF COMMISSION) _____ (hereinafter called Commission)

This is to advise that under the terms of a policy or policies issued to:

_____ (NAME OF MOTOR CARRIER)
_____

of _____ (ADDRESS OF MOTOR CARRIER)
_____

by _____ (NAME OF COMPANY)
_____

of _____ (ADDRESS)
_____

said policy or policies, including any and all endorsements forming a part thereof or certificates issued in connection therewith, is (are) hereby canceled effective as of the _____ day of _____, 19_____, 12:01 A.M., standard time at the address of the Insured as stated in said policy or policies provided such date is not less than thirty (30) days after the actual receipt of this notice by the Commission.

Insurance Company File No. _____ _____

Insurance Company File No.(POLICY NO.) (SIGNATURE OF INSURER)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., Sec. 302(b)(2)).

FORM L

UNIFORM NOTICE OF CANCELLATION OF

MOTOR CARRIER SURETY BONDS

(EXECUTED IN TRIPLICATE)

Check Type Canceled

BI and PD

Cargo

Filed with _____ (NAME OF COMMISSION) _____ (hereinafter called Commission)

This is to advise that, under the terms of surety bond(s) executed in behalf of

_____ (NAME OF PRINCIPAL)
_____

of _____ (ADDRESS)
_____

by _____ (NAME OF SURETY)
_____

of _____ (ADDRESS)
_____

said bond(s), including any and all riders or certificates attached thereto or issued in connection therewith, is (are) hereby canceled effective as of the _____ day of _____, 19_____, 12:01 A.M., standard time at the address of the Principal as stated in said bond(s) provided such date is not less than thirty (30) days after the actual receipt of this notice by the Commission.

Insurance Company File No. _____ _____

Insurance Company File No.(POLICY NO.) (SIGNATURE OF PRINCIPAL OR SURETY)

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., Sec. 302(b)(2)).

FORM E

UNIFORM MOTOR CARRIER BODILY INJURY

AND PROPERTY DAMAGE LIABILITY

CERTIFICATE OF INSURANCE

(EXECUTED IN TRIPLICATE)

Filed with_____ (hereinafter called Commission)

Filed with (Name of Commission)

This is to certify, that the _____

(Name of Company)

(hereinafter called Company) of _____

(Home Office Address of Company)

has issued to _____ of _____

(Name of Motor Carrier) (Address of Motor Carrier)

a policy or policies of insurance effective from _____ 12:01 A.M., standard time at the address of the insured stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed under such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the Company agrees to furnish the Commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving thirty (30) days' notice in writing to the State Commission, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of the Commission.

Countersigned at _____

Countersigned at (Street Address) (City) (State) (Zip Code)

this _____ day of _____ 19 _____

Authorized Company Representative

Insurance Company File No. _____

Insurance Company File No. (Policy Number)

FORM F

UNIFORM MOTOR CARRIER BODILY INJURY

AND PROPERTY DAMAGE LIABILITY

INSURANCE ENDORSEMENT

It is agreed that:

1. The certification of the policy, as proof of financial responsibility under the provisions of any State motor carrier law or regulations promulgated by any State Commission having jurisdiction with respect thereto, amends the policy to provide insurance for automobile bodily injury and property damage liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby, provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.

2. The Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance has been filed with the State Commissions indicated on the reverse side hereof.

3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State Commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date the notice is actually received in the office of such Commission.

Attached to and forming part of policy No. _____ issued by _____

_____, herein called Company, of _____

_____ to _____ of _____

Dated at _____ this _____ day of _____ 19 _____

Countersigned by_____ _____

Authorized Company Representative

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., Sec. 302(b)(2)).

(Obverse)

FORM G

UNIFORM MOTOR CARRIER BODILY INJURY AND

PROPERTY DAMAGE LIABILITY SURETY BOND

(EXECUTED IN TRIPLICATE)

KNOW ALL MEN BY THESE PRESENTS, That we, _____

(Name of Motor Carrier Principal)

of _____, as Principal (hereinafter called Principal, and _____

(City) (State) (Name of Surety)

_____, a corporation created and existing under the laws of the state of _____, with principal office at _____, _____, as Surety (hereinafter called Surety), are held and firm bound (City) (State)

unto the State of _____ in the sum or sums hereinafter provided for which payment, well and truly to be made, the Principal and Surety hereby bind themselves, their successors and assigns, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal is or intends to become a motor carrier subject to the laws of such State and the rules and regulations of

(Name of Commission)

(hereinafter called Commission), relating to insurance or other security for the protection of the public, and has elected to file with the Commission a surety bond conditioned as hereinafter set forth; and

WHEREAS, this bond is written to assure compliance by the Principal as a motor carrier of passengers or property with the laws of such State and the rules and regulations of the Commission relating to insurance or other security for the protection of the public, and shall inure to the benefit of any person or persons who shall recover a final judgment or judgments against the Principal for any of the damages herein described.

NOW, THEREFORE, if every final judgment recovered against the Principal for bodily injury to or the death of any person or loss of or damage to the property of others, sustained while this bond is in effect, and resulting from the negligent operation, maintenance, or use of motor vehicles in transportation (but excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damage to property of the Principal and property transported by the Principal designated as cargo), shall be paid, then this obligation shall be void, otherwise to remain in full force and effect.

Within the limits hereinafter provided, the liability of the Surety extends to such losses, damages, injuries, or deaths regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the principal or elsewhere.

(Reverse)

This bond is effective from _____ (12:01 A.M., standard time at the address of the Principal as stated herein) and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Commission, such termination to become effective not less than thirty (30) days after actual receipt of said notice by the Commission. The Surety shall not be liable hereunder for the

payment of any judgment or judgments against the Principal for bodily injury to or the death of any person or persons or loss of or damage to property resulting from accidents which occur after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

The liability of the Surety on each motor vehicle shall be the limits prescribed in the laws of such State and the rules and regulations of the Commission governing the filing of surety bonds, which were in effect at the time this bond was executed, and will be a continuing one notwithstanding any recovery hereunder.

IN WITNESS WHEREOF, the said Principal and Surety have executed this instrument on the _____ day of _____, 19_____

(Principal)

By _____

(Affix Corporate Seal)

(Surety)

_____, _____

(City) (State)

By _____

Countersigned at _____ this _____ day of _____, 19 _____

Bond No. _____

Registered Resident Agent

This form determined by the National Association of Railroad and Utilities Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of Section 202(b)(2) of the Interstate Commerce Act (49 U.S.C., Sec. 302(b)(2)).

[Footnote 1]: * Appendix A added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter 9 added City Record Sept. 26, 1994 eff. Oct. 27, 1994.

35 RCNY 10-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 10 RULES GOVERNING PUBLIC AUCTION OF TAXICAB LICENSES

§10-01 Public Auction of Taxicab Licenses.

(a) The chairman may issue taxicab licenses to qualified persons, to replace any revoked taxicab licenses that were not sold by the owners prior to revocation. Issuance shall be made through application for a license, submitted by the highest bidder at a public auction. (A taxicab license is referred to herein as a "medallion.") The medallion numbers shall be set by the Chairman.

(b) The public auction will be conducted by a licensed auctioneer. The auction sale shall be advertised in the City Record for at least twenty days before the auction. The Chairman may also advertise the auction in his sole discretion in newspapers and other media. The Chairman may, at any time and for any reason, postpone or cancel an auction.

(c) In accordance with Title 35 RCNY §l-04(g),*1 the replacement of an independent taxicab owner license shall be an independent taxicab owner license; similarly, the replacement of a fleet or minifleet license shall be a fleet or minifleet taxicab license. A fleet or minifleet medallion may be issued only to a corporation which owns at least one other fleet or minifleet medallion. Purchase at auction of two such medallions would satisfy that requirement.

(d) If more than one fleet or minifleet medallion is being auctioned, the medallions will be auctioned first as a pair and then separately. The final sale of the medallions will be in the manner (as a pair or separately), which will bring the highest return to the City.

(e) Any person may bid. The highest bidder must, however, satisfy all criteria for taxicab license owners. Satisfaction of the ownership criteria will be determined by the Chairman in the review of the application by the highest bidder for a license.

(f) The highest bidder must file an application for a taxicab license with the Commission within three weeks from the auction date, unless the deadline is extended for good cause by the Chairman.

(g) If the highest bidder's application for a license is denied for any cause, the second-highest bidder will be awarded the sale, but conditional on approval by the Chairman of an application for a taxicab license.

(h) If neither the highest bidder's nor the second-highest bidder's application for a license is approved, the auction shall be nullity.

(i) The highest bidder must provide to the auctioneer, immediately after the close of bids, a deposit covering a percentage of the high bid, as set in advance by the Chairman, in the form of a certified check or money order or such other form as set in advance and published in the **City Record** by the Chairman.

(j) In addition to the amount bid, the highest bidder will be responsible on the transfer closing date for any sales tax, medallion transfer tax, or other applicable taxes or fees.

(k) The outcome of the auction remains conditional pending the resolution of any challenge to the Commission's legal authority to issue and auction the medallions.

(l) The chairman is authorized to delegate matters pertaining to the auction and to take such further measures as in his discretion may be appropriate to the sale of the medallions. The Chairman is authorized in his discretion to modify the procedures set forth in subsections (d) through (i) herein, upon public notice in the **City Record** made in advance of the auction.

HISTORICAL NOTE

Section added City Record Jan. 2, 1992 eff. Feb. 1, 1992.

FOOTNOTES

1

[Footnote 1]: * There is no 35 RCNY §1-04(g).

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 11*1 RULES CONCERNING PETITIONS TO INITIATE RULEMAKING

§11-01 Definitions.

Person. Person shall mean any individual, partnership, corporation or other legal entity, and any individual or entity acting in a fiduciary or representative capacity.

Petition. Petition shall mean a request or application for the Taxi and Limousine Commission to adopt a rule.

Petitioner. Petitioner shall mean the person who files a petition.

Rule. Rule shall have the same meaning set forth in §1041(5) of the New York City Charter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chap. 11 renumbered City Record Sept. 26, 1994 eff. Oct. 27, 1994 (formerly Chap. 9)

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 11*1 RULES CONCERNING PETITIONS TO INITIATE RULEMAKING

§11-02 Procedures for Submitting Petitions.

(a) Any person may petition the Taxi and Limousine Commission to consider the adoption of rules.

(b) The petition must contain the following information:

(1) The proposed language for the rule to be adopted;

(2) A statement of the Taxi and Limousine Commission's authority to promulgate the rule and its purpose;

(3) The petitioner's argument in support of adopting the rule;

(4) The period of time the rule should be in effect;

(5) The name, address and telephone number of the petitioner;

(6) The signature of the petitioner.

(c) All petitions should be typewritten.

(d) The Taxi and Limousine Commission is authorized to adopt a form petition. Every petition shall be submitted on such a form unless such a form is not available from the Taxi and Limousine Commission, in which case the petition shall be filed on plain white, durable paper which shall be eleven by eight and one-half inches in size.

(e) Petitions shall be mailed or delivered to the offices of the Taxi and Limousine Commission at 221 W. 41st Street, New York, New York, 10036, marked to the attention of the Chairman.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chap. 11 renumbered City Record Sept. 26, 1994 eff. Oct. 27, 1994 (formerly Chap. 9)

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 11*1 RULES CONCERNING PETITIONS TO INITIATE RULEMAKING

§11-03 Procedures for Consideration of Petitions.

(a) Upon receipt of a petition submitted in proper form, the petition shall be stamped with the date it was received and shall then be assigned a processing number. The petition shall then be forwarded to the Chairman who may, at his or her discretion, reject the petition or present the petition for consideration by the Commission. Within sixty days from the date such petition is received in proper form, the Chairman shall either deny such petition by written notice stating the reasons for the denial, or shall state in writing the Taxi and Limousine Commission's intention to grant such petition and to initiate rulemaking by a specific date.

(b) If the Chairman denies a petition, copies of the Chairman's notice rejecting such petition, together with a copy of the petition, shall be presented to the Commission at the next regularly scheduled session. At or after such session, any Commission member may present the petition for consideration by the Commission as to whether to initiate rulemaking. The Commission will notify the petitioner of the results of such session.

(c) In proceeding with rulemaking, the Taxi and Limousine Commission shall not be bound by the language proposed by the petitioner, but may amend or modify such proposed language at the Taxi and Limousine Commission's discretion.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chap. 11 renumbered City Record Sept. 26, 1994 eff. Oct. 27, 1994 (formerly Chap. 9)

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 11*1 RULES CONCERNING PETITIONS TO INITIATE RULEMAKING

§11-04 Review.

The Taxi and Limousine Commission's decision to deny or grant a petition is final and shall not be subject to judicial review.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chap. 11 renumbered City Record Sept. 26, 1994 eff. Oct. 27, 1994 (formerly Chap. 9)

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-01 Definitions.

Agent. An "agent" is an individual, partnership or corporation acting, by employment, contract or otherwise, on behalf of one or more owners to operate or provide for the operation of a taxicab in accordance with the requirement of this chapter and any rule promulgated by the Commission. The term "agent" shall not include an attorney or representative who appears on behalf of one or more owners before the Commission or an administrative tribunal, and taxicab drivers licensed pursuant to Chapter 5, Title 19 of the Administrative Code when acting in that capacity.

Merchant. A "merchant" is an individual or business entity licensed by the Commission that contracts with a merchant bank provider of credit/debit card services and other merchant account related services, which merchant bank provider is approved by the Commission as a subcontractor to one or more taxicab technology service providers for the purpose of providing in-cab payment of taxicab fares, surcharges, tolls and tips by credit/debit cards.

Taxicab technology service provider. A "taxicab technology service provider" is a vendor who has contracted with the Commission to install and maintain the taxicab technology system in taxicabs.

Taxicab technology system. The "taxicab technology system" is hardware and software that provides the following four core services (collectively "four core services"): (i) credit/debit card payment required by section 3-03(e)(7) of this title, (ii) text messaging required by section 3-03(e)(8) of this title, (iii) trip data collection and transmission required by section 3-06 of this title, and (iv) data transmission with the passenger information monitor required by section 3-07 of this title.

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Merchant added City Record June 12, 2007 §29, eff. July 12, 2007. [See T35 §1-01 Note 3]

Taxicab technology service provider added City Record June 12, 2007 §29, eff. July 12, 2007. [See T35 §1-01 Note 3]

Taxicab technology system added City Record June 12, 2007 §29, eff. July 12, 2007. [See T35 §1-01 Note 3]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record March 29, 1996 effective April 30, 1996. Note further provisions:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-530 of such Code, authorizing TLC to license and regulate medallion leasing agents.

The promulgated regulations implement Local Law 83 of 1995, which authorizes TLC to license and regulate taxicab medallion leasing agents. Taxi medallion owners who choose to designate an agent to operate their taxicabs must use a licensed agent.

The annual fee for an agent's license is $500. An agent must maintain a business premises in a location zoned for the operation of such business with sufficient off-street parking to store a portion of the taxicabs managed. In addition, an agent must deposit a $50,000 bond with the Commission, payable upon violation of any Commission rules or the Administrative Code.

In addition, the Taxicab Owners Rules were amended in order to make these rules consistent with the newly proposed agent regulations. Designation of an agent would not relieve an owner of the responsibilities of a licensee.

The proposal did not appear in a regulatory agenda for the agency. The regulations are required to implement Local Law 83 of 1995.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-02 Agent's License.

(a) No individual, partnership or corporation shall act as an agent without first obtaining a license therefor from the Commission.

(b) An application for an agent's license and for the renewal thereof shall be submitted on behalf of a sole proprietorship by the proprietor; on behalf of a partnership by a general partner thereof; on behalf of a corporation by an officer or director thereof; or by any other type of business entity by the chief executive officer thereof, irrespective of organizational title. The application shall contain a sworn and notarized statement by such individual that the statements therein are true under the penalties of perjury.

(c) An applicant for an agent's license shall be fingerprinted for the purpose of securing criminal history records from the New York State Division of Criminal Justice Services. The applicant shall pay any processing fee required by the New York State Division of Criminal Justice Services. Fingerprints shall be taken of the proprietor if the applicant is a sole proprietorship; all the general partners if the applicant is a partnership; all the officers, directors, and owners of more than ten percent of the outstanding stock of the corporation if the applicant is a corporation; and if the applicant is another type of business entity, the chief executive officer, irrespective of organizational title.

(d) An applicant for an agent's license and the renewal thereof shall deposit with the Commission a bond, in the penal sum of fifty thousand ($50,000) dollars, containing one or more sureties to be approved by the Commission. Such bond shall be payable to the City of New York and shall be conditioned on the license applicant or licensee complying with the provisions of the Administrative Code of the City of New York and applicable rules or regulations of the Commission, and payment of all fines imposed by the Commission and all judgments or settlements arising from

damages occasioned to any person by reason of any misrepresentation, fraud or deceit, or any unlawful act or omission of such licensee, or his or her employee, officer, director, partner, owner of more than ten percent of the outstanding stock of the licensee or the chief executive officer of such licensee while such individual is acting on behalf of such licensee, or any other violation of §19-530 of the Administrative Code. The term judgment shall include but not be limited to an order of an Administrative Law Judge of the Commission or a recommendation of the Office of Administrative Trials and Hearings adopted by the Commission directing restitution to an aggrieved party. The agent is immediately liable for satisfaction of any fine or judgment upon determination of the amount thereof, or, if timely appeal is taken, upon final determination of the appeal. The bond shall remain in effect for one year following the expiration or revocation of the license.

(e) The Commission may deny an application for an agent's license or renewal of a license or, after notice and hearing, revoke or suspend any license issued, and/or impose a civil penalty of up to ten thousand dollars ($10,000) on a licensee, if it finds that an applicant, a licensee, any officer, director, partner, or owner of more than ten percent of the outstanding stock of an applicant or licensee, or the chief executive officer of an applicant or licensee has:

(1) made a material misstatement or misrepresentation on an application for such a license or the renewal thereof; or

(2) made a material misrepresentation or omission or committed a fraudulent or unlawful act while engaged in the business or occupation of, or holding himself, herself or itself out as an agent. Such acts shall include but not be limited to:

(i) presentation of a vehicle for inspection by the Commission with a vehicle identification number other than the one under which such vehicle is licensed by the Commission;

(ii) operation of a vehicle with a vehicle identification number which has been removed and reattached, or which is other than the one under which such vehicle is licensed by the Commission;

(iii) presentation of a document to the Commission which falsely states that insurance requirements with respect to a licensed vehicle have been met; and

(iv) conviction of bribing or attempting to bribe any officer or employee of the Commission; or

(3) violated any provision of §19-530 of the Administrative Code of the City of New York or any applicable rule of the Commission.

(f) The Commission may deny an application for an agent's license or renewal of a license or, after notice and hearing, revoke or suspend any license issued, if an applicant, a licensee, any officer, director, partner, or owner of more than ten percent of the outstanding stock of an applicant or licensee, or the chief executive officer of an applicant or licensee has been found in violation of any Commission rules as a medallion owner and such party's penalty as owner is revocation or divestiture of the owner's license.

(g) The Commission may deny an application for an agent's license or renewal of a license if the proprietor, any general partner, officer, director or owner of ten percent or more of the outstanding stock of the applicant or the chief executive of the applicant, as may be the case, has been convicted of a crime which under article twenty-three-A of the Correction Law would provide a basis for the denial of such license or renewal.

(h) Upon application for a license or renewal of a license, or upon request of the Commission an agent shall provide the Commission with the identity of all shareholders, partners, officers and other principals of such agent.

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record March 29, 1996 effective April 30, 1996. Note further provisions:

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under section 2303(a) of the Charter of the City of New York, authorizing TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for hire in the city; under section 2303(b) of such Charter, authorizing TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under section 19-503 of the Administrative Code of the City of New York, authorizing TLC to promulgate rules and regulations necessary to exercise the authority conferred upon it by the Charter; and under section 19-530 of such Code, authorizing TLC to license and regulate medallion leasing agents.

The promulgated regulations implement Local Law 83 of 1995, which authorizes TLC to license and regulate taxicab medallion leasing agents. Taxi medallion owners who choose to designate an agent to operate their taxicabs must use a licensed agent.

The annual fee for an agent's license is $500. An agent must maintain a business premises in a location zoned for the operation of such business with sufficient off-street parking to store a portion of the taxicabs managed. In addition, an agent must deposit a $50,000 bond with the Commission, payable upon violation of any Commission rules or the Administrative Code.

In addition, the Taxicab Owners Rules were amended in order to make these rules consistent with the newly proposed agent regulations. Designation of an agent would not relieve an owner of the responsibilities of a licensee.

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-03 Term of Agent's License.

(a) An agent's license shall expire on December 31 of the year in which it is issued, unless sooner suspended or revoked by the Commission.

(b) If at any time during the term of the agent's license the Commission becomes aware of information that the agent no longer meets the requirements for an agent's license, the Commission may deny his or her renewal application, or suspend or revoke his or her license in the manner provided in the Procedures in the Event of a Violation of Commission Rules, §12-07.*2

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record March 29, 1996 effective April 30, 1996. Note further provisions:

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2

[Footnote 2]: * §12-07 was repealed in City Record Dec. 1, 1999 §4.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-04 License Fees.

(a) In accordance with §19-530(b) of the Administrative Code of the City of New York, the fee for an agent's license shall be five hundred dollars ($500) annually, to be paid at the time of filing the application for issuance or renewal of such license. If a license is granted for a period of six months or less, the fee shall be two hundred and fifty dollars ($250).

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

FOOTNOTES

1

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-05 Agent's Business Premises.

(a) An agent acting on behalf of an owner, who leases or otherwise dispatches one or more taxicabs for return at the end of a shift, shall maintain business premises in a location zoned for the operation of such business, with:

(1) sufficient off-street space at or near its business premises to store the lesser of twenty-five vehicles or the following: fifty percent of the taxicabs leased on a daily or shift basis, plus five percent of the taxicabs leased for longer than one day;

(2) sufficient office space to conduct business, where all records required by the Commission, including trip sheets and driver records, are kept;

(3) regular business hours, including the hours of 9:00 a.m. through 5:00 p.m. on every weekday other than legal holidays; and

(4) a business address and telephone number on file with the Commission.

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-06 Standards of Conduct.

(a) An agent shall not present a vehicle for inspection by the Commission with a vehicle identification number other than the one under which such vehicle is licensed by the Commission.

(b) An agent shall not operate a vehicle with a vehicle identification number which has been removed and reattached, or which is other than the one under which such vehicle is licensed by the Commission.

(c) An agent shall not present a document to the Commission which falsely states that insurance requirements with respect to a licensed vehicle have been met.

(d) An agent shall not bribe or attempt to bribe any officer or employee of the Commission.

(e) An agent, while performing his or her duties and responsibilities as an agent, shall not commit or attempt to commit, alone or in concert with another, any act of fraud, material misrepresentation, dishonesty or larceny or perform any willful act of omission or commission which is in violation of any applicable provision of law.

(f) An agent shall promptly respond to and comply with all inquiries, directives, summonses and other communications from the Commission or from the New York City Department of Investigation, and shall make their business premises and books and records available upon request for inspection by employees or designees of the Commission.

(g) An agent shall provide the Commission with a list of all taxicabs operated by the agent, annually and upon

request.

(h) An agent, while performing his or her duties and responsibilities as a taxicab agent, shall not threaten, harass or abuse any Commission or other governmental representative, public servant or other person.

(i) An agent, while performing his or her duties and responsibilities as a taxicab agent, shall not use any physical force against any Commission or other governmental representative, public servant or other person.

(j) An agent shall not dispatch a taxicab which is unlicensed.

(k) An agent shall not dispatch a taxicab which does not have a current medallion affixed thereto.

(l) An agent shall dispatch taxicabs in accordance with the double shift requirements of Owners Rule 1-09(a), which requires that fleet and minifleet taxicabs be operated for a minimum of two shifts of nine hours each day including weekends and holidays.

(m) An agent shall not dispatch a taxicab unless all equipment, including brakes, tires, lights and signals are in good working order and meet all requirements of the New York State Vehicle and Traffic Law, the Commission, section 3-03 and/or 3-03.1 and 3-03.2 of this title and these rules.

(n) An agent shall not dispatch a taxicab which is not equipped with a partition which isolates the driver from the rear seat passengers or all passengers of the taxicab, in accordance with section 1-17 of this title and meets the specifications set forth in section 3-03(e)(3)(i) of this title, unless the taxicab is exempt pursuant to section 1-17 of this title from the partition requirements and is equipped with an in-vehicle camera system in accordance with section 1-17 of this title in addition to the trouble light required by section 1-18(a) of this title.

(o) An agent shall not dispatch a taxicab which is not equipped with a help or distress signaling light system, in accordance with Owners Rule 1-18.

(p) An agent shall not dispatch a taxicab which is not equipped with a taximeter in accordance with Owners Rule 1-20.

(q) An agent shall not tamper with, alter, repair or attempt to repair a taximeter or any seal affixed thereto by a licensed taximeter repair shop or another authorized facility, or the taxicab technology system as defined in section 12-01 of this chapter, or alter, repair or attempt to repair any cable mechanism or electrical wiring of a taximeter or taxicab technology system, or make any change in a vehicle's mechanism or its tires which would affect the operation of the taximeter or of the taxicab technology system.

(r) An agent shall not dispatch a taxicab unless the following are present in the taxicab:

(1) the driver's written trip record, also known as a "trip sheet" until the taxicab is required to be equipped with the taxicab technology system as defined in section 12-01 of this chapter, and thereafter whenever the taxicab technology system is inoperable for not more than forty-eight (48) hours following the filing of an incident report with the authorized taxicab technology service provider, as set forth in subdivision (u) of this section;

(2) the taxicab driver's license;

(3) the rate card in the frame alongside the frame for the taxicab driver's license;

(4) an insurance card or photostat thereof, unless the owner is self insured and has noted this fact on the rate card along with any other information required by the Commission; and

(5) all notices required to be posted in the taxicab.

(s) An agent shall not authorize or allow a driver to operate a taxicab unless either the driver's name has been or entered on the rate card by the Commission and such driver, if operating the vehicle by lease arrangement, is not operating beyond the lease expiration date entered on the rate card, or "Unspecified Drivers" has been entered on the rate card by the Commission.

(t) An agent shall not authorize or allow a driver to operate a taxicab unless the driver possesses a current, valid driver's license and a current, valid taxicab driver's license.

(u) Responsibilities of agent with regard to the taxicab technology system. (1) (i) For any taxicab that is required to be equipped with the taxicab technology system, such equipment shall at all times be in good working order and each of the four core services shall at all times be functioning. (ii) In the event of any malfunction or failure to operate of such taxicab technology system, the agent shall file an incident report with the authorized taxicab technology service provider promptly and in no event more than two (2) hours following the agent's discovery of such malfunction or failure to operate or such time as the agent reasonably should have known of such malfunction or failure to operate. If the driver or taxicab owner previously filed a timely incident report regarding such malfunction or failure to operate, the agent shall not be required to file a separate incident report but shall obtain an incident report number from the driver, owner or taxicab technology service provider. Upon instruction from the owner, the agent shall meet the appointment for repair scheduled by the authorized taxicab technology service provider following the filing of an incident report with such authorized taxicab technology service provider. A taxicab in which any of the four core services of the taxicab technology system, or any part thereof, are not functioning shall not operate more than forty-eight (48) hours following the timely filing of an incident report by the owner, driver or agent.

(2) The agent for any taxicab that is required to be equipped with the taxicab technology system shall equip such taxicab, except as provided in section 1-11(g) of this title, with a taxicab technology system as set forth in sections 3-03(e)(7) and (8), 3-06 and 3-07 of this title.

(3) An agent for any taxicab requiring six (6) or more repairs of the taxicab technology system in any thirty (30) day period shall promptly take such vehicle for inspection to or schedule an inspection with the Commission's Safety and Emissions Facility. Such requirement shall not apply to the agent if compliance is made by the owner or driver of such vehicle.

(4) A merchant who is an agent may charge a mark-up to a driver licensed by the Commission of not more than five percent (5%) of the total credit/debit card charges incurred during the driver's shift.

(v) An agent who becomes aware of the death or incompetency of an owner of an interest in a taxicab license shall promptly inform the Commission thereof.

HISTORICAL NOTE

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Subd. (m) amended City Record June 12, 2007 §30, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (n) amended City Record Apr. 23, 2007 §8, eff. May 23, 2007. [See T35 §1-17 Note 4]

Subd. (q) amended City Record June 12, 2007 §30, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (r) par (1) amended City Record June 12, 2007 §30, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (u) added City Record June 12, 2007 §30, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (v) added (as (u)) City Record Dec. 24, 2008 §10, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record March 29, 1996 effective April 30, 1996. Note further provisions:

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-07 Procedures in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 12-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 12*1 TAXICAB AGENTS

§12-08 Penalties for Violation of Rules Governing Agents.

(a)

Rule No.	Penalty All fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed.	Personal Appearance Required
12-02(a)	$500-1,000	Yes
12-02(e)	$500-10,000 and/or revocation	Yes
12-02(f)	suspension or revocation	Yes
12-05(a)	$500-1,000 and suspension until compliance	Yes
12-06(a)	$1,000-10,000 and/or revocation	Yes
12-06(b)	$1,000-10,000 and/or revocation	Yes
12-06(c)	$1,000-10,000 and/or revocation	Yes
12-06(d)	$1,000-10,000 and/or revocation	Yes
12-06(e)	$1,000-5,000	Yes
12-06(f)	$500-1,500	Yes
12-06(g)	$250 and suspension until compliance	Yes
12-06(h)	$100-350 and/or suspension up to 30 days	Yes
12-06(i)	$100-350 and/or suspension up to 30 days	Yes
12-06(j)	$500-2,000 and/or suspension up to 30 days	Yes
12-06(k)	$500-2,000 and/or suspension up to 30 days	Yes

§12-06(m)	$100	No
12-06(q)	$250-1,500 and/or suspension up to 30 days	Yes
12-06(s)	$350	No
12-06(t)	$500-2,000 and/or suspension up to 30 days	Yes
§12-06(u)(1)(i)	$250 and suspension until compliance	Yes
§12-06(u)(1)(ii)	$250 and suspension until compliance	Yes
§12-06(u)(2)	$1000 and suspension until compliance	Yes
§12-06(u)(3)	$250	No
§12-06(u)(4)	First violation: $200. Second violation: $300. Third violation: $500.	Yes
12-06(v)	$100 In addition to the penalty payable to the Commission, the administrative law judge may order the agent to pay restitution to the driver, equal to the excess amount that was charged to the driver.	Yes

(b) A penalty of $75-350 and/or suspension shall be imposed for default.

HISTORICAL NOTE

Subd. (a) Penalty column heading amended City Record Nov. 2, 2006 §20, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Section added City Record Mar. 29, 1996 §1, eff. Apr. 30, 1996. [See T35 Chapter 12 footnote]

Subd. (a) §12-06(m) added City Record June 12, 2007 §31, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) §12-06(u)(1)(i) added City Record June 12, 2007 §31, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) §12-06(u)(1)(ii) added City Record June 12, 2007 §31, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) §12-06(u)(2) added City Record June 12, 2007 §31, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) §12-06(u)(3) added City Record June 12, 2007 §31, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) §12-06(u)(4) added City Record June 12, 2007 §31, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (a) §12-06(v) added (as 12-06(u)) City Record Dec. 24, 2008 §11, eff. Jan. 23, 2009. [See T35 §1-80 Note 1]

FOOTNOTES

1

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Rules of the City of New York

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35 RCNY 13-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 13*1 RULES GOVERNING ISSUANCE AND PUBLIC SALE OF TAXICAB LICENSES

§13-01 Definitions.

For purposes of this chapter:

(a) "Accessible medallion" shall mean a taxicab license valid for use only with a vehicle accessible to a passenger using a wheelchair;

(b) "Alternative fuel medallion" shall mean a taxicab license valid for use only with a vehicle powered by compressed natural gas or a hybrid electric vehicle;

(c) "Bidder" shall mean an individual submitting a bid for one or more lots of taxicab medallions at an auction provided for under this chapter, except that, as to subdivisions (f), (g), (h), (m), (n), (o) and (p) of section 13-03 of this chapter, the term bidder shall include any and all of the owners, partners, shareholders, or members of any entity to which a bid is assigned pursuant to subdivision (g) of section 13-03;

(d) "Chairperson" shall mean the Chairperson of the Taxi and Limousine Commission, as defined in section 2301(c) of the New York City Charter, or his or her designee;

(e) "Commission," "minifleet," "owner," "taxicab," and "taxicab license" shall have the meanings of those terms as defined in section 1-01 of this title.

(f) "Hybrid electric vehicle" shall have the meaning of that term as used in section 19-533 of the Administrative Code and in section 3-01.1(b) of this title;

(g) "Independent medallion" shall mean a taxicab license that must be owned by the owner of no more than one taxicab license, as provided by section 19-504(i) of the Administrative Code;

(h) "Lot" shall mean one taxicab license, in the case of an independent medallion, and two taxicab licenses in the case of minifleet medallions;

(i) "Minifleet medallion" shall mean a taxicab license that must be owned by the owner of more than one taxicab license, as provided by section 19-504(i) of the Administrative Code;

(j) "Restricted medallion" shall mean either an accessible medallion or an alternative fuel medallion;

(k) "Unrestricted medallion" shall mean a taxicab license that is not a restricted medallion.

HISTORICAL NOTE

Section amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007. [See Statement 2 at end of Chapter] Note: This amendment overlooked the amendment to §13-01(e) by City Record June 20, 2006 §8. The amendment is incorporated here.

Section added City Record Apr. 13, 2006 §1, eff. May 13, 2006. [See Statement 1 at end of Chapter]

Subd. (e) amended (as Subd. (d)) City Record June 20, 2006 §8, eff. July 20, 2006. [See T35 §1-01 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007; City Record Apr. 13, 2006 §1, eff. May 13, 2006. See Statements at end of Chapter.

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***** Current through December 2009 ****

35 RCNY 13-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 13*1 RULES GOVERNING ISSUANCE AND PUBLIC SALE OF TAXICAB LICENSES

§13-02 Issuance and Public Sale of Additional Taxicab Licenses.

(a) In accordance with Administrative Code section 19-532, the Chairperson may issue and sell additional taxicab licenses up to the number authorized by state and local law.

(b) Medallions shall be sold in lots. The ratio of minifleet medallions to independent medallions shall be maintained in accordance with section 19-504(i) of the Administrative Code.

(c) Only a person who owns no other medallions shall own an independent medallion. Independent medallions shall be subject to the "owner must drive" requirements of section 1-09(b) of this title.

(d) A minifleet medallion shall be owned only by a minifleet in which each officer, director, shareholder, partner or member does not have a financial interest in any independent medallion.

(e) The terms and conditions for the public sale of licenses pursuant to this chapter shall provide that vehicles operated by or under agreement with the owners of such licenses shall be entitled to accept hails from passengers in the street in accordance with section 19-504(a)(1) of the Administrative Code.

(f) The Chairperson shall place a public notice of the date and time upon which bids are due, the number of medallions to be sold, whether those medallions shall be sold as accessible medallions, alternative fuel medallions or unrestricted medallions, the numbers of minifleet and independent medallions to be sold, the size of the reserve classes for each type of medallions to be sold and other terms of sale in the City Record for five (5) consecutive days, beginning not less than thirty (30) days prior to the deadline for bidding. In the event that the Chairperson shall, in his or

her discretion, postpone the public sale, the Chairperson shall place notice of such postponement of the sale in the City Record for five (5) consecutive days beginning at least ten (10) days prior to the new deadline for bidding. The Chairperson may place such additional notices in the City Record or other publications, as the Chairperson deems advisable.

(g) Separate public sales may be conducted for each of independent and minifleet medallions for each of accessible medallions, alternative fuel medallions, and unrestricted medallions.

HISTORICAL NOTE

Section amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007. [See Statement 2 at end of Chapter] Note: This amendment overlooked the amendment to §13-02(d) by City Record June 20, 2006 §9. That amendment was not incorporated here because this amendment covers the subject.

Section renumbered and amended (former §13-01) City Record Apr. 13, 2006 §1, eff. May 13, 2006. [See Chapter 13 footnote]

Section repealed and added City Record Sept. 3, 2004 §§1, 2, eff. Oct. 3, 2004. [See Note 2]

Section repealed and added City Record Feb. 9, 2004 §§1, 2, eff. Mar. 10, 2004. [See Statement 1 at end of Chapter, see also Note 1]

Subd. (d) amended City Record June 20, 2006 §9, eff. July 20, 2006. [See T35 §1-01 Note 2]

NOTE

1. Provisions of City Record Feb. 26, 2004:

NOTICE OF COMPLETION

OF A FINAL ENVIRONMENTAL IMPACT STATEMENT

FOR THE ISSUANCE OF ADDITIONAL TAXICAB MEDALLIONS

Date Issued:	February 25, 2004
CEQR No.:	03TLC001Y
SEQRA Classification:	Type I
Lead Agency:	New York City Taxi and Limousine Commission40 Rector Street, 5th FloorNew York, NY 10006
Location:	New York City-City-wide

Pursuant to Executive Order 91 of 1977, as amended, and the Rules of Procedure for City Environmental Quality Review found at Title 62, Chapter 5 of the Rules of the City of New York (CEQR), to Article 8 of the New York State Environmental Conservation Law, the State Environmental Quality Review Act (SEQRA), and its implementing regulations as set forth in 6 NYCRR Part 617, the Taxi and Limousine Commission (TLC) has issued a Final Environmental Impact Statement (FEIS) for the Sale of Additional Taxicab Medallions described herein. The FEIS is available for public inspection at the following repositories:

New York City Taxi and Limousine Commission, 40 Rector Street, 5th Floor, New York, NY 10006; New York

City Office of Environmental Coordination, 100 Gold St., Second Floor, New York, NY 10038; The New York Public Library, 5th Avenue and 42nd Street, New York, NY 10018; Borough Presidents' Offices; Manhattan Community Board No. 1, 49-51 Chambers Street, Room 715, New York, NY 10007; and Manhattan Community Board No. 10, 215 West 125th Street, Suite 340, New York, NY 10027.

The FEIS is also available on the Taxi and Limousine Commission's Website, www.nyc.gov/html/tlc. A Draft Environmental Impact Statement (DEIS) was issued on December 26, 2003. Public hearings were held on January 7 and 12, 2004, and public comments were received until 5:00 p.m. on January 23, 2004. All comments received by this date were incorporated into Section 8.0 of the FEIS, **Response to Comments Made on the DEIS.** Description of the Proposed Project The City of New York proposes to improve taxi service through the issuance of 900 additional taxi medallions. Taxicabs fill a vital niche in the menu of transportation alternatives available to residents, commuters and visitors of New York City. Securing a cab during rush hour, late evenings and inclement weather may be very difficult. The TLC is proposing to issue the first 300 medallions for sale in the fiscal year ending June 30, 2004, followed by two subsequent medallion sales in Fiscal Years 2005 and 2006. The TLC may limit the number of medallions issued for sale. If all 900 medallions were sold by the end of Fiscal Year 2006, the total number of taxicab medallions in New York City would be 13,087. Required Approvals The proposed sale of additional taxicab medallions requires the following approvals:

· Amendments to New York State law requiring legislative approval; and

· Amendments to the New York City Administrative Code requiring City Council approval.

Potential Significant Adverse Impacts

The proposed action could have a potential significant adverse socioeconomic impact upon the taxicab industry as a result of a possible decrease in taxicab medallion values. However, as a matter separate from the proposed medallion sale, the Taxi and Limousine Commission has reviewed petitions for taxicab fare increases from industry groups and has determined that an increase in taxicab fares could reduce the potential socioeconomic impacts to the industry resulting from the sale of additional taxicab medallions.

Significant adverse traffic impacts are projected to occur at the study intersections (listed in "Mitigation Measures," below). These impacts include increased delays and decreased levels-of-service at study intersections. The vast majority of these impacts can be mitigated by reallocating one second of green time. However, for those intersections that require more than a reallocation of one second of green time, additional mitigation measures are proposed.

Traffic impacts would occur in each phase of the medallion sale, starting with the first sale of 300 medallions in 2004.

Mitigation Measures

To address the unavoidable significant adverse traffic impacts due to the proposed project, the following mitigation measures are proposed:

· The impacted lane groups and/or approaches at the study intersections that require more than one second of green time to be reallocated, or require other mitigation measures, are listed below:

· 3rd Avenue/East 56th Street-reallocate 2 seconds of green time from northbound phase to eastbound phase during weekday PM peak hour;

· 5th Avenue/42nd Street-reallocate 2 seconds of green time from southbound phase to the east/westbound phase during weekday AM peak hour;

· Madison Avenue/East 42nd Street-reallocate 2 seconds of green time from northbound phase to the east/westbound phase during weekday AM peak hour;

· 6th Avenue/West 30th Street-eliminate on-street parking and re-stripe the eastbound approach lane and reallocate one second of green time from eastbound phase to northbound phase;

· 6th Avenue/West 33rd Street-reallocate 2 seconds of green time from the leading pedestrian phase to the northbound phase during the weekday AM peak hour.

Alternatives

Three alternatives to the proposed action were evaluated in the FEIS. These alternatives included:

· The No Action Alternative: no additional medallions would be sold.

· Alternative 1: limit the sale to 300 medallions in Fiscal Year 2004.

· Alternative 2: limit the sale to 300 medallions in each of Fiscal Years 2004 and 2005.

Contact Information

Questions regarding the FEIS may be forwarded to:

Peter M. Mazer, General Counsel

New York City Taxi and Limousine Commission

40 Rector Street, 5th Floor

New York, NY 10006

(212) 676-1117

2. Statement of Basis and Purpose in City Record Sept. 3, 2004: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, and under §19-532 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise the sale of additional taxicab medallions. In March 2004, the TLC promulgated rules which governed the sale of 300 taxicab medallions at public auctions held on April 16 and 23, 2004. These medallions were sold and all of these new medallions have been issued. Pursuant to §19-532 of the Administrative Code, the TLC has the authority to sell up to 600 additional taxicab medallions, including medallions which must be used in connection with either an alternative fuel or a wheelchair accessible vehicle. At the public sale held in April 2004, such restricted medallions were offered for sale; however, no bids were received for a price that exceeded the minimum authorized price. These amendments remove the pricing link at the public sale between restricted and unrestricted medallions, thereby increasing the possibility that the TLC will receive valid bids for unrestricted medallions. The Administrative Code states that if the price received for a restricted medallion is not at least ninety percent (90%) of the price received for an unrestricted medallion, the Commission "is authorized," but not mandated, to sell these medallions without such a restriction. Under the regulations promulgated herein, the Chairperson will establish a minimum upset price for restricted medallions prior to the auction. This will enable potential bidders to make educated decisions concerning prospective bids. Under the prior regulations, the minimum acceptable price for a restricted medallion was determined only after all unrestricted bids were opened and an average was calculated. Prospective bidders were not aware of the minimum acceptable price for a restricted medallion until the day of the bid opening. This may have dissuaded some potential purchasers from submitting bids on restricted

medallions. These rules also make some technical changes to the bid and closing process. The number of days for accepting bids was reduced from four to three, to conserve TLC staff and resources. Few bids were received during the first day that bids were accepted in April. In addition, bids submitted by mail will no longer be accepted. Few bids were received by mail, but significant agency resources were expended to receive, sort and process mail bids. The rules will also require that all bids be placed in an approved TLC-issued envelope to conform with practice. The requirement that a completed application be submitted with the bid has been eliminated. The rules presently require that successful bidders submit a second deposit within fourteen (14) days after the bid opening, unless this period was extended by the Chairperson. The TLC Chair extended this period for individuals who were able to schedule a closing within thirty (30) days of the bid opening. The proposed rules would codify this practice by waiving the second deposit requirement for all successful bids who are ready, willing and able to close within thirty (30) days. Finally, the proposed rules extend the period of time for closing from 45 to 60 days after notification to the winning bidder. By making these relatively minor adjustments to the closing procedures, the bidding and closing processes will be made even more efficient than at the previous sale, wherein 300 medallions were closed prior to the end of the fiscal year.

HISTORICAL NOTE FOR FORMER §13-02

§13-02 Restricted Medallions repealed City Record Apr. 13, 2006 §1, eff. May 13, 2006. [See Statement 1 at end of Chapter]

Section repealed and added City Record Sept. 3, 2004 §§1, 2, eff. Oct. 3, 2004. [See §13-01 Note 2]

Section added City Record Feb 9, 2004 §2, eff. Mar. 10, 2004. Former §13-02 became §13-03. [See T35 Chapter 13 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007; City Record Apr. 13, 2006 §1, eff. May 13, 2006. See Statements at end of Chapter.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 13-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 13*1 RULES GOVERNING ISSUANCE AND PUBLIC SALE OF TAXICAB LICENSES

§13-03 Sale by Sealed Bid.

(a) A bidder shall submit a sealed bid no earlier than four (4) business days prior and no later than 12:00 noon on the date set by the Chairperson as the deadline for bidding. A bidder shall submit each sealed bid by hand delivery, either in person or by an agent at the place designated by the Chairperson. Bids shall be received between the hours of 9:00 a.m. and 12:00 noon. Bids must be received by the Chairperson no later than 12:00 noon on the deadline date. A bidder must submit a bid on a form prescribed by the Chairperson in a 9" × 12" sealed envelope with a cover form prescribed by the Chairperson with only one bid for one lot per envelope, which bid is accompanied with the following: (i) a deposit of $2,000 for each medallion for which a bidder submits a bid, in the form of a certified check, bank check, money order, or a check issued by a taxicab broker or taxicab agent licensed by the Commission pursuant to chapter 5 or chapter 12 of this title, respectively, payable to the "New York City Taxi and Limousine Commission"; and (ii) a letter of commitment for no less than eighty percent (80%) of the bid amount, issued by a bank or credit union licensed to do business in the State of New York or other lender licensed by the State of New York or the Federal Government. Each bidder shall certify, as part of each bid form, that such bidder has not relied on any statements or representations from the City of New York in determining the amount of such bidder's bid. Each bidder shall further certify that such bidder has not colluded, consulted, communicated, or agreed in any way with any other bidder or prospective bidder for the purpose of restricting competition or inducing any other prospective bidder to submit or not submit a bid for purpose of restricting competition. Each bidder shall further certify that such bidder has not disclosed any bid price either directly or indirectly to any other bidder for the purpose of restricting competition or inducing any other prospective bidder to submit or not to submit a bid for the purpose of restricting competition. Each bidder shall further certify, as a part of each bid form, that such person is not acting as a taxicab broker for any other bidder, and is not the owner, shareholder, partner, member, or employee of any person or entity acting as a taxicab broker for any other bidder. No

bid amounts shall be accepted which provide for a price ending in fractional cents per medallion. Any bid for which a bidder has failed to use the proper form or the proper envelope, or for which either the bid form or the envelope cover form is not properly completed in the Chairperson's determination, or which does not contain the proper deposit or a commitment letter meeting the requirements of this subdivision, or which is a bid for more than one lot per envelope, or for which the price per medallion is set forth ending in amounts ending in fractional cents, or which is non-responsive or non-conforming in any other respect, shall be deemed non-responsive and rejected. A bidder shall not have an opportunity to correct any bid.

(b) Each bid must be submitted in a conforming sealed envelope with a cover form prescribed by the Chairperson on which the bidder shall indicate the following: (i) the bidder's name, address, phone number and date of sale, and (ii) whether the bid is for one lot of minifleet medallions or for one lot of one independent medallion and (iii) whether the bid is for an unrestricted medallion lot, an alternative fuel medallion lot or an accessible medallion lot.

(c) A minimum upset price for medallions to be sold may be determined by the Chairperson. The Chairperson may establish different upset prices for each of independent and minifleet medallions for each of accessible medallions, alternative fuel medallions, and unrestricted medallions. A minimum upset price shall be set by publication in the City Record no less than ten (10) days prior to the deadline for submission of bids. Any bid received for less than the minimum upset price should such price be set shall be rejected as non-responsive.

(d) On a date set by the Chairperson, the bids shall be opened in public and the winning bids announced at the public sale. The winning bids shall be the highest bids that are complete in accordance with the provisions of subdivision (a) of this section, and are responsive as set forth in subdivision (c) of this section. The winning bidders shall be notified promptly by certified mail. Tie bids will be decided with a drawing which shall be held at the bid opening. Winning bids shall be published in the City Record and posted at the Commission's office and on the Commission's website.

(e) Within thirty (30) days after the bid opening, each winning bidder shall close on his or her medallion(s), except that if such bidder is unable to close within that period, such bidder shall, no later than thirty (30) days after the bid opening (i) deposit $25,000 in a certified check for each medallion covered by the winning bid, and (ii) provide the Chairperson with proof of purchase of a vehicle eligible for hack-up pursuant to section 3-03 or section 3-03.1 of this title in the form of a certificate of origin or title, or a bill of sale or a sales contract. All purchases of medallions pursuant to winning bids shall close by no later than sixty (60) days after bid opening unless extended by the Chairperson for reasonable cause shown. All closing dates are subject to the approval of the Chairperson. Failure by any winning bidder to comply with any deadline contained in this subdivision shall result in disqualification of the winning bid as provided in subdivision (l) of this section.

(f) The Chairperson shall determine for each type of medallion being sold the number of the highest, non-winning bids for such type of medallion that will be accorded reserve status, provided that such number shall be not less than 10 percent of the total number of medallions of that type being sold. The holders of the highest non-winning bids which are accorded reserve status shall be notified of such reserve status. Reserve status may be converted to a winning bid upon the failure of a winning bidder to comply with subdivision (e) of this section. In the event that a reserve status is converted to a winning bid, the holder of such reserve status shall be so notified, and the date of notification shall be deemed to be the date of the bid opening for purposes of calculating such holder's deadlines pursuant to this chapter. If, for any type of medallion, there are a greater number of bids at the lowest bid price qualifying for reserve status than are established by the Chairperson pursuant to this subdivision, a drawing will be held to determine which of those tied bids will hold reserve status. Such drawing shall be held at the bid opening. Any bids otherwise qualifying for reserve status under this subdivision made by any bidder who was a winning bidder for any lot will be disqualified from reserve status upon such winning bidder's failure to comply with the requirements of subdivision (e) of this section.

(g) The rights of a winning bidder are not assignable prior to the close of sale, except that such rights may be assigned to a corporation, limited liability company or partnership by a winning bidder who is a shareholder of such

corporation, member of such limited liability company, or partner of such partnership. No winning bid may be assigned to any corporation, limited liability company or partnership the shareholders, members, or partners of which include any other winning bidder for a lot at a higher price than the winning bid being assigned and who has failed to comply with the requirements of subdivision (e) of this section with respect to such higher-priced lot.

(h) Each winning bidder must demonstrate compliance with all of the requirements applicable for issuance and ownership of a taxicab license, including those contained in sections 1-02 and 1-03 of this title, must submit all documentation required by the Chairperson, must clear outstanding fines and penalties, and must submit proof of purchase of a vehicle eligible for hack-up as required by subdivision (e) of this section, before a closing can be scheduled. Each winning bidder must also, prior to the closing, submit fingerprint records as directed by the Chairperson unless such bidder has electronic fingerprints already on file with the Commission. Each winning bidder of an independent medallion must demonstrate an ability to comply with the owner-must drive service requirements of section 1-09(b) of this title by holding or obtaining a taxicab driver's license issued under chapter 2 of this title or by providing as an owner of an entity to which such bid has been assigned a person who holds such a license.

(i) All deposits of winning bidders shall be credited toward the sale price or, in the event the winning bidder does not meet the qualifications for issuance of a taxicab license, refunded to the bidder. However, a winning bidder who fails to comply with the deadlines provided in subdivision (e) of this section, including a winning bidder who does not attempt to meet the requirements of subdivision (h) of this section, shall forfeit deposits made pursuant to subdivision (a) of this section. The Chairperson will return deposits of non-winning and non-responsive bidders. Deposits submitted in respect of bids which achieve reserve status will be held until such bids are converted to winning bids, or until the sales of all lots of medallions of the type for which the bid was made have closed.

(j) In addition to the amount bid, each winning bidder will be responsible on the transfer closing date for any applicable taxes or fees including two (2) years' worth of license and inspection fees as provided by sections 1-04 and 1-05 of this title, provided however, there will not be any medallion transfer tax collected for this initial issuance of medallions. Each medallion license shall be issued for two (2) years and all the required inspection fees shall be collected at closing.

(k) Each medallion sold pursuant to this chapter must be hacked up, as that term is used in section 3-01(a) of this title, no later than the fifth business day following the day of the closing on the sale of the medallion, unless extended by the Chairperson for reasonable cause shown.

(l) Failure of a winning bidder to meet the deadlines provided in subdivision (e) of this section regarding a winning bid shall result in the disqualification of that bidder as to that winning bid and forfeiture of deposits made pursuant to subdivision (a) of this section.

(m) Any bid achieving reserve status made by a winning bidder for another bid for which such winning bidder who has failed to meet the requirements of subdivision (e) of this section with respect to such other bid shall be disqualified and the deposits made pursuant to subdivision (a) of this section with respect to such bid will be forfeited.

(n) If any winning bidder who is a winning bidder in respect of multiple bids, including any bids assigned to an entity in which such bidder is an owner, partner, shareholder, or member, shall fail to meet the requirements of subdivision (e) of this section with respect to some but not all such bids, such bidder shall be disqualified first on the lowest such winning bid, and then in ascending order of each of the next lowest winning bids. As to such disqualified bids, the deposits made pursuant to subdivision (a) of this section in respect of such bids shall be forfeited, as required in subdivision (l) of this section. Any winning bidder who is a winning bidder in respect of multiple bids, including any bids assigned to an entity in which such bidder is an owner, partner, shareholder, or member, must close first on his or her highest winning bid(s) and then in descending order of each next highest winning bid(s).

(o) No bidder shall collude, consult, communicate or agree in any way with any other bidder or prospective bidder

for the purpose of restricting competition or inducing any other prospective bidder to submit or not submit a bid for purpose of restricting competition. No bidder shall disclose any bid price either directly or indirectly to any other bidder for the purpose of restricting competition or inducing any other prospective bidder to submit or not submit a bid for purpose of restricting competition. Violation of this subdivision or submission of a false certification under subdivision (a) of this section shall result in disqualification of all bids submitted by such bidder, in addition to any other penalties provided by law.

(p) No taxicab broker may submit a bid to purchase any lot if such taxicab broker is acting as a taxicab broker for any bidder. For purposes of this subdivision, "taxicab broker" shall include any person or entity, whether or not licensed as a taxicab broker pursuant to chapter 5 of this title, that represents or advises any bidder or potential bidder in connection with an actual or potential bid and either (i) provides advice as to a bid price or potential bid price or (ii) in the course of such representation or advice, obtains actual knowledge of the bid price submitted by any bidder, and any person or entity which is an owner, shareholder, partner, member or employee of such person or entity.

HISTORICAL NOTE

Section amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007. [See Statement 2 at end of Chapter] Note: This amendment overlooked the amendment to §13-03(g) by City Record June 20, 2007 §10. That amendment is not incorporated here because this amendment covers the subject.

Section amended City Record Apr. 13, 2006 §1, eff. May 13, 2006. [See Statement 1 at end of Chapter]

Section repealed and added City Record Sept. 3, 2004 §§1, 2, eff. Oct. 3, 2004. [See §13-01 Note 2]

(Note internal renumbering by the Law Department per Charter §1045(b))

Section repealed and added (formerly §13-02) City Record Feb. 9, 2004 §§1, 2, eff. Mar. 10, 2004. [See Statement 1 at end of Chapter]

Subd. (g) amended City Record June 20, 2006 §10, eff. July 20, 2006. [See T35 §1-01 Note 2]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007; City Record Apr. 13, 2006 §1, eff. May 13, 2006. See Statements at end of Chapter.

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 13-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 13*1 RULES GOVERNING ISSUANCE AND PUBLIC SALE OF TAXICAB LICENSES

§13-04 Classifications of Medallions.

A medallion issued pursuant to this chapter as an accessible medallion or an alternative fuel medallion, whether as an independent medallion, or a minifleet medallion, shall remain so classified despite any change in ownership of the medallion after its issuance, and all service and ownership requirements for such type of medallion set forth in chapter 1 of this title shall continue to apply thereto.

HISTORICAL NOTE

Section amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007. [See Statement 2 at end of Chapter]

Section added City Record Apr. 13, 2006 §1, eff. May 13, 2006. [See T35 Chapter 13 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007; City Record Apr. 13, 2006 §1, eff. May 13, 2006. See Statements at end of Chapter.

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***** Current through December 2009 ****

35 RCNY 13-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 13*1 RULES GOVERNING ISSUANCE AND PUBLIC SALE OF TAXICAB LICENSES

§13-05 Penalties for Violation of Rules Governing Medallion Auctions.

Rule No.	Penalty	Personal Appearance Required
13-03	$10,000 and either disqualification of bid or, if sale has closed, revocation of taxicab licenses	Yes
13-03(p)	$10,000 and either disqualification of bid or, if sale has closed, revocation of taxicab licenses	Yes

HISTORICAL NOTE

Section added City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007. [See Statement 2 at end of Chapter]

STATEMENTS OF BASIS AND PURPOSE

FOR CHAPTER 13

NOTE

1. Statement of Basis and Purpose in City Record Apr. 13, 2006:

The rules amend chapter 13 of the rules of the Taxi and Limousine Commission ("TLC"), governing the issuance and public sale of taxicab licenses, generally known as medallions.

These amended rules would apply to the third round of taxicab license auctions authorized by chapter 63 of the

laws of 2003 and §19-532 of the New York City Administrative Code. The first two rounds of auctions were conducted in the spring and fall of 2004.

The amended rules include a number of technical and terminological amendments to existing rules, as well as the following substantive amendments:

· The amended rules expressly allow a minifleet owner to bid on a single restricted medallion (alternative fuel medallion or accessible medallion) to be added to an existing minifleet, in order to expand the pool of eligible bidders.

· The rules eliminate the bidder's option to submit a bond in lieu of a deposit. This amendment is based on the fact that no bidder used the bond option in past auctions.

· The rules provide that tie bids will be decided by drawing at the public bid opening, regardless whether the bidders choose to attend the opening. This provision is intended to eliminate an unnecessary delay in the auction process.

· The rule clarifies that a bidder's failure to submit the required deposit within 30 days of notification of the winning bid, or to close on the bid within 60 days of the bid opening, would result in a disqualification of the winning bidder and forfeiture of the first deposit of $2000 per medallion. This provision is intended to ensure that winning bidders close on their bids promptly, and put their medallions into service promptly.

· The rule expressly provides that closing on a winning bid shall be scheduled only after the winning bidder demonstrates satisfaction with the requirements of medallion ownership and submits proof that the bidder has purchased a vehicle that is eligible for hack-up. This provision is intended to ensure that winning bidders promptly qualify to own medallions, and promptly put their medallions into service.

· The rule states expressly that a winning bidder must hack-up each purchased medallion to a taxicab no later than five business days after closing on the sale, to ensure that new medallions are put into service promptly.

· The rule requires new fingerprints from any winning bidder who does not have fingerprints less than six months old on file with the TLC, rather than three years old as previously provided. The change is required by a procedural change in the New York State Division of Criminal Justice Services' processing of fingerprints.

· The rule clarifies that the ratio of independent medallions and minifleet medallions will be maintained by selling unrestricted medallions to the high bidders, without regard to whether the bids are for independent medallions or minifleet medallions, and adjusting the ratio of independent medallions and minifleet medallions in the unrestricted medallion auction as needed to maintain the required overall ratio.

Chapter basically repealed and added City Record Feb. 9, 2004 eff. Mar. 10, 2004. Note provisions of City Record Feb. 9, 2004:

Section 3. Additional licenses authorized hereunder shall be issued only after completion of such review as may be required by Article Eight of the New York State Environmental Conservation Law.

Statement of Basis and Purpose

The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, which empowers the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the City, and under §19-532 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise the sale of additional taxicab medallions.

Pursuant to Charter §2303(B), taxicab medallions are transferable, and new medallions may be issued only upon

the enactment of a local law providing therefor. On May 19, 2003, the State Legislature authorized the City of New York to issue up to 900 additional taxicab medallions by public sale. Like all other medallions, these additional licenses shall be fully transferable and may be pledged as security for loans and the lending institution providing the financing shall have all rights of secured parties with respect to these loans.

In 2003, the New York City Council amended the Administrative Code to add a new section 19-532, which authorizes the TLC to issue up to 900 additional taxicab licenses, provided the requirements of the New York State Environmental Conservation Law have been complied with. The TLC is further authorized to promulgate rules that establish procedures for the issuance and public sale of these licenses. The Administrative Code further provides that at least nine percent (9%) of these new licenses must be used in connection with a vehicle that is either fueled by compressed natural gas ("CNG") or is a hybrid electric vehicle. An additional nine percent (9%) of these new licenses must be used in connection with a vehicle that is accessible to persons with disabilities. The TLC can issue licenses without these restrictions if the purchase price for these restricted licenses achieved at an auction does not equal at least ninety percent (90%) of the purchase price of an unrestricted license.

These rules set forth the procedures for the sale of any additional medallions that may be issued by the Commission in accordance with the provisions of §19-532 of the Administrative Code.

2. Statement of Basis and Purpose in City Record Aug. 15, 2007: The rules amend chapter 13 of the rules of the Taxi and Limousine Commission ("TLC"), governing the issuance and public sale of taxicab licenses, generally known as medallions. The changes are made generally to reflect experience gained with the auctions of taxicab licenses held in 2006 and to ensure that future auctions provide for full and fair competition among all bidders. These amended rules will apply to an auction of one hundred fifty taxicab licenses authorized by chapter 535 of the laws of 2006 and section 19-532 of the New York City Administrative Code, an auction of unsold medallions remaining from the taxicab license auctions authorized by chapter 63 of the laws of 2003 and section 19-532 of the New York City Administrative Code, and any additional auctions that might be authorized in the future. The amended rules include a number of technical and terminological amendments to existing rules, as well as the following substantive amendments:

· The amended rules eliminate provisions permitting a minifleet purchaser to purchase only one medallion to add to an existing minifleet; experience with prior auctions demonstrated that minifleet purchasers did not use that option.

· The rules eliminate the ability of licensed taxicab brokers and their principals and employees to purchase medallions on their own behalf while advising potential purchasers at the auction. This change is made to reduce the possibility of collusion or other misuse of bid information.

· The rules provide anti-collusive bidding language and further restrict the ability of winning bidders who are also reserve bidders to default on winning bids in favor of their reserve bids. These changes are made to align practices more closely with those in place for the procurement process under the General Municipal Law and to assure that the auctions are open, fair and competitive.

· The rules permit the Chairperson to establish separate reserve classes (of at least 10% of the number of medallions being sold in each class) for each type of medallion being sold. This change is done to permit the TLC to set reserve classes of a size that will help guarantee that all medallions will be sold in any auction.

· The rules provide that tie bids will be decided by drawing at the public bid opening, regardless whether the bidders choose to attend the opening. This provision is intended to eliminate an unnecessary delay in the auction process.

· The rules provide that a bidder's failure to close within 30 days of notification of the winning bid will require submission of an additional deposit of $25,000, and that failure to close on the bid within 60 days of the bid opening would result in a disqualification of the winning bidder and forfeiture of the first deposit of $2,000 per medallion. This provision is intended to ensure that winning bidders close on their bids promptly, and put their medallions into service

promptly.

· The rules expressly provide that closing on a winning bid shall be scheduled only after the winning bidder demonstrates satisfaction with the requirements of medallion ownership and submits proof that the bidder has purchased a vehicle that is eligible for hack-up. This provision is intended to ensure that winning bidders promptly qualify to own medallions, and promptly put their medallions into service.

· The rules provide that bidders must be individual persons, to reflect experience in prior auctions, although bids will continue to be assignable to partnerships, corporations and limited liability companies in which a winning bidder is a partner, shareholder, or member. The TLC's experience in 2006 was that all bids were placed by individuals, but that many winning bids were closed upon by corporations, limited liability companies, or partnerships. Bidders typically do not organize entities to own medallions until they know that they are winning bidders.

· The rules clarify that new fingerprints must be obtained prior to closing from any winning bidder who does not have fingerprints in electronic format on file with the TLC. The prior rules specified that fingerprints had to be obtained within 30 days of the bid opening, but the experience of the 2006 auction indicated that the timing of the closing, rather than the bid opening, was a more important reference point for obtaining fingerprints.

· The rules clarify that the statutory ratio of independent medallions and minifleet medallions will be maintained as required by the Administrative Code.

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record Aug. 15, 2007 §1, eff. Sept. 14, 2007; City Record Apr. 13, 2006 §1, eff. May 13, 2006. See Statements at end of Chapter.

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***** Current through December 2009 ****

35 RCNY 14-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 14 [PILOT PROGRAMS]*1

§14-01 Definitions.

For purposes of this chapter:

(a) "Commission" shall mean the Taxi and Limousine Commission as defined in §2301 of the New York City Charter.

(b) "Chairperson" shall mean the Chairperson of the Taxi and Limousine Commission, as defined in §2301(c) of the New York City Charter, or his or her designee.

HISTORICAL NOTE

Section added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. [See Chapter 14 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 14 added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. Chapter heading supplied by editor. Note: Statement of Basis and Purpose of Rules:

These rules are intended to encourage innovation and experimentation in the industries regulated by the

Taxi and Limousine Commission ("TLC"), pursuant to §2303(b)(9) of the Charter of the City of New York ("Charter"). The TLC has entered into various pilot programs in the past, and has previously promulgated rules governing innovation and pilot programs in specific areas such as taxicab vehicle models (35 RCNY §3-03(d)) and taxicab group rides (35 RCNY §1-71(c)). These rules reflect the TLC's view that all of the industries it regulates should be encouraged to engage in innovation and experimentation in all aspects of their equipment, service and operations, and that such innovation and experimentation will benefit from a regularized and transparent process for proposal, review, approval, implementation and evaluation of pilot programs.

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35 RCNY 14-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 14 [PILOT PROGRAMS]*1

§14-02 Purpose.

The Commission recognizes that its regulatory framework should encourage the industries it regulates to adopt technological and other advances. This chapter is intended to provide a regularized and transparent process for proposal, review, approval, implementation, and evaluation of pilot programs, in furtherance of the Commission's mandate, expressed in §2303(b)(9) of the City Charter, to encourage innovation and experimentation in relation to type and design of equipment, modes of service and manner of operation.

HISTORICAL NOTE

Section added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. [See Chapter 14 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 14 added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. Chapter heading supplied by editor. Note: Statement of Basis and Purpose of Rules:

These rules are intended to encourage innovation and experimentation in the industries regulated by the Taxi and Limousine Commission ("TLC"), pursuant to §2303(b)(9) of the Charter of the City of New York

("Charter"). The TLC has entered into various pilot programs in the past, and has previously promulgated rules governing innovation and pilot programs in specific areas such as taxicab vehicle models (35 RCNY §3-03(d)) and taxicab group rides (35 RCNY §1-71(c)). These rules reflect the TLC's view that all of the industries it regulates should be encouraged to engage in innovation and experimentation in all aspects of their equipment, service and operations, and that such innovation and experimentation will benefit from a regularized and transparent process for proposal, review, approval, implementation and evaluation of pilot programs.

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35 RCNY 14-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 14 [PILOT PROGRAMS]*1

§14-03 Submission of Pilot Program Proposals.

Any person or entity may propose a pilot program in writing to the Chairperson for purposes of testing and evaluating a proposed innovation. The proposal shall include:

(a) A statement of the purpose or value of the proposed innovation;

(b) A detailed description of the proposed innovation, including, as appropriate, diagrams, blueprints or images;

(c) Information regarding the use of the proposed innovation in other jurisdictions;

(d) Estimates of any cost and revenue impact of the proposed innovation on affected licensee groups such as drivers and vehicle owners, on the Commission and the City, and on the public;

(e) Specification of each respect in which the proposed innovation would depart from otherwise applicable requirements, including the rules of this title;

(f) Description of any affect the pilot program would have on the safety of operations involved in the pilot program;

(g) The proposed duration of the pilot program;

(h) The number of pilot program participants necessary to achieve the purpose of the proposed pilot program; and

(i) Criteria by which the value of the innovation can be measured after implementation of the pilot program, such as cost, customer satisfaction, licensee satisfaction, environmental impacts, and safety.

HISTORICAL NOTE

Section added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. [See Chapter 14 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 14 added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. Chapter heading supplied by editor. Note: Statement of Basis and Purpose of Rules:

These rules are intended to encourage innovation and experimentation in the industries regulated by the Taxi and Limousine Commission ("TLC"), pursuant to §2303(b)(9) of the Charter of the City of New York ("Charter"). The TLC has entered into various pilot programs in the past, and has previously promulgated rules governing innovation and pilot programs in specific areas such as taxicab vehicle models (35 RCNY §3-03(d)) and taxicab group rides (35 RCNY §1-71(c)). These rules reflect the TLC's view that all of the industries it regulates should be encouraged to engage in innovation and experimentation in all aspects of their equipment, service and operations, and that such innovation and experimentation will benefit from a regularized and transparent process for proposal, review, approval, implementation and evaluation of pilot programs.

Rules of the City of New York

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35 RCNY 14-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 14 [PILOT PROGRAMS]*1

§14-04 Review and Approval of Pilot Program Proposals.

(a) The Chairperson shall conduct or oversee the review of pilot program proposals. The Chairperson shall be authorized to assemble any information, from any source, that he or she determines to be useful in reviewing the proposal. Without limitation of the foregoing, the Chairperson may request modification or resubmission of the proposal, including additional information, evaluations, inspection of prototypes, tests or other processes of any kind that may assist in the review of the proposal. Such request may be made to the person or entity proposing the pilot program, or to any other person or entity.

(b) The Chairperson shall forward to the Commission a proposed pilot program within 60 days of receipt of a completed proposal, except that the Chairperson may within such 60-day period extend the time for forwarding the proposed pilot program.

(c) The Commission shall consider the proposal and shall approve or reject the proposed pilot program. Grounds for rejection shall include, but shall not be limited to, the merits of the proposal and the administrative ability of the Commission or its staff to implement, monitor, or evaluate the proposed pilot program. Approval of a pilot program by the Commission shall be done in accordance with subdivision (d) of this section.

(d) The Commission's resolution of approval of any proposed pilot program shall set forth terms governing the implementation, monitoring and evaluation of the proposed pilot program, including but not limited to the following:

(1) The duration of the pilot program;

(2) A schedule for implementation and evaluation of the pilot program, including a deadline for a final report from the Chairperson to the Commission, and a deadline for initiation of rulemaking action to implement changes in the Commission's rules based on the outcome of the pilot program so that the proposed innovation may continue without interruption in the event that the Commission determines that such continuation is warranted;

(3) Statement of any minimum and maximum number of pilot program participants; (4) Description of the means by which public notice will be given of the proposed pilot program;

(5) Description of the process for selection of participants in the pilot program;

(6) Statement whether a safety evaluation of the proposed pilot program shall be required before or during implementation of the pilot program, and, if so, statement of how and by whom such safety evaluation shall be conducted;

(7) Statement that the pilot program participants shall enter into binding agreements with the Chairperson on behalf of the Commission;

(8) Enumeration of the criteria to be used in evaluating the proposed innovation during and after implementation of the pilot program; and

(9) Description of any reporting requirements during and after the completion of the pilot program, including reports from the pilot program participants to the Chairperson and from the Chairperson to the Commission.

HISTORICAL NOTE

Section added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. [See Chapter 14 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 14 added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. Chapter heading supplied by editor. Note: Statement of Basis and Purpose of Rules:

These rules are intended to encourage innovation and experimentation in the industries regulated by the Taxi and Limousine Commission ("TLC"), pursuant to §2303(b)(9) of the Charter of the City of New York ("Charter"). The TLC has entered into various pilot programs in the past, and has previously promulgated rules governing innovation and pilot programs in specific areas such as taxicab vehicle models (35 RCNY §3-03(d)) and taxicab group rides (35 RCNY §1-71(c)). These rules reflect the TLC's view that all of the industries it regulates should be encouraged to engage in innovation and experimentation in all aspects of their equipment, service and operations, and that such innovation and experimentation will benefit from a regularized and transparent process for proposal, review, approval, implementation and evaluation of pilot programs.

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35 RCNY 14-05

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 14 [PILOT PROGRAMS]*1

§14-05 Agreements Between the Commission and the Pilot Program Participants.

(a) Participation by a person or entity in any pilot program approved by the Commission shall be subject to that person or entity entering into an agreement with the Chairperson on behalf of the Commission, governing the preparation, implementation and evaluation of the pilot program. Such agreement shall include provisions consistent with the terms of the Commission's resolution of approval of the pilot program.

(b) Where a pilot program involves more than one participant, the Chairperson shall determine whether the participants shall enter into identical or differing agreements.

(c) Agreements made pursuant to this section shall be subject to approval as to form by the Corporation Counsel pursuant to §394(b) of the New York City Charter.

HISTORICAL NOTE

Section added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. [See Chapter 14 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter 14 added City Record Mar. 13, 2006 §1, eff. Apr. 12, 2006. Chapter heading

supplied by editor. Note: Statement of Basis and Purpose of Rules:

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35 RCNY 15-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-01 Definitions.

(a) Agent. "Agent" shall mean an individual, partnership or corporation that acts, by employment, contract or otherwise, on behalf of one or more owners, whether or not such person is an "agent" within the meaning of Title 35, Chapter 12 of the Rules of the City of New York.

(b) Applicant. "Applicant" shall mean an individual, partnership or corporation seeking a taximeter business license from the commission.

(c) Commission. "Commission" shall mean the New York City Taxi and Limousine Commission.

(d) Driver. "Driver" shall mean a person licensed by the commission to drive a medallion taxicab in the City of New York.

(e) Hack-up. "Hack-up" shall mean to outfit a vehicle as a taxicab and obtain approval from the commission for that vehicle to serve as a taxicab for the first time.

(f) Mailing address. "Mailing address" shall mean the address designated by an applicant or licensee for the receipt of all notices and correspondence from the commission. Unless otherwise approved in advance, the mailing address of a taximeter business licensee shall be the street address of the business.

(g) MTA Tax. The "MTA Tax" is the 50-cent tax on taxicab trips that is imposed by article 29-A of the New York State Tax Law.

(h) Owner. "Owner" shall mean an individual, partnership, limited liability company or corporation licensed by the Commission to own and operate a medallion taxicab or taxicabs.

(i) Representative. "Representative" shall mean an individual, partnership, limited liability company or corporation appointed by a manufacturer of taximeters required to be licensed under this chapter to hold a license on behalf of such manufacturer and to carry out such manufacturer's duties and responsibilities as a licensee under this chapter.

(j) Rate of fare. "Rate of fare" shall mean the established fare which may be charged by a licensed taxicab, which fare has been promulgated by the commission, and which fare may include, but is not limited to night surcharges, the MTA Tax and waiting times.

(k) Seal. "Seal" shall mean a device, approved by the commission, which may be installed on a taximeter, wire, wiring mechanism, gear or other device, so that no adjustment, repair, alteration or replacement can be made without removing or mutilating the seal or seals.

(l) Taxicab technology service provider. A "taxicab technology service provider" is a vendor who has contracted with the Commission to install and maintain the taxicab technology system in taxicabs.

(m) Taxicab technology system. The "taxicab technology system" is hardware and software that provides the following four core services (collectively "four core services"): (i) credit, debit and prepaid card payment required by section 3-03(e)(7) of this title, (ii) text messaging required by section 3-03(e)(8) of this title, (iii) trip data collection and transmission required by section 3-06 of this title, and (iv) data transmission with the passenger information monitor required by section 3-07 of this title.

(n) Taximeter. "Taximeter" shall mean an instrument or device approved by the commission by which the charge to a passenger for hire of a licensed taxicab is automatically calculated and on which such charge is plainly indicated.

(o) Taximeter business. "Taximeter business" shall mean any business which engages, in whole or in part, in the manufacture, sale (whether of new or used equipment), installation, repair, adjustment, testing, sealing or calibrating of taximeters, for use upon any licensed vehicle in the City of New York, including any business which engages in whole or in part in the installation of taxicab roof lights.

(p) Taximeter business owner. "Taximeter business owner" shall mean an individual, partnership or corporation licensed by the commission to own and operate a taximeter business.

(q) Taximeter test. "Taximeter test" (sometimes alternatively referred to as "test") shall mean a method to determine compliance with distance and time tolerances, utilizing either a road test over a precisely measured road course or a simulated road test determining the distance traveled by use of a roller device, or by computation from rolling circumference and wheel-turn data, said test having been conducted in accordance with National Institute of Standards and Technology Handbook No. 44.

(r) Wiring Harness. "Wiring harness" shall mean any wire or collection of wires, including all connections thereto, which is connected in any manner whatsoever to a taximeter, or in any way affects the operation of a taximeter.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

Subd. (g) added City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]

Subd. (h) relettered (former Subd. (g)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; amended City Record June 20, 2006 §11, eff. July 20, 2006. [See T35 §1-01 Note 2]

Subd. (i) relettered (former Subd. (h)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; added City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (j) relettered (former Subd. (i)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (h)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (k) relettered (former Subd. (j)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (i)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (l) relettered (former Subd. (k)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; added City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (m) relettered (former Subd. (l)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; added City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (n) relettered (former Subd. (m)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (j)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (o) relettered (former Subd. (n)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (k)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (p) relettered (former Subd. (o)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (l)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (q) relettered (former Subd. (p)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (m)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

Subd. (r) relettered (former Subd. (q)) City Record Sept. 25, 2009 §10, eff. Oct. 25, 2009. [See T35 §15-15 Note 1]; relettered (former Subd. (n)) City Record June 12, 2007 §32, eff. July 12, 2007. [See T35 §1-01 Note 3]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record May 5, 1999 eff. June 4, 1999. Statement of Basis and Purpose: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-509 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules with respect to the licensing and operation of taximeter businesses.

The Administrative Code authorizes the TLC to license shops that sell, repair, or install taximeters used by licensed medallion taxicabs. The Commission has not heretofore adopted any rules to accomplish this purpose. These regulations establish a formal procedure for both the licensing and supervision of businesses that manufacture, sell, repair and install taximeters used in medallion taxicabs.

The purpose of these regulations is to implement §19-509 of the Administrative Code. Businesses authorized to sell, repair or install taximeters will be licensed by the Commission. The regulations establish

comprehensive criteria for the ownership of such businesses. The ownership criteria proposed herein will ensure that the owners of taximeter businesses are financially capable of operating a taximeter business and have operational and necessary equipment. Taximeter businesses are required to operate their businesses in a manner that will not constitute a nuisance to the public or unfavorably impact upon the quality of life in the surrounding community.

Regulations promulgated herein regulate the specific operation of a taximeter business. The purpose of these regulations is to prevent taximeter businesses from engaging in unlawful conduct, fraud or abuse, and to protect their customers and the public. Taximeter businesses will heretofore be responsible if they participate, either directly or indirectly, in the installation or removal of meter tampering devices, fail to perform proper repairs or tests, or fail to disclose evidence of tampering to the Commission. The regulations also require taximeter businesses to only utilize employees who have been properly trained and certified to perform tests, installations and repairs. The regulations also require business to maintain regular business hours, keep proper records, and disclose all charges.

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35 RCNY 15-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-02 Unlicensed Business Activities Prohibited.

(a) No individual, partnership, corporation or other business entity shall manufacture, sell, install, repair, adjust, or calibrate taximeters or install or repair seals, wiring harnesses or other equipment relating to the operation of a taximeter or roof light for use upon any licensed vehicle in the City of New York unless he, she or it holds a current, valid taximeter business license issued by the Commission, which license is neither suspended nor revoked. No individual, partnership, corporation or other business entity shall manufacture, sell, install, repair, adjust, calibrate or maintain a taxicab technology system that is not provided by a taxicab technology service provider as defined in section 15-01 of this chapter.

(b) After July 18, 2007, no taximeter may be used in a taxicab licensed by the Commission unless the manufacturer thereof has been licensed by the Commission under these rules. Any manufacturer required to obtain a license under this subdivision must obtain such license separately and in addition to any other licenses such person or entity may hold from the Commission, including other licenses held for a taximeter business. A manufacturer required to be licensed under this chapter may appoint a representative to hold such license. Except as otherwise provided in this subdivision, such representative shall be required to meet all applicable conditions and qualifications of licensure provided by this chapter and must be authorized by appointment to act on behalf of the manufacturer pursuant to this chapter and to bind the manufacturer to the fulfillment of the duties and responsibilities of a licensee under this chapter, and the manufacturer, by such appointment, agrees to be so bound and shall be deemed to be bound hereby. Such licenses which a representative is appointed to hold shall be separate and in addition to any other licenses such person or entity may hold from the Commission, including other licenses held for a taximeter business. In the event a manufacturer chooses to appoint a representative to hold a license:

(1) The representative must have, and shall be deemed to have, the ability, on behalf of the manufacturer, to fulfill the requirements and obligations of a manufacturer, under this chapter, including the ability to implement the requirements of section 15-44 of this chapter as to the manufacturer, and to ensure that all persons and entities authorized to sell, install, or service taximeters manufactured by the manufacturer in taxicabs licensed by the Commission comply with all applicable provisions of these rules, except that such representative shall not be required to meet the requirements of section 15-12 of this chapter relating to premises and equipment of the manufacturer's manufacturing operations; notwithstanding the appointment of the representative, the manufacturer and its representative shall be jointly responsible for fulfilling the duties and responsibilities of a manufacturer as required by this chapter, including those set forth in section 15-44 of this chapter and the manufacturer's appointment of a representative shall not relieve it of responsibility for compliance;

(2) The manufacturer must inform the Commission at any time it appoints a representative and provide a copy of the appointment together with the name, address and license numbers, if any, of the representative. In addition, as a condition of renewal of such manufacturer's license, the manufacturer shall provide the Commission annually during the month of January with the name of the representative authorized by the manufacturer to hold a license from the Commission on behalf of the manufacturer, including the address, and, if already licensed by the Commission, license number(s) of such representative; and

(3) Each representative appointed under this subdivision must apply to hold a license under this chapter and must meet all applicable standards, criteria, and conditions of licensure, and must further provide to the Commission with its application for a license or renewal thereof an acceptance of the appointment and acceptance of the responsibilities imposed on such manufacturer by this chapter, except that such representative shall not be required to meet the requirements of section 15-12 of this chapter relating to premises and equipment of the manufacturer's manufacturing operations and only individual representatives, partners of a representative, members of a representative or officers of a representative shall be required to be fingerprinted under section 15-03(e) of this chapter.

HISTORICAL NOTE

Section amended City Record June 12, 2007 §33, eff. July 12, 2007. [See T35 §1-01 Note 3]

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record May 5, 1999 eff. June 4, 1999. Statement of Basis and Purpose: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-509 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules with respect to the licensing and operation of taximeter businesses.

The Administrative Code authorizes the TLC to license shops that sell, repair, or install taximeters used by licensed medallion taxicabs. The Commission has not heretofore adopted any rules to accomplish this purpose. These regulations establish a formal procedure for both the licensing and supervision of businesses that manufacture, sell, repair and install taximeters used in medallion taxicabs.

The purpose of these regulations is to implement §19-509 of the Administrative Code. Businesses authorized to sell, repair or install taximeters will be licensed by the Commission. The regulations establish comprehensive criteria for the ownership of such businesses. The ownership criteria proposed herein will ensure that the owners of taximeter businesses are financially capable of operating a taximeter business and have operational and necessary equipment. Taximeter businesses are required to operate their businesses in a manner that will not constitute a nuisance to the public or unfavorably impact upon the quality of life in the surrounding community.

Regulations promulgated herein regulate the specific operation of a taximeter business. The purpose of these regulations is to prevent taximeter businesses from engaging in unlawful conduct, fraud or abuse, and to protect their customers and the public. Taximeter businesses will heretofore be responsible if they participate, either directly or indirectly, in the installation or removal of meter tampering devices, fail to perform proper repairs or tests, or fail to disclose evidence of tampering to the Commission. The regulations also require taximeter businesses to only utilize employees who have been properly trained and certified to perform tests, installations and repairs. The regulations also require business to maintain regular business hours, keep proper records, and disclose all charges.

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35 RCNY 15-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-03 Taximeter Business License.

(a) An applicant for a taximeter business license or its renewal shall be a sole proprietor, a partnership or a corporation. The application for a new license or its renewal shall be filed on a form approved by the commission and shall contain a sworn and notarized statement that the information contained therein is true under penalty of perjury.

(b)(1) An individual applicant for a taximeter business license must provide to the Commission proof of identity in the form of:

(i) A valid form of photo identification issued by the United States, any state or territory thereof, or any political subdivision of such state or territory; and

(ii) A valid, original social security card.

(2) An individual applicant for a taximeter business license or its renewal must be:

(i) at least eighteen (18) years of age;

(ii) of good moral character;

(iii) able to speak, read, write, and understand English.

(c) An applicant that is a partnership must file with its license application a certified copy of the partnership certificate from the clerk of the county where the principal place of business is located. In addition, each partner must

satisfy the requirements of individual ownership set forth in §15-03(b).

(d) An applicant that is a corporation shall file with its license application:

(1) a certified copy of its certificate of incorporation with a filing receipt issued by the secretary of state, if incorporated less than one year from the date of the license application or a certificate of good standing, if incorporated more than one year from the date of the license application, or if an out of state corporation, a copy of the certificate of incorporation, filing receipt, and authority to do business within the State of New York; (2) a list of its officers and shareholders, including names, residence addresses, telephone numbers and percentage of ownership interest of each shareholder; and

(3) a certified copy of the minutes of the organizational meeting at which the current officers were elected.

(e) Each of the following persons shall be fingerprinted, for purposes of securing criminal history records from the New York State Division of Criminal Justice Services:

(1) each individual applicant;

(2) each partner of a partnership applicant;

(3) each officer or shareholder of a corporate applicant;

(4) each person who has provided funds either individually, or as a principal of a partnership or corporation, whether such funds were provided by gift, loan or otherwise, in connection with the operation of the taximeter business, unless such provider is a licensed bank or loan company.

The new applicant shall pay any processing fees required by the commission or the Division of Criminal Justice Services.

(f) The commission shall have the right to reject the proposed name of any taximeter business that the commission finds to be substantially similar to any name in use by another taximeter business licensee.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

Subd. (b) amended City Record Oct. 31, 2006 §7, eff. Nov. 30, 2006. [See T35 §1-02 Note 2]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 5, 1999 eff. June 4, 1999. Statement of Basis and Purpose: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-509 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules with respect to the licensing and operation of taximeter businesses.

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***** Current through December 2009 ****

35 RCNY 15-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-04 Bond Required.

Each applicant for a taximeter business license or renewal thereof shall deposit with the commission, and shall keep in full force and effect throughout the license period, a bond in the sum of fifty thousand ($50,000) dollars, provided by one or more sureties approved by the commission. Such bond shall be payable to the City of New York and shall be conditioned on the licensee complying with all provisions of the Administrative Code of the City of New York and the Rules and Regulations governing taximeter businesses promulgated thereunder, including, but not limited to, payment of any fines or judgments against said licensee by any court or administrative agency, including, but not limited to, the administrative tribunal of the commission, or the Office of Administrative Trials and Hearings. This bond shall remain in full force and effect for the term of the taximeter business license, and for one year following the termination, non-renewal, or revocation of any license.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-05 Financial Disclosure.

(a) Each individual applicant for a new or renewal taximeter business license, and each partner, shareholder or officer shall file with the commission a financial disclosure statement, to be submitted on a form provided by the commission, which shall include but not be limited to such individual's assets, liabilities, income, net worth, source of bank accounts and any investments within a business licensed or regulated by the commission or with an individual or entity who is a participant in a business licensed or regulated by the commission.

(b) Each individual, partner, shareholder or officer of a taximeter business shall disclose to the commission his interest, whether as owner, partner, officer, shareholder, director, lender or other creditor, in any licensed medallion taxicab.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY 15-06

RULES OF THE CITY OF NEW YORK

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-06 Filing and Renewal Fees.

Every application for a license to operate a taximeter business shall be accompanied by a non-refundable application fee of five hundred dollars ($500) for each location to be licensed. The application fee shall be one-half the annual fee for any license to be issued for a period of six months or less. Said fee shall be payable in cash, by money order, or by certified check. Irrespective of the date on which it was issued, each license shall expire on the thirty-first day of March following the date of issuance.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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35 RCNY 15-07

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-07 Failure to Continuously Comply with Licensing Requirements.

(a) If at any time during the term of the taximeter business license the commission becomes aware that the licensee no longer meets the requirements for a taximeter business license, the commission may suspend or revoke the license in accordance with §§15-44 or 15-45 of these rules, and/or deny any application for renewal.

(b) Nothing contained herein shall limit the authority of the commission to summarily suspend the license of any taximeter business in accordance with §15-47 of these rules, where a threat to public health, safety or welfare exists.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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35 RCNY 15-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-08 Change in Business Ownership.

(a) A taximeter business owner shall not, without the prior consent of the commission, transfer any interest in a taximeter business, including, but not limited to, the transfer of any ownership interest, or any agreement to transfer an ownership interest in the future.

(b) A taximeter business owner shall not, without prior notification and approval by the commission, make any change in location, mailing address, corporate name, trade name, corporate officers, or any other material deviation from the description of the taximeter business as stated in the original or renewal application.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-09 [Reserved]

FOOTNOTES

1

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35 RCNY 15-10

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§15-10 Compliance with Applicable Law.

(a) A licensee shall obtain and keep in full force and effect all licenses and permits required by city, state, or federal law.

(b) A licensee shall comply with all applicable Occupational Safety and Health Act (OSHA) standards and requirements at the licensee's place of business, as well as all other federal, state and local laws governing the conduct of its business.

(c) A licensee shall pay any fines, fees, and/or taxes owed by it to any federal, state or local governmental jurisdiction.

(d) A licensee shall comply with all worker's compensation and disability benefits laws, and all federal laws regarding the withholding of taxes and payment of FICA and other withholding taxes.

HISTORICAL NOTE

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FOOTNOTES

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35 RCNY 15-11

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-11 Fees Charged by Licensees.

(a) A licensee shall file with the commission a schedule of current fees for all services related to the sale, repair, installation and calibration of taximeters, including, but not limited to, inspections, tests, adjustments, installations, corrections, or repairs.

(b) Any change in fees shall be filed with the commission at least ten (10) days prior to the scheduled date of said change in fees.

(c) A taximeter business owner shall not engage in any business unless a current schedule of inspection and repair charges, including hourly rates, if applicable, is prominently displayed to the public on the business premises.

(d) A taximeter business owner shall not publicly display any fee schedule until after it has been filed with the commission.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY 15-12

RULES OF THE CITY OF NEW YORK

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-12 Requirements Concerning Business Premises and Equipment.

(a) A taximeter business licensee shall at all times:

(1) be located within an area zoned for this business activity;

(2) be of sufficient size to simultaneously accommodate at least three (3) vehicles of the type(s) and model(s) licensed by the commission;

(3) have sufficient illumination and space in inspection, testing, and calibration areas to enable proper inspections and tests required by these regulations;

(4) have sufficient waiting area and rest room facilities for customers; and

(5) have all signs required by law and these rules.

(b) A taximeter business licensee may not use temporary structures that are not described in the certificate of occupancy for the premises. No installation, adjustment, correction, calibration, or repairs of any type may be performed on a public street or any facility other than the taximeter business premises.

(c) A taximeter business must be equipped with, at a minimum, the equipment required by the commission necessary for the repair and installation of taximeters.

HISTORICAL NOTE

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35 RCNY 15-13

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Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-13 Maintenance of Required Equipment.

(a) A taximeter business owner shall properly maintain all equipment required by the commission, or any other equipment required by law or regulation, in good working order, and in such a manner that an inspection, test, or calibration may be conducted in conformity with these rules.

(b) A taximeter business shall not conduct any test, calibration, or installation using equipment that is not in good working order.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 5, 1999 eff. June 4, 1999. Statement of Basis and Purpose: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-14 Signage.

(a) A "licensed taximeter business" sign, bearing the taximeter business license number and meeting the specifications of the commission, shall, at all times, be hung or mounted on the outside of the premises in such a manner that it is easily visible to the public from outside the building. A taximeter business owner shall not display a "licensed taximeter business" sign if its taximeter business license, or any other necessary license, is expired, suspended or revoked.

(b) In addition to the foregoing, each licensed taximeter business shall have affixed to the inside of the glass window thereon, to be clearly legible from the outside, a printed sign bearing its business name, license number, and the Taxi and Limousine Commission complaint number.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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35 RCNY 15-15

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-15 MTA Tax.

Each taximeter business is required to adjust any taximeter in a taxicab used to provide trips in New York City to implement the MTA Tax commencing on November 1, 2009.

HISTORICAL NOTE

Section added City Record Sept. 25, 2009 §11, eff. Oct. 25, 2009. [See

Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 25, 2009:

Effective November 1, 2009, the New York State Legislature enacted a tax on taxicab trips within the Metropolitan Commuter Transportation District (the "MTA Tax"), as part of article 29-A of the New York State Tax Law. The MTA Tax will add fifty cents to the cost of each taxicab trip that originates in New York City and ends within New York City or the Counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

The MTA Tax must be paid by "taxpayers" defined at length in article 29-A of the Tax Law-either the owner of the taxicab vehicle or, under certain circumstances, a lessee of the vehicle. The MTA Tax must be passed along to the passenger, and taxicab rate regulators are required to adjust taxicab fares accordingly.

To implement the MTA Tax, the promulgated rules:

· Adjust the fares for all trips that originate in New York City and terminate either in New York City or in the county of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk or Westchester.

· Require drivers to collect the tax and pass it along to the statutorily defined "taxpayer," if that is not the driver.

· Permit owners or agents who are "taxpayers" to recoup the MTA Tax from drivers-first, by deduction from reimbursements due to drivers for credit card receipts; second, by deduction from drivers' security deposits; and third, by directly charging drivers.

In addition, the promulgated rules revise the York Avenue group ride fare from $3.50 to $6.00, to accurately reflect current practices among participants in that group ride program.

FOOTNOTES

1

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-16 [Reserved]

FOOTNOTES

1

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§15-17 [Reserved]

FOOTNOTES

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-18 [Reserved]

FOOTNOTES

1

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-19 [Reserved]

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-20 Personal Conduct of Licensees.

(a) A taximeter business owner, while performing his, her or its duties and responsibilities as a taximeter business owner, shall not commit or attempt to commit, alone or in concert with another, any act of fraud, misrepresentation, or larceny. Examples of fraud, larceny or misrepresentation include, but are not limited to, calibration of a fare other than that set by the Commission; adjustment of the tire size, driving axle, pinion gear, transducer, wiring, or other equipment, for the purpose of generating an inaccurate signal of time or distance into the taximeter or the taxicab technology system; the manufacture, sale or installation of any device which is either designed to or does generate a false or inaccurate signal into the taximeter or the taxicab technology system; or the falsification of taxicab technology system records.

(b) An owner or his representative shall not perform any willful act of omission or commission, which is against the best interest of the public, even if not specifically prohibited by these rules.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

Subd. (a) amended City Record June 12, 2007 §34, eff. July 12, 2007. [See T35 §1-01 Note 3]

FOOTNOTES

1

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35 RCNY 15-21

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-21 Unlawful Activities Prohibited.

(a) A taximeter business owner shall not use or permit any other person to use his business premises or office of record for any unlawful purpose.

(b) A taximeter business owner shall not conceal any evidence of a crime connected with his business premises or office of record.

(c) A taximeter business owner shall report immediately to the commission and the police any attempt to use his business premises to commit a crime.

(d) A taximeter business owner shall not file with the commission any statement, whatsoever, including statements required to be filed pursuant to these rules which he or she knows or reasonably should know to be false, misleading, deceptive or materially incomplete.

HISTORICAL NOTE

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-22 Notification upon Conviction of a Crime or Other Change in License Con- ditions.

(a) A taximeter business owner, including a member of a partnership or any officer or shareholder of a corporation, shall notify the commission in writing of his conviction for a crime within fifteen (15) days of such conviction, and he shall deliver to the commission a certified copy of the certificate of disposition issued by the clerk of the court within fifteen (15) days of conviction.

(b) A taximeter business owner shall notify the commission of any material change in the information contained on such owner's latest taximeter business license application or renewal.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-23 Notification upon Suspension or Revocation of License.

A taximeter business owner shall immediately notify the commission in writing of any suspension or revocation of any license granted to the licensee, or any other person acting on his behalf, by any agency of the City or State of New York, or the government of the United States.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 15-24

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-24 Bribery Prohibited.

(a) A taximeter business owner or any person acting on his behalf shall not offer or give any gift, gratuity, or thing of value to any employee, representative, or member of the commission, or any public servant.

(b) A taximeter business owner or any person acting on his behalf or during the scope of his or her employment with said taximeter business owner, shall immediately report to the commission and the NYC Department of Investigation any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the commission or any public servant.

(c) A taximeter business owner or any person acting on his behalf shall not accept any gift, gratuity, or thing of value from an owner or driver of any vehicle licensed by the commission, or any individual or any other person actually or purportedly acting on behalf of such owner or driver for the purpose of omitting an act required by these rules or committing any violation of these rules.

(d) A taximeter business owner shall notify the commission immediately and in writing within twenty-four (24) hours thereafter of any offer of a gift or gratuity prohibited by §15-24(c).

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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***** Current through December 2009 ****

35 RCNY 15-25

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-25 Threatening, Harassing or Abusive Conduct Prohibited.

A taximeter business owner, while performing his duties and responsibilities as a licensee, shall not:

(a) Threaten, harass, or abuse any governmental or commission representative, public servant, or other person.

(b) Use or attempt to use any physical force against a commission representative, public servant or any other person.

HISTORICAL NOTE

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***** Current through December 2009 ****

35 RCNY 15-26

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-26 Cooperation with TLC.

(a) A taximeter business owner shall, at all times, cooperate with all law enforcement officers and representatives of the commission.

(b) A taximeter business owner shall answer and comply as directed with all questions, communications, notices, directives, and summonses from the commission or its representatives. A licensee shall produce his/her commission license and/or other documents whenever the commission requires.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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***** Current through December 2009 ****

35 RCNY 15-27

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-27 Taximeter Business Liability for Conduct of Employees.

(a) A taximeter business owner shall supervise and be responsible for the conduct of all its employees, contractors or agents, for the activities including, but not limited to, the sale, installation, inspection, testing, and calibration of taximeters.

(b) A taximeter business owner shall ensure that all employees are fully familiar with the rules and regulations contained herein, as well as any other pertinent regulatory agency rules and regulations. To this end, a taximeter business shall employ only such persons who have been certified as taximeter technicians by a taximeter manufacturer to perform any installation, testing, repair or calibration of the taximeter on which work is being performed.

(c) Any work involving a taximeter, including, but not limited to, installation, inspection, calibration, and repair shall be performed by a technician certified by the taximeter manufacturer. The certified technician shall be responsible for maintaining all records required by the commission and shall place his signature on all inspection, testing, repair or other reports prepared by him.

(d) A taximeter business owner shall ensure that all employees perform their duties in compliance with all relevant federal, state, and city laws, rules, and regulations.

(e) A taximeter business shall furnish to the commission, upon licensure or renewal, the names of all certified taximeter technicians employed by it and shall notify the commission in writing of any changes in the employment of certified taximeter technicians.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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***** Current through December 2009 ****

35 RCNY 15-28

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-28 Taximeter Business Liability for Tampering or Alteration.

(a) By installing a seal on a taximeter, the taximeter business certifies that the taximeter has been tested and calibrated in accordance with these rules. A taximeter business owner shall be strictly liable for tampering of a meter that is sealed with an unbroken seal issued by the taximeter business.

(b) By testing, installing or calibrating a taximeter, the taximeter business certifies that at the time of such installation, testing or calibration, it has examined and found the wiring harness leading from the taximeter to the speed sensor is of one piece construction with no intervening connectors, splices, "Y" connections, or direct or indirect interruptions of any kind whatsoever, and has examined the pinion gear seal and has determined that it is properly sealed.

HISTORICAL NOTE

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***** Current through December 2009 ****

35 RCNY 15-29

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-29 Duty to Notify the Commission.

(a) A taximeter business shall notify the Commission by telephone immediately, and in writing within twenty-four (24) hours, of any of the following occurrences:

(1) A taximeter which the taximeter business knows or has reason to know has been reported to the Commission as lost or stolen or a taxicab technology system which the taximeter business knows or has reason to know has not been provided by a taxicab technology provider as defined in section 15-01 of this chapter has been presented to the taximeter business for installation, repair, adjustment or calibration.

(2) A taximeter has been presented for installation, repair, adjustment or calibration on which one or more seals are removed, damaged, broken or tampered with.

(3) A person whom the taximeter business owner knows or should have known to be a licensee of the commission, or to be acting on behalf of a licensee, has requested that the taximeter business engage in any activity prohibited by these rules.

(4) A person whom the taximeter business owner knows or should have known to be a licensee of the commission, or to be acting on behalf of a licensee, has attempted to repair, or connect any unauthorized device to, any taximeter, seal, cable connection or electrical wiring, which may have affected the operation of a taximeter.

(5) The taximeter business discovers the existence of any intervening connections, splices, "Y" connections or direct or indirect interruptions or connections of any kind whatsoever.

(b) Any notice required to be provided to the commission hereunder shall contain, at a minimum, the following information:

(1) The taxicab medallion number;

(2) The operator's license number, if any, of the driver or drivers who presented the vehicle to the taximeter business;

(3) The date of the inspection or repair;

(4) A detailed description of any items, evidence or occurrences as described in subdivision (a) herein;

(5) The names and operator's license numbers of each individual listed as a driver on the rate card.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

Subd. (a) open par amended City Record June 12, 2007 §35, eff. July 12, 2007. [See T35 §1-01

Note 3]

Subd. (a) par (1) amended City Record June 12, 2007 §35, eff. July 12, 2007. [See T35 §1-01

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35 RCNY 15-30

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-30 Seals.

(a) Installation of a taximeter shall include the affixing of security seals to the taximeter as required by the commission. Only seals which have been authorized and approved by the commission shall be used by a taximeter business. The security seals shall be installed in a manner prescribed by the commission, and in such manner that the security seals self-destruct when the taximeter or sealed part of the vehicle is dis- assembled.

(b) Each seal shall be numbered and the taximeter business shall keep a record of each seal used. Seals must be used in consecutive numerical order, and any seal not used must be accounted for. The record of seals shall be available for inspection by the commission as set forth herein. The record shall contain, at a minimum, the following information:

(1) the seal number;

(2) the number of the taximeter in which the seal was installed;

(3) the medallion number of the taxicab in which the taximeter was installed;

(4) the date the seal was installed;

(5) the date and seal number of any seal removed; and

(6) the reason for installing any new seal.

(c) No taximeter business shall install a seal on a taximeter without removing all seals installed by another meter

shop, whether or not broken.

(d) Each taximeter business shall maintain on its business premises either a fireproof safe secured to the floor of the establishment or a locked, secured room secured by an alarm connected to a centralized monitoring facility, for the storage of seals and taximeter repair records.

(e) Each taximeter business shall maintain and file with the commission a description of the procedures used by it to prevent the loss, theft, destruction or misuse of taximeter seals.

HISTORICAL NOTE

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35 RCNY 15-31

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-31 Required Inspection of Taximeters.

A taximeter shall be inspected by the taximeter business whenever it is installed, repaired, or calibrated. Inspection shall include examination of the taximeter installation and operation to verify compliance with:

(a) the taximeter specifications, type approvals, tolerances, and all other requirements of the commission, including, but not limited to a measured mile run test;

(b) the rate of fare established by the commission;

(c) the standards set forth in the sections of the taxicab owners' rules regarding taximeters; and

(d) all other applicable federal, state, and city regulations and guidelines.

This section shall not apply to repairs which are made exclusively to the printing mechanism or the resetting of the date and/or time on the printer receipt.

HISTORICAL NOTE

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***** Current through December 2009 ****

35 RCNY 15-32

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-32 Other Repair Limitations.

A taximeter business owner shall not perform any work on a taximeter, including, but not limited to, inspection, testing, calibration, or repair, if:

(a) no valid vehicle license from the commission is presented unless the taximeter is not for use in a taxicab licensed by the commission;

(b) the taximeter serial number is deleted, defaced, or otherwise altered;

(c) the vehicle is licensed by the TLC and the taximeter make, model or serial number appears on the commission vehicle license or rate card, and the commission has not otherwise authorized the use of that taximeter;

(d) the taximeter business licensee knows or should know that the taximeter presented for testing was reported lost or stolen to the commission or any other law enforcement agency; or

(e) the taximeter business licensee has not obtained from the owner or driver of the vehicle, or his agent, a written consent to perform any work on the taximeter.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 15-33

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-33 Recording the Results of Taximeter Tests.

(a) The taximeter business owner shall record the results of any inspections or tests, and the taximeter make, model, and serial number on a form, prescribed by the commission, which the taximeter business licensee shall submit to the commission within seven (7) days of such inspection.

(b) Upon a determination that a taximeter has passed an inspection, the taximeter business owner, in addition to complying with subdivision (a), shall affix a certification sticker, prescribed and approved by the commission, to the taximeter. Any certification sticker shall not be re-affixed to the taximeter if removed.

(c) A taximeter business owner shall provide for the safekeeping of certification stickers, shall control their sequence of issuance, and shall ensure that such stickers are placed only on taximeters in accordance with these regulations.

(d) When a taximeter is installed in preparation for "hack-up," the taximeter business owner, in addition to complying with subdivisions (a) and (b), shall:

(1) prepare a vehicle "hack-up" certification form approved by the commission at the completion of the preparatory work for vehicle "hack-up";

(2) submit to the commission, within 24 hours, all documents relating to the installation and inspection of such taximeter; and

(3) provide the vehicle owner with an itemized list of all work performed in preparation for "hack-up."

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 15-34

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-34 Failure of Tests.

No taximeter business owner shall, as a condition of performing any test or other work, require a vehicle driver or owner to undertake any repair work at his business. He shall inform the owner or driver that he may select another licensed taximeter business to perform a repair. No taximeter business owner shall direct a vehicle owner to utilize any other taximeter business to perform said repair work.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY 15-35

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-35 Overcharges Prohibited.

A licensed taximeter business shall not charge fees for any work involving taximeters in excess of the fees set by its fee schedule, which must be filed with the commission and shall be publicly displayed pursuant to §15-11 of these rules.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-36 [Reserved]

FOOTNOTES

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Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-37 [Reserved]

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Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-38 [Reserved]

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Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-39 [Reserved]

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***** Current through December 2009 ****

35 RCNY 15-40

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-40 Roof Light Installation and Repair.

(a) A taximeter business owner shall install a roof light for use in a taxicab licensed by the commission only of a type or model approved by the commission.

(b) A taximeter business owner shall install roof light directional appendages in a manner which does not permit its operation for other than directional or emergency uses.

(c) If an emergency or trouble light is installed, the taximeter business owner shall install an emergency or trouble light only of a type or model approved by the commission and in compliance with TLC specifications.

(d) If an emergency or trouble light is installed, the taximeter business owner shall install a switch to operate the emergency or trouble light that has no other function and which is not connected to any other equipment.

(e) The taximeter business owner shall install the roof light, the trouble light, the taximeter and the rate card/taxi driver license holder light in such a manner that the operation of either of these mechanisms is not controlled or affected by the dashboard light dimmer switch or any other device controlled by the driver.

(f) The taximeter business owner shall use only switches and wiring that meet specifications of the Society of Automotive Engineers, where such specifications are ap- plicable.

(g) The taximeter business owner shall only install switches for functions approved by the commission, and no additional switches, wiring and/or connections shall be installed.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY 15-41

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-41 Sale of Taximeters.

(a) A taximeter business owner shall sell only taximeters for use in a taxicab licensed by the commission that have been approved by the New York State Commissioner of Agriculture and Markets and the commission.

(b) A taximeter business owner shall not sell a taximeter for use in a taxicab licensed by the commission unless a valid vehicle license from the commission is presented.

(c) A taximeter business owner shall not sell a taximeter for use in a TLC licensed vehicle unless the installation, testing and certification of the taximeter/vehicle assembly is performed by the taximeter business licensee or an employee thereof.

(d) A taximeter business owner shall report to the commission, within seven (7) days, all sales, trades or exchanges of taximeters by the licensed taximeter business on a form prescribed by the commission.

(e) A taximeter business owner shall inform all purchasers in writing, before the sale takes place, of any and all restrictions imposed by the taximeter manufacturer and/or taximeter business licensee regarding the testing, repairs, calibration and installation of the taximeter.

(f) A taximeter business owner shall remove, deface, or otherwise void the validity of the certification sticker upon receipt of a taximeter purchased, exchanged, or accepted in trade by the taximeter business licensee, and report such decertification to the com- mission.

(g) The certification sticker must conform to all specifications established by the commission and bear the name of the chairperson of the commission.

(h) All installations of taximeters must be in accordance with specifications which have been filed with and approved by the commission.

(i) No change in the method of installation shall be made unless the installation method has been filed with and approved by the commission.

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

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35 RCNY 15-42

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-42 Record-Keeping and Reporting Requirements.

(a) A taximeter business owner shall comply with all record-keeping procedures established by the commission. All records required to be kept by the commission shall be in the form and manner prescribed by the commission and must be maintained for a period of five (5) years. All record-keeping entries must be made by a technician certified in accordance with §15-27 of these rules.

(b) A taximeter business owner shall acount for all certification stickers procured and issued by the taximeter business licensee.

(c) A taximeter business owner shall acount for all new or used taximeters that the taximeter business licensee buys, loans, rents, exchanges or accepts in trade.

(d) A taximeter business owner shall keep records of all sales, installations, inspections, re-inspections, calibrations, repairs and the results thereof.

(e) At any and all times, a taximeter business owner shall make available for examination, to any agent of the commission, or any other properly authorized law enforcement officer, all the records the official taximeter business is required to keep.

(f) A taximeter business owner shall permit any agent of the commission or any law enforcement official to inspect any portion of its business premises at any time.

HISTORICAL NOTE

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35 RCNY 15-43

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-43 Penalties for Violation of Rules Governing Taximeter Businesses.

Rule No. PenaltyAll fines listed below also include a separate license suspension, to run concurrent with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed. PersonalAppearanceRequired

§15-02 $10,000 and revocation if the taximeter business license is suspended Yes

§15-08(a) $1,000-5,000 and suspension until consent of commission is obtained or change in business ownership is withdrawn, or revocation Yes

§15-08(b) $500-1,000 Yes

§15-10 $500-1,000 and/or suspension until compliance Yes

§15-11(a) $50 No

§15-11(b) $50 No

§15-11(c) $50 No

§15-11(d) $50 No

§15-12(a) $500-1,000 and suspension until compliance Yes

§15-12(b) $500-1,000 Yes

§15-12(c) $500-1,000 and suspension until compliance Yes

§15-13(a) $500-1,000 Yes

§15-13(b) $500-1,000 Yes

§15-14 $100 No

§15-20(a) Revocation and $10,000 Yes

§15-20(b) $150-350 and/or suspension up to 30 days or revocation Yes

§15-21(a) $350-1,000 and/or suspension up to 30 days or revocation Yes

§15-21(b) $350-1,000 and/or suspension up to 30 days or revocation Yes

§15-21(c) $100-350 and/or suspension up to 30 days Yes

§15-21(d) Revocation and $10,000 Yes

§15-22(a)-(b) $500-1,000 and/or suspension up to 30 days Yes

§15-23 $500-1,000 and suspension until compliance Yes

§15-24(a)-(c) Revocation and $10,000 Yes

§15-25(a) $350-1,000 and/or suspension up to 30 days or revocation Yes

§15-25(b) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-26(a) $250 No

§15-26(b) $250 and suspension until compliance Yes

§15-27(a)-(e) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-28(a)-(b) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-29(a)-(b) $500-1,500 and/or suspension up to 60 days or revocation. If the failure to report relates to a medallion in which the taximeter business has a financial or other interest, the penalty may include, but not be limited to, fine or revocation of the medallion or loss of medallion owner's privileges as set forth in Chapter 1 of the commission's rules. Yes

§15-30(a)-(e) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-31 $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-32(a)-(e) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-32(f) $500 No

§15-33(a) $500 and suspension until compliance Yes

§15-33(b) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-33(c) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-33(d) $500 and suspension until compliance Yes

§15-34 $500 No

§15-35 $500 No

§15-40(a)-(g) $500 for each subdivision violated No

§15-41 $500-1,500 and/or suspension up to 60 days or revocation for each subdivision violated Yes

§15-42(a) $500 No

§15-42(b)-(d) $500-1,500 and/or suspension up to 60 days or revocation Yes

§15-42(e) $500 and suspension until compliance Yes

§15-42(f) $500-1,500 and suspension Yes

§15-44(a) and (b) First Violation: $10,000Second violation: revocation of license Yes

HISTORICAL NOTE

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

Penalty column heading amended City Record Nov. 2, 2006 §21, eff. Dec. 2, 2006. [See T35 §1-07 Note 1]

Subd. (a) §15-44(a) and (b) added City Record June 12, 2007 §36, eff. July 12, 2007. [See T35 §1-01 Note 3]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 5, 1999 eff. June 4, 1999. Statement of Basis and Purpose: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-509 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules with respect to the licensing and operation of taximeter businesses.

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35 RCNY 15-44

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-44 Cooperation with Taxicab Technology Service Providers.

Each taxicab technology service provider (as that term is defined in section 15-01 of this chapter) shall, with the approval of the Commission, choose one or more Commission-approved taximeters to interface and communicate data with its taxicab technology system, and shall communicate such choice or choices in writing to the Commission. When a taximeter business that manufactures taximeters approved by the Commission has been notified by the Commission that its taximeter has been chosen by a taxicab technology service provider to interface and communicate data with the taxicab technology system of such taxicab technology service provider, such taximeter business shall choose either of the following options: (a) Such taximeter business shall provide to such taxicab technology service provider such information relating to the design and inner operation of the taximeter that is necessary for such taxicab technology service provider to perform the work of effecting an interface and communication of data between its taxicab technology system and the taximeter. A taximeter business may require as a condition of providing such information to a taxicab technology service provider that such taxicab technology service provider execute a non-disclosure agreement that is substantially similar in form to Attachment NDA to the agreement between the Commission and the taxicab technology service providers or as agreed upon between the parties; or

(b) Such taximeter business shall, (i) for the purpose of receiving from such taxicab technology service provider such information relating to the design and inner operation of such provider's taxicab technology system, within five business days of notification by the Commission pursuant to this section that the taximeter of such taximeter business has been chosen by such provider to interface and communicate data with such taxicab technology system, execute a non-disclosure agreement substantially similar in form to Attachment NDA to the agreement between the Commission and the taxicab technology service providers or as agreed to between the parties, (ii) perform the work of effecting an

interface and communication of data between such taximeter and such taxicab technology system, (iii) ensure that upon installation of such taxicab technology system and thereafter such interface and communication of data are effective, and (iv) submit to the Commission on an annual basis a signed certification that the taximeter business has effected and continues to effect an interface and communication of data between such taxicab technology system and such taximeter. Each failure on the part of a taximeter business that manufactures taximeters to cooperate with a taxicab technology service provider as provided in subdivision (a) or subdivision (b) of this section shall constitute a separate violation of this rule.

No taximeter manufactured by a taximeter business shall be used with any taxicab technology system unless such taximeter business is in compliance with this section insofar as it has cooperated to effect an interface of its taximeter with the taxicab technology systems of all taxicab technology service providers that chose such taximeter.

HISTORICAL NOTE

Section added City Record June 12, 2007 §37, eff. July 12, 2007. [See T35 §1-01 Note 3]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 5, 1999 eff. June 4, 1999. Statement of Basis and Purpose: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-509 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules with respect to the licensing and operation of taximeter businesses.

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-44 Procedures in the Event of a Violation of Commission Rules. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section added City Record May 5, 1999 eff. June 4, 1999. (Note internal redesignations in subd.

(v) by Law Department per Charter §1045(b)) [See T35 Chapter 15 footnote]

FOOTNOTES

1

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35 RCNY 15-45

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-45 Discretionary Revocation Proceedings Before OATH. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

1

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35 RCNY 15-46

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-46 Procedures to Determine the Fitness of a Licensee or Applicant. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1999 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

1

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35 RCNY 15-47

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 15 TAXIMETER BUSINESS RULES*1

§15-47 Summary Suspension of Licenses. [Repealed]

HISTORICAL NOTE

Section repealed City Record Dec. 1, 1994 §4, eff. Dec. 31, 1999. [See T35 Chapter 8 footnote]

Section added City Record May 5, 1999 eff. June 4, 1999. [See T35 Chapter 15 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record May 5, 1999 eff. June 4, 1999. Statement of Basis and Purpose: The regulations promulgated herein by the New York City Taxi and Limousine Commission ("TLC") are authorized under §2303(a) of the Charter of the City of New York, authorizing the TLC to regulate and supervise the business and industry of transportation of persons by licensed vehicles for-hire in the city; under §2303(b) of such Charter, authorizing the TLC to promulgate rules and regulations reasonably designed to carry out its purposes; under §19-503 of the the Administrative Code of the City of New York, authorizing the TLC to promulgate rules and regulations necessary to exercise authority conferred upon it by the Charter; under §19-509 of the Administrative Code of the City of New York, authorizing the TLC to promulgate rules with respect to the licensing and operation of taximeter businesses.

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35 RCNY 16-01

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-01 Definitions.

Accessible taxicab. An "accessible taxicab" is a taxicab that complies with section 3-03.2 of this title.

Accessible vehicle. An "accessible vehicle" is an accessible taxicab or a wheelchair accessible livery.

Chairperson. The "Chairperson" is the Chairperson of the Commission, or his or her designee.

Commission. The "Commission" is the New York City Taxi and Limousine Commission.

Dispatch. A "dispatch" is a request conveyed by the dispatcher for a participating driver operating an accessible vehicle to provide transportation for a wheelchair passenger or for a group of passengers which includes a wheelchair passenger.

Dispatch Equipment. The "dispatch equipment" shall be the communications equipment provided by the dispatcher to enable participating drivers operating accessible vehicles to receive dispatches from the dispatcher.

Dispatcher. The dispatcher is the entity selected by the commission to provide dispatch service for accessible vehicles.

Owner. The owner shall be the owner of the accessible taxicab medallion, or the wheelchair accessible livery, as applicable.

Participating driver. A "participating driver" is a driver of an accessible vehicle who holds a current, valid license

from the Commission to drive a taxicab under chapter 2 of this title, or to drive a livery under chapter 6 of this title, and has successfully completed the training prescribed in section 16-05 of this chapter.

Wheelchair accessible livery. A "wheelchair accessible livery" shall mean a livery which meets the requirements of section 6-28 of this title and the owner of which vehicle has opted to participate in the dispatch program as set forth in this chapter.

Wheelchair passenger. A "wheelchair passenger" is a passenger using a wheelchair.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY 16-02

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-02 Effective Date.

Effective on January 1, 2008:

(a) All accessible vehicles and all owners and all participating drivers must comply with all provisions of this chapter; and

(b) Each accessible taxicab must be driven by a participating driver who holds a taxicab driver's license issued under chapter 2 of this title; and

(c) Each wheelchair accessible livery must be driven by a participating driver who holds a for-hire vehicle operator's permit issued under chapter 6 of this title; and

(d) No owner, and no base station with which any wheelchair accessible livery is affiliated, may permit operation of an accessible vehicle by a driver other than a participating driver holding the proper license or permit for such vehicle.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY 16-03

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-03 Requirements Not Exclusive.

Except to the extent that this chapter expressly provides otherwise, each participating driver, each accessible vehicle and each owner must comply with the generally applicable provisions of chapters 1, 2, 3 and 6 of this title.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY 16-04

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-04 Dispatch Equipment for Accessible Vehicles.

(a) Each accessible vehicle must be equipped with operable dispatch equipment.

(b) While the accessible vehicle is in operation, the dispatch equipment must be on and capable of use, unless the dispatch equipment becomes inoperable.

(c) If the dispatch equipment becomes inoperable, the driver of the accessible vehicle must notify the dispatcher and owner by the end of such driver's shift that the equipment is not operable. The owner must install replacement or repaired dispatch equipment promptly upon receipt thereof from the dispatcher. An accessible vehicle with inoperable dispatch equipment may continue to operate without accepting dispatches until repair or replacement of the dispatch equipment.

(d) Each participating driver must log on to the dispatch equipment at the beginning of such driver's shift and log off at the conclusion of such shift, and communicate with the dispatcher regarding dispatches, all in the manner prescribed by the dispatcher.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-05 Training of Participating Drivers.

(a) Any driver, in order to become a participating driver and to operate an accessible vehicle, must attend a course of wheelchair accessible driver training approved by the Chairperson regarding wheelchair passenger assistance techniques.

Wheelchair accessible driver training shall include a minimum of three hours of training that covers the following:

(i) A review of all legal requirements pertaining to transportation of persons with disabilities;

(ii) Passenger assistance techniques including a review of various disabilities, hands-on demonstrations, disability etiquette, mobility equipment training (including familiarity of lift/ramp operations and various types of wheelchairs), and safety procedures, such training to involve an actual person using a wheelchair; and

(iii) Sensitivity awareness, including customer service and conflict resolution policies.

(b) No driver may operate an accessible vehicle unless the driver has a certificate of completion for or other evidence of completion of the required training as provided in subdivision (a) of this section.

(c) Each participating driver must keep the certificate or a copy of the certificate obtained pursuant to subdivision (b) of this section in the accessible vehicle and available for inspection.

(d) The owner shall be responsible for paying any fees required for the training of participating drivers for such owner's medallion or vehicle.

(e) The owner shall be responsible for ensuring that an accessible vehicle is operated by a participating driver who has completed the training provided for in this section.

(f) Each participating driver must also attend and complete the course of instruction in operation of the dispatch equipment provided by the dispatcher. Each participating driver must also attend and complete any mandatory update training on the dispatch equipment provided by the dispatcher.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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***** Current through December 2009 ****

35 RCNY 16-06

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-06 Acceptance of Dispatch.

(a) A participating driver of an accessible vehicle must accept a dispatch from the dispatcher while a driver is on duty. In the event that any participating driver while on duty rejects more than two dispatches from the dispatcher in any work shift, the participating driver shall be deemed to have failed to participate in the dispatch program. Such participating driver may offer as a defense of any charge of failure to participate evidence or an explanation that the driver was not on duty or the vehicle was otherwise not actually available.

(b) A participating driver operating an accessible vehicle, upon receiving a dispatch from the dispatcher, must indicate to the dispatcher when the accessible vehicle will be able to pick up a wheelchair passenger in response to a dispatch in the manner prescribed by the dispatcher. A participating driver of an accessible taxicab shall illuminate the "Off Duty" light when the driver begins to travel to the pick up location.

(c) A participating driver of an accessible vehicle who has accepted a dispatch from the dispatcher may not accept any other passenger prior to picking up the wheelchair passenger.

(d) A base station with which a participating wheelchair accessible livery is affiliated shall also be responsible for ensuring the acceptance of a dispatch by the operator of the vehicle.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

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35 RCNY 16-07

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-07 Fares.

Except as provided in section 16-09 of this chapter, fares for transportation provided following a dispatch under this chapter shall be equivalent to those set for taxicabs pursuant to sections 1-69, 1-70, 1-72 and 1-73 of this title.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

35 RCNY 16-08

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-08 Driver Duties Regarding Wheelchair Passengers.

(a) A participating driver must assist the wheelchair passenger to and from the curbside while entering and exiting the vehicle and must secure the wheelchair passenger within the vehicle. A participating driver is not required to assist a wheelchair passenger beyond the curbside.

(b) A participating driver must place the wheelchair passenger's packages and parcels in the vehicle and secure them and must retrieve them for the wheelchair passenger upon the conclusion of the ride.

(c) A participating driver must accept and provide transportation in the accessible vehicle for a wheelchair passenger's service animal(s) and for as many companions as may be seated in the vehicle.

(d) (i) A participating driver who has accepted a dispatch must wait for the wheelchair passenger to appear at the curbside at the point of pick up for a minimum of ten minutes following the time of pick up indicated by the dispatcher.

(ii) Notwithstanding the provisions of section 2-33(a) of this title, a participating driver shall not turn on the taximeter until the later of (A) the pick up time indicated by the dispatcher or (B) the vehicle's arrival at the point of pick up. The fare shall include any wait time from the time the taximeter is turned on until the trip begins.

(e) Except as provided in section 16-09 of this chapter, a participating driver of an accessible vehicle may not charge a fare to a wheelchair passenger higher than that indicated on the taximeter.

(f) A participating driver accepting a dispatch from the dispatcher must notify the dispatcher in the manner

prescribed by the dispatcher when the driver has arrived at the pick up location, whether a passenger is a wheelchair passenger, and whether the driver has picked up any passengers. At the conclusion of the ride, the participating driver must notify the dispatcher in the manner described by the dispatcher that the trip has been completed, the amount of the fare and the driver's ability to accept a new dispatch.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Rules of the City of New York

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35 RCNY 16-09

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-09 Non-Wheelchair Passengers.

A participating driver who has accepted a dispatch and who finds, upon arriving at the pick up location, that none of the passengers is a wheelchair passenger, may either refuse to provide transportation to such passengers, or provide such transportation but charge a fare of twice the otherwise applicable fare.

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Rules of the City of New York

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35 RCNY 16-10

RULES OF THE CITY OF NEW YORK

Title 35 Taxi and Limousine Commission

CHAPTER 16 DISPATCH OF VEHICLES ACCESSIBLE TO PERSONS IN WHEELCHAIRS*1

§16-10 Penalties for Violation of Accessible Dispatch Rules.

Rule No. PenaltyAll fines listed below also include a separate license suspension, to run concurrently with any underlying suspension, until such fine is paid, unless such fine is paid by the close of business on the day assessed. PersonalAppearanceRequired

§16-02 $100 to each of driver, owner, and, if the vehicle is a wheelchair accessible livery, the base station. No

§16-04(a) $50 No

§16-04(b) $100 No

§16-04(c) $50 No

§16-04(d) $100 No

§16-05(b) $50 No

§16-05(c) $50 No

§16-05(e) $50 No

§16-06(a) $100 per work shift No

§16-06(b) $100 No

§16-06(c) $100 No

§16-06(d) $50 No

§16-08(a) $50 No

§16-08(b) $50 No

§16-08(c) $50 No

§16-08(d)(i) $50 No

§16-08(d)(ii) $50 No

§16-08(e) $100 No

§16-08(f) $50 No

HISTORICAL NOTE

Section added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Nov. 23, 2007 §14, eff. Dec. 23, 2007. [See T35 §1-87 Note 1]

Rules of the City of New York

38 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 DEALERS IN RIFLES AND SHOTGUNS*

§1-01 Introduction.

The following rules and regulations are hereby promulgated for the licensing and regulating of dealers in rifles and shotguns. Licensees are held responsible for the strict enforcement of and adherence to these rules. Any violation thereof is cause for suspension and/or revocation of the subject1 license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. Note further provisions of City Record May 31, 2001:

The Police Commissioner is responsible for the licensing and regulation of handguns, rifles, shotguns and other weapons in New York City, including activities such as possessing, carrying, selling, manufacturing, transporting or repairing such weapons. In addition, the Police Commissioner is authorized to designate

individuals as "Special Patrolmen" pursuant to §14-106 of the New York City Administrative Code. The administrative arm of the Police Department which fulfills these functions at his direction is the New York City Police Department's License Division.

Since early 1997, the operation of the License Division has undergone extensive review and analysis. This continuous effort to improve the quality and timeliness of the application and renewal process, the investigation of incidents, the determination of fitness, and the safe transport of weapons through New York City has resulted in significant policy changes and organizational improvements under the present rules and practices. However, it became clear that in the interest of consistency, fairness, and efficiency, a close examination and restructuring of Chapters 1, 2, 3, 4, 5, 13, 15 (Subchapter B), and 16 of Title 38 of the Rules of the City of New York was equally necessary.

Chapters 1 through 5, regarding licensing and possession of handguns and rifles/shotguns, as well as the licensing of dealers in weapons (including air pistols and air rifles), have been amended to be internally consistent in application, renewal, and suspension/revocation procedures. The amendments incorporate recent changes to the law, such as federal and state law prohibitions against possession of firearms by perpetrators of domestic violence, as well as local laws regarding the possession and use of safety locking devices and the establishment of domestic partnership registration in New York City. The amendments clarify and streamline the application and review process, clarify the conditions of the issuance of a license including the obligation to observe applicable laws and rules, and set forth consistent procedures for the appeal of revocation or suspension of a license or permit. Specifically with respect to handgun licensing, the amendments eliminate as a separate category the "Target" handgun license, clarify the requirements for particular categories of handgun licenses, and require inspection of all handguns with each renewal of the license.

Chapter 13, "Special Patrolmen," has been similarly amended to streamline and clarify application, renewal, and suspension/revocation procedures, including criteria to be considered when evaluating whether employers demonstrate sufficient need for the appointment of special patrolmen.

Subchapter B of Chapter 15, governing hearings conducted by the License Division, has been amended to conform the hearing process to the License Division rules as amended herein, as well as to clarify and streamline the hearing and disposition process.

Chapter 16 is amended to strengthen the already existing rules regarding the transport of weapons in New York City. The amendments clarify the definitions of applicable terms, strengthen notification requirements and security requirements when weapons are transported in and through New York City, and provide an appropriate procedure when a weapons shipment destined for a location outside of New York City is unexpectedly delayed in New York City. The chapter is also amended to exempt weapons shipments of five or fewer between licensed dealers within New York City from the operation of these rules.

In response to public comment on the proposed rule amendments and additional review by members of the Police Department, modifications have been made to rules contained in Chapters 1, 2, 3, 4, 5, 13, and 15, which include: addition of a provision requiring license or permit applicants to notify the License Division in the event that their circumstances change during the pendency of the application; restoration of the thirty-day period within which to request a hearing following suspension or revocation of a license or permit, rather than the ten-day period originally provided; addition of a provision requiring that a licensee or permittee whose license was suspended or revoked due to their becoming the subject of an order of protection must wait until the order of protection is expired or voided in order to request a hearing; and modification of a requirement in Chapter 5 providing that licensees may, rather than shall, be required to produce all handguns possessed for inspection upon renewal of a handgun license.

Consistent with the intent of the New York State Penal Law and the New York City Administrative Code,

and pursuant to the powers of the Commissioner under §§434(b) and 1043 of the New York City Charter, Title 10 of the New York City Administrative Code, and Articles 265 and 400 of the New York State Penal Law, the Police Department is now acting to amend its rules to create a comprehensive and reasonable regulatory scheme for the licensing and regulation of deadly weapons in New York City, and for the appropriate designation of Special Patrolmen.

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38 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 DEALERS IN RIFLES AND SHOTGUNS*

§1-02 Definitions.

Ammunition. The term "ammunition" shall mean any explosives suitable to be fired from a rifle or shotgun.

Certificate of registration. The term "certificate of registration" shall mean the Certificate of Registration of Rifles and Shotguns issued by the New York City Police Department.

Dealer in rifles and shotguns. The term "dealer in rifles and shotguns" shall mean any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any rifle or shotgun. Dealer in rifles and shotguns shall not include a wholesale dealer.

Dispose of. The term "dispose of" shall mean to dispose of, give away, give, lease, loan, keep for sale, offer, offer for sale, sell, transfer, and otherwise dispose.

Employee. The term "employee" shall mean any person who is employed by a licensed dealer in rifles and shotguns and who has access in any manner to rifles and shotguns.

Fire Commissioner. The term "Fire Commissioner" shall mean the Fire Commissioner of the City of New York.

Police Commissioner. The term "Police Commissioner" shall mean the Police Commissioner of the City of New York.

Police officer, peace officer. The terms "police officer" and "peace officer" shall mean "police officer" and "peace officer" as those terms are defined in §§1.20 and 2.10 of the New York State Criminal Procedure Law, respectively.

Principal agent. The term "principal agent" refers to the person who is in active charge of the dealership. Dealer's licenses are issued to individuals. Every premises in which rifles and shotguns are sold requires an individual dealer's license. Thus if a company owns several stores each store would require its own individual dealer's license and the manager of the store would normally be considered the principal agent. Individual owners of stores who do not actively participate in the operation of their store may designate a responsible person as the "principal agent."

Rifle. The term "rifle" shall mean a "rifle" as defined in §265.00 of the New York State Penal Law, except that for purposes of this chapter a rifle shall have a barrel length of no less than sixteen inches and an overall length of no less than twenty-six inches.

Rifle/Shotgun Section. The term "Rifle/Shotgun Section" shall mean the Rifle/Shotgun Section of the License Division of the New York City Police Department. The "Rifle/Shotgun Section" was at one time known as the "Firearms Control Section."

Rifle/shotgun permit. The term "rifle/shotgun permit" shall mean the permit issued by the New York City Police Department for the purchase and possession of rifles or shotguns.

Shotgun. The term "shotgun" shall mean a "shotgun" as defined in §265.00 of the New York State Penal Law, except that for purposes of this chapter a shotgun shall have a barrel length of no less than eighteen inches and an overall length of no less than twenty-six inches.

Storage permit. The term "storage permit" shall mean the permit for the storage of more than two hundred (200) rounds of ammunition issued by the Fire Commissioner.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

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38 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 DEALERS IN RIFLES AND SHOTGUNS*

§1-03 Applications.

(a) A fee of $150 shall accompany the application. All permits expire on the first day of the second January following the date of issuance of the permit and may be renewed thereafter. The renewal fee is also $150. The applicant shall pay the applicable fee with a certified check or money order payable to "N.Y.C. Police Department."

(b) All applications, renewals, inquiries and information concerning licenses for dealers in rifles and shotguns shall be made to the Rifle/Shotgun Section, License Division, New York City Police Department, 120-55 Queens Blvd., Kew Gardens, New York 11424, (718) 520-9300. The Rifle/Shotgun Section shall prescribe the manner by which such license is issued.

(c) A valid license must contain the validation seal of the Rifle/Shotgun Section.

(d) No license shall be issued or renewed pursuant to these Rules except by the Police Commissioner, and then only after investigation of the application including a review of the circumstances relevant to the answers provided in the application, and finding that all statements in a proper application for a license or renewal are true. The application may be disapproved if a false statement is made therein. No license shall be issued or renewed except for an applicant:

(1) of good moral character;

(2) who has not been convicted anywhere of a felony or of any serious offense, as defined in §265.00(17) of the New York State Penal Law, or of a misdemeanor crime of domestic violence as defined in §921(a) of title 18, United States Code;

(3) who has stated whether s/he has ever suffered any mental illness or been confined to any hospital or institution, public or private, for mental illness and who is free from any disability or condition that would impair the ability to safely possess or use a rifle or shotgun;

(4) who has stated whether s/he is or has been the subject or recipient of an order of protection or a temporary order of protection, or the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act; and

(5) concerning whom no good cause exists for the denial of a license.

(e) An application for a license shall be made to the Rifle/Shotgun Section by submitting two copies of the prescribed form by the applicant, or in the case of a corporation or partnership, by a principal agent thereof. All entries on this official form shall be typewritten.

(f) An applicant, or principal agent, shall certify upon the application that s/he has been issued a rifle/shotgun permit, the identification number thereof, that s/he maintains a regular place of business within New York City, the address of the same, that s/he is over the age of twenty-one, that s/he undertakes to supervise the acts of her/his, or in the case of a corporation or partnership, its employees, and that the applicant has not previously been refused a license as a dealer in rifles and shotguns, and that no such license issued to her/him has been revoked.

(g) The Rifle/Shotgun Section shall reserve the right to require that every applicant for dealership and also any officer, partner, agent or employee of the proposed dealership be fingerprinted in contemplation of issuing a dealer's license. The Rifle/Shotgun Section shall also reserve the right to require photographs of all applicants and also of any officer, partner, agent, or employee of the proposed dealership.

(h) During the pendency of the application, the applicant shall notify the Rifle/Shotgun Section of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

(i) If her/his license application is disapproved the applicant shall receive a written "Notice of Application Disapproval" from the Rifle/Shotgun Section indicating the reason(s) for the disapproval. If the applicant wishes to appeal the decision s/he shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, One Police Plaza, Room 110A, New York, New York 10038 within thirty (30) calender days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the applicant or her/his New York State licensed attorney shall not be accepted. All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the applicant of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of her/his disapproval is denied, the applicant shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

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38 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 DEALERS IN RIFLES AND SHOTGUNS*

§1-04 Licenses and Licensees.

(a) For purposes of this section, all employees of a licensed dealer in rifles and shotguns shall personally be in possession of a valid rifle/shotgun permit to purchase and possess rifles and shotguns issued by the Rifle/Shotgun Section. Applications for dealer in rifles and shotguns and for possession of rifles and/or shotguns shall be processed together if submitted together.

(b) A dealer's license shall be valid for one year and may be renewed under the same conditions as for original issuance. All licensees shall be held responsible for renewing their licenses upon expiration. Any application to renew a license that has not previously expired, been revoked, suspended or cancelled shall thereby extend the term of the license until disposition is made of the application. Failure to renew a license after expiration shall result in the cancellation of the license.

(c) Federal law requires that dealers in rifles and shotguns shall be licensed by the United States Government Bureau of Alcohol, Tobacco and Firearms (ATF). The New York City Police Department shall notify the ATF of all dealer's licenses that are issued by the Rifle/Shotgun Section. The Police Department reserves the right to withhold a dealer's license from any applicant who does not have a federal license.

(d) All licensees shall be required to sign an acknowledgment that they shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to each type of license or permit issued to them. The Rifle/Shotgun Section shall provide the licensee with the acknowledgment statement to be executed. This acknowledgment statement shall be notarized. Failure to execute the acknowledgment statement and to have it notarized

shall result in the license application being denied.

(e) The licensee shall immediately notify the Rifle/Shotgun Section by telephone, followed by written notice within ten (10) calendar days, of any incident or violation of law or rules of federal, state, or local jurisdictions regarding her/himself, partners, officers, directors or stockholders of the licensed corporation or entity, or affecting the premises or business operations. For purposes of this subdivision, an incident includes:

(1) arrest, indictment or conviction in any jurisdiction;

(2) summons (except traffic infraction);

(3) suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act;

(4) the fact that the individual is or becomes the subject or recipient of an order of protection or a temporary order of protection;

(5) admission to any psychiatric institution, sanitarium and/or the receipt of psychiatric treatment;

(6) receipt of treatment for alcoholism or drug abuse;

(7) the presence or occurrence of a disability or condition that may affect the handling of a rifle/shotgun, including but not limited to epilepsy, diabetes, fainting spells, blackouts, temporary loss of memory, or nervous disorder;

(8) altered or mutilated license; or

(9) discharge of a rifle/shotgun on the licensee's premises.

(f) A dealer's license may be suspended and/or revoked by the Rifle/Shotgun Section for good cause by the issuance of a Notice of Determination Letter to the licensee, which shall state in brief the grounds for the suspension or revocation and notify the licensee of the opportunity for a hearing. The conviction of a licensee anywhere of a felony or serious offense as defined in §265.00(17) of the Penal Law of New York State, or of a misdemeanor crime of domestic violence as defined in §921(a) of title 18, United States Code, shall operate as a revocation of the license.

(g) If her/his license is suspended or revoked, the licensee shall be required to deposit any rifles or shotguns as well as any handgun license and any handguns in her/his possession with her/his local police precinct and forward a copy of the voucher together with her/his permit to the Rifle/Shotgun Section, 120-55 Queens Boulevard, Kew Gardens, N.Y. 11424, Room B-11. Her/his failure to comply within ten (10) calendar days from the date of suspension or revocation may result in the arrest of the licensee.

(h) A license issued shall be valid only for the premises mentioned and described in the license. No license is transferable to another person or location. The license shall be prominently displayed on such premises, and available at all times for inspection by members of the New York City Police Department. Failure of any licensee to so exhibit or display her/his license shall be presumptive evidence that s/he is not duly licensed.

(i) Upon issuance of a written Notice of Determination Letter from the Rifle/Shotgun Section notifying the licensee of suspension or of revocation of the license, a suspended/former licensee shall have thirty (30) calendar days from the date of the notice to submit a written request for a hearing to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York, New York 10038. A licensee whose arrest or summons resulted in suspension or revocation of her/his license may only submit a written request or a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law §1.20(16)(c). If the suspension or revocation resulted from the licensee becoming the subject of an order of protection or a temporary order of protection, the licensee may only submit a written request for a hearing within thirty (30) calendar days after the

expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply.

(j) Licensees shall be held responsible for having knowledge of all new laws and/or amendments or regulations that may be enacted through legislation or promulgated by the New York City Police Department affecting dealers in rifles and shotguns.

(k) Licensees shall cooperate with all reasonable requests by the Police Department for information and assistance in matters relating to the license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

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38 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 DEALERS IN RIFLES AND SHOTGUNS*

§1-05 Rifles/Shotguns and Ammunition.

(a) No rifle or shotgun shall be sold, or given away, or disposed of, unless the transferee is authorized by law to possess such rifle or shotgun. Any police officer or peace officer shall produce a shield and proper identification before purchasing a rifle or shotgun. A peace officer whose status does not confer authorization to possess firearms pursuant to §2.10 of the New York State Criminal Procedure Law shall possess a rifle/shotgun permit in order to be a lawful transferee. Therefore, before delivering a rifle or shotgun to a peace officer without a rifle/shotgun permit, the licensee shall verify that person's status as a peace officer by telephoning the License Division Incident Section at (212) 374-5538 or 5539.

(b) Every dealer in rifles and shotguns shall keep a record book provided by the Rifle/Shotgun Section (P.D. 641-50). This book shall contain a record of all dispositions and registrations of rifles and shotguns purchased and disposed of by the dealer. Such records shall be maintained on the premises stated in the license and permanently preserved thereat. In the event of cancellation and/or revocation of the license, or discontinuance of business by a licensee, such records, as well as rifles and shotguns stored on the premises, shall be surrendered to the New York City Police Department.

(c) In the event of loss or theft of any rifle or shotgun, ammunition, dealer's license, or record, the licensee is required to report the loss or theft to her/his local precinct, and notify the Rifle/Shotgun Section by telephone on the next business day after discovery of the loss or theft. The licensee shall follow up with a written notification to the Rifle/Shotgun Section within 10 calendar days of discovery of the loss or theft.

(d) In the event that any individual lacking authority to possess such weapon attempts to leave any rifle or shotgun

with a licensee for cleaning, repairing, or other processing, the licensee may accept the rifle or shotgun and obtain the name, address, telephone number, etc. of the person leaving the weapon. The licensee shall immediately report the incident to the precinct wherein the premises is located. If the licensee does not accept the rifle or shotgun for cleaning, repairing, or other processing, s/he shall report the incident to the precinct wherein the premises is located as soon as the individual possessing the weapon leaves the premises. In the event that such an individual offers to sell or otherwise dispose of such a weapon to a licensee, the licensee shall attempt to obtain the name, address, and telephone number of said individual and shall notify the precinct wherein the premises is located as soon as said individual leaves the premises.

(e) Any dealer who sells, offers to sell, stores, or otherwise disposes of ammunition in excess of two hundred (200) cartridges shall be required to obtain a storage permit from the Fire Commissioner. Dealer's licenses issued by the Rifle/Shotgun Section shall not be valid for the sale of ammunition unless the dealership is also in possession of a storage permit from the Fire Department. Upon receipt of an application which indicates an intention to sell or store ammunition, the Rifle/Shotgun Section shall notify the Fire Department and ask them to conduct an inspection of the premises. The sale or storage of ammunition without a valid Fire Department permit shall be deemed sufficient cause to revoke a dealer's license.

(f) No ammunition shall be stored, exhibited, or displayed in the windows, showcases, or doors of the licensee's premises.

(g) All other ammunition shall be stored in an area of the premises that can be reasonably secured, and is not in view of the public. Only the licensee and authorized employees shall have access to this storage area.

(h) (1) The quantities of cartridges and other ammunition stored on the premises shall not exceed the amounts fixed by the Fire Commissioner for storage of ammunition. These quantities so fixed shall be stated in the storage permit.

(2) All ammunition kept on the licensee's premises shall not be stored in an area where other materials of a highly flammable nature are manufactured, stored, or kept for sale. This restriction shall not apply to any person duly authorized to keep and sell gunpowder.

(i) (1) A record of all ammunition received and dispensed shall be registered in a bound book with pages consecutively numbered. This record book shall be separately maintained from the record book noting all rifle and shotgun transactions. It shall be the responsibility of the licensee or a designated employee to make entries in this record book. This book, together with all invoices received, shall be kept in the ammunition storage area.

(2) This record shall be arranged in columnar form as outlined below. The first page of this book shall have an inscription bearing the name and address of the premises, license number, name of owner of premises, name of employee designated to make entries, and date of book being opened. Beginning with page 2, each even numbered page shall contain a record of ammunition received, and starting with page 3, each odd numbered page shall contain a record of ammunition dispensed or sold.

(j) In the event of cancellation or revocation of the license or discontinuance of business by a licensee, such records shall be surrendered to the New York City Police Department.

(k) No ammunition suitable for use in a rifle of any calibre, or for a shotgun of any gauge, shall be sold, given away, or otherwise disposed of to any person who has not been issued a rifle/shotgun permit and a certificate of registration, and who does not exhibit the same to the dealer at the time of purchase. Rifle or shotgun ammunition shall not be sold to any such person except for the shotgun or for the specific calibre of rifle for which the certificate of registration has been issued.

(l) The Rifle/Shotgun Section advises all dealers that certain ammunition calibres are considered to be

interchangeable between rifles and handguns. Sales of ammunition in these calibres shall be recorded by dealers. The following list includes most of the calibres likely to be sold as pistol, revolver, or interchangeable ammunition; however, it is not necessarily inclusive:

.4mm Rimfire

.17 Bumble Bee and Ackley Bee

.17 Hornet and "K" Hornet

.17 Mach IV

.17-222 and .17-223

5mm Remington Mag. Rimfire

.22, .25 and .32 Rimfire

.22 Rem. Jet Mag. and .22 Win. Mag.

.22 Hornet and .22 "K" Hornet

.221 Remington Fireball

.222 Remington

.223 Remington

.25 (6.35mm) ACP

25-35 Winchester

.256 Winchester Mag.

7.5mm revolver

.30 Luger (7.65mm)

.30 Mauser (7.63mm)

7.62mm Tokarev

7.65mm French Long

.30-30 (.30 WCF)

.30 calibre Carbine

.32 revolver (all types)

.32 (7.65ww) ACP

.32-20 Winchester

.357 Mag.

.357-44 B&D

9mm pistol and revolver (all types)

.38 revolver (all types)

.38 Special pistol and revolver (all types)

.38-40 Winchester

.38-44 special

.38 Super

.38 AMU

.38 ACP

.380 ZACP

.41 revolver (all types)

.41 Mag.

.44 revolver (all types)

.45-38 automatic

.45 pistol and revolver (all types)

.455 pistol and revolver (all types)

Below is a sample outline for a licensee's book recording ammunition received, dispensed or sold. While slight variations may be permitted to accommodate clarity and page size, all dealers in ammunition shall provide all information indicated below. Any deviations from this form shall be approved by the Rifle/Shotgun Section of the New York City Police Department.

AMMUNITION RECEIVED[*]

Date- Time	Manf.	Invoice	Calibre/ Gauge	Type	Quant.	Signa- ture	Comments
-	-	-	-	-	-	-	-

AMMUNITION SOLD[**]

Date- Time	Manf.	Calibre/ Gauge	Quant.	Name	Address	Date of Birth	License No.
-	-	-	-	-	-	-	-

** Records for ammunition received shall be placed on all even numbered pages beginning with page 2.

** Records for ammunition sold and disposed of shall be placed on all odd numbered pages beginning with page 3.

(m) Prospective buyers shall not be allowed to load weapons upon the premises of the licensee. If the sale of one or

more rifles and/or shotguns as well as ammunition is consummated, the ammunition box shall be sealed prior to the sale and the buyer shall be instructed that the rifle or shotgun is not to be loaded on the premises.

(n) Pursuant to New York City Administrative Code §10-312, it shall be a criminal violation for any person who is the lawful owner or lawful custodian of a rifle or shotgun to store or otherwise place or leave such weapon in such a manner or under circumstances that it is out of her/his immediate possession or control, without having rendered such weapon inoperable by employing a safety locking device as defined in subdivision (o) of this section. Such offense shall constitute a misdemeanor if the offender has previously been found guilty of such violation or if the violation is committed under circumstances which create a substantial risk of physical injury to another person. The New York City Police Department recognizes that all licensees have incurred an obligation by being issued a dealer's license to maintain and dispose of rifles and shotguns in a responsible fashion. In order to assist licensees, the Rifle/Shotgun Section has issued the following safety requirements in response to past incidents involving dealers in rifles and shotguns:

(1) No weapons shall be stored, exhibited or displayed in windows, showcases, or doors of the premises. Rifle/shotgun storage or inventory areas shall be physically separated from counter and display areas and access to these areas shall be carefully controlled.

(2) All rifle/shotgun display cases shall be kept locked and secured at all times and not readily accessible to the public. All keys to such display cases shall not leave the control of authorized personnel.

(3) All rifles and shotguns shall not be readily capable of firing. They shall be temporarily deactivated by removing magazines or bolts; or by securing with bars or chains through the trigger guard; or by using individual trigger locks or other safety locking devices composed primarily of steel or other metal of significant gauge to inhibit breaking.

(4) All rifles and shotguns within a licensee's inventory shall be tagged and cross referenced to the appropriate entry in the acquisition records.

(o) Pursuant to New York City Administrative Code §10-311(a), it shall be unlawful for any person or business enterprise to dispose of any rifle or shotgun which does not contain a safety locking device, defined as a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user. The following types of safety locking devices will be deemed to comply with this provision:

(1) a trigger lock, which prevents the pulling of the trigger without the use of a key; or

(2) a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers; or

(3) a detachable or non-detachable locking device, composed primarily of steel or other metal of significant gauge to inhibit breaking, utilizing a metallic key or combination lock, rendering the weapon inoperable until the locking device is removed by an authorized person.

(p) Pursuant to New York City Administrative Code §10-311(b), it shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to dispose of any rifle or shotgun in New York City unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the rifle or shotgun and on a separate sheet of paper included within the packaging enclosing the rifle or shotgun: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

(q) Pursuant to New York City Administrative Code §10-311(c), any person who applies for and obtains

authorization to purchase, or otherwise lawfully obtains, a rifle or shotgun shall be required to purchase or obtain a safety locking device at the time s/he purchases or obtains the rifle or shotgun.

(r) Pursuant to New York City Administrative Code §10-311(d), the City of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of a safety locking device that may have been purchased in compliance with these rules.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

Subd. (n) par (3) amended City Record Aug. 9, 1999 eff. Sept. 8, 1999. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 9, 1999:

Local Law No. 21 of 1998, or "Christopher's Law," added Section 10-311 to the New York City Administrative Code, requiring anyone selling or otherwise transferring a pistol or revolver to provide an accompanying safety locking device. The law also requires licensed manufacturers, importers and dealers to provide a written warning with any handgun sold, encouraging the use of safety locking devices. The Police Commissioner is required to provide written notice of the law to anyone seeking authorization to purchase a handgun, and to advise applicants for handgun licenses and renewals on safe storage of weapons and the use of a safety locking device. Finally, the law authorizes the Commissioner to promulgate rules regarding the types of safety locking devices that will comply with the law.

Consistent with the intent of the law, and pursuant to the powers of the Commissioner under sections 434(b) and 1043 of the New York City Charter, the Police Department is now acting to amend its rules regarding the licensing of handguns and rifles/shotguns, as well as the licensing of dealers in such weapons, to implement the law's provisions as required and to encourage the use of safety locking devices.

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Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 DEALERS IN RIFLES AND SHOTGUNS*

§1-06 Security.

A licensee shall take all reasonable precautions to make the premises secure. These precautions shall include but not be limited to all applicable measures as listed below:

(a) Securing windows at or near ground level with expanded metal welded to bolted angle-iron frames.

(b) Securing the front of the premises with a metal folding scissors gate, roll-down door, or another similar device.

(c) Adequately protecting and securing all rear windows and doors, and skylights.

(d) Allowing the interior of the premises to be visible at all times; no drapes or blinds shall be used that would block the view of police or passersby who might observe unusual activity within the premises.

(e) Illuminating fully the exterior and interior of the premises at night, and during the hours when business is not conducted within.

(f) Installing alarms, or other appropriate security/service systems upon the premises.

(g) Posting signs prominently on the premises warning of the presence of electronic or other types of security systems and containing penalties for criminal violations.

(h) Installing high-security cylinder locks in all doors.

(i) In order to properly protect a licensee's premises and the weapons and ammunition stored within, the New York City Police Department requires that dealers utilize its "Crime Prevention Security Survey." A member of the New York City Police Department will come to a licensee's business establishment and inspect the building for security measures. After the inspection, the officer will recommend and suggest various methods in order to better protect the premises. These recommendations may include the choice of locks, gates, and alarm systems suitable for the licensee's premises. The inspection is free of charge. Licensees shall contact their local police precinct, and request an appointment with the Crime Prevention Officer or the Community Policing Supervisor for a survey of the premises.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

NOTE

References within this chapter to the masculine shall be presumed to include the feminine and neuter. References to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Rules of the City of New York

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38 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-01 Introduction.

The following Rules have been promulgated by the Police Commissioner for the registration and regulation of organizations possessing rifles and shotguns. Such organizations are held responsible for the strict enforcement of and adherence to these Rules. Any violation thereof is cause for suspension or revocation of the privilege to possess rifles and shotguns.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-02 Definitions.

Ammunition. The term "ammunition" shall mean any explosives suitable to be fired from a rifle or shotgun.

Certificate of registration. The term "certificate of registration" shall mean the Certificate of Registration of Rifles and Shotguns issued by the New York City Police Department.

Custodian. The term "custodian" shall mean an individual personally possessing a rifle/shotgun permit, and designated by an organization to be held responsible for the safeguarding and supervision of any rifle or shotgun owned by the organization.

Alternate custodian. The term "alternate custodian" shall mean an individual personally possessing a rifle/shotgun permit, and designated by an organization to be held responsible for the safeguarding and supervision of any rifle or shotgun owned by the organization when the custodian is unavailable to perform her/his duties.

Fire Commissioner. The term "Fire Commissioner" shall mean the Fire Commissioner of the City of New York.

Organization. The term "organization" shall mean any firm, partnership, corporation, company or other entity, association, educational institution, cultural institution, or paramilitary organization registered by the Rifle/Shotgun Section to possess rifles and/or shotguns for the purpose of holding itself out to the general public as a business providing security or protection services for compensation; or instructing individuals in the use of rifles and/or shotguns; or organizing and supervising a competition or target practice involving the use of rifles and/or shotguns.

Organization registration certificate. The term "organization registration certificate" shall mean the certificate issued by the Rifle/Shotgun Section to approved organizations registered to possess rifles and shotguns.

Rifle. The term "rifle" shall mean a "rifle" as defined in §265.00 of the New York State Penal Law, except that for purposes of this chapter, a rifle shall have a barrel length of no less than sixteen inches, and an overall length of no less than twenty-six inches.

Rifle/Shotgun Section. The term "Rifle/Shotgun Section" shall mean the Rifle/Shotgun Section of the License Division of the New York City Police Department. The "Rifle/Shotgun Section" was at one time known as the "Firearms Control Section."

Rifle/shotgun permit. The term "rifle/shotgun permit" shall mean the permit issued by the Rifle/Shotgun Section for the possession and purchase of rifles and shotguns.

Shotgun. The term "shotgun" shall mean a "shotgun" as defined in §265.00 of the New York State Penal Law, except that for purposes of this chapter, a shotgun shall have a barrel length of no less than eighteen inches and an overall length of no less than twenty-six inches.

Storage permit. The term "storage permit" shall mean the permit for the storage of more than two hundred (200) rounds of ammunition issued by the Fire Commissioner.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-03 Applicability.

These Rules shall apply to any person, firm, partnership, corporation, company or other entity, association, educational institution, cultural institution, or paramilitary organization possessing rifles and/or shotguns for the purpose of holding itself out to the general public as a business providing security or protection services for compensation; or instructing individuals in the use of rifles and/or shotguns; or engaging in a military drill or parade with rifles and/or shotguns; or organizing and supervising a competition or target practice involving the use of rifles and/or shotguns.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-04 Original Applications and Renewals.

(a) All applications, renewals, requests for information and inquiries by an organization pursuant to these Regulations shall be made to the Rifle/Shotgun Section, License Division, New York City Police Department, 120-55 Queens Blvd., Kew Gardens, N.Y. 11424, (718) 520-9300. The Rifle/Shotgun Section shall prescribe and enforce the manner in which an organization may be registered to possess rifles and shotguns.

(b) A letter prepared on the letterhead of the organization shall accompany the official application. In addition to a request to be designated an organization to possess rifles and shotguns, this letter shall set forth:

(1) the names of the custodian and alternate custodian;

(2) the manner in which the rifles and shotguns shall be secured when not in use.

The applicant shall also submit two (2) color photographs each of the designated custodian and alternate custodian, size $1^1/_2 \times 1^1/_2$ inches, taken within the past thirty (30) days, front view from the chest up, with the application.

(c) During the pendency of the application, the applicant shall notify the Rifle/Shotgun Section of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

(d) If the application is disapproved the organization shall receive a written "Notice of Application Disapproval" from the Rifle/Shotgun Section indicating the reason(s) for the disapproval. If the organization wishes to appeal the

decision it shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, One Police Plaza, Room 110A, New York, New York 10038 within thirty (30) calendar days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the organization or its New York State licensed attorney shall not be accepted. All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the organization of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of the disapproval is denied, the organization shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

(e) An organization registration certificate shall expire on the last day of the third December after the date of issue and may be renewed every three (3) years thereafter. A renewal application shall be forwarded to the organization at least thirty (30) calendar days prior to the expiration date. If the renewal application is not received in a timely manner, the custodian or alternate custodian shall so notify the Rifle/Shotgun Section by telephone. Certificates may be renewed under the same conditions as original issuance. An application for issuance or renewal of a certificate may be disapproved if a false statement is made therein. All organizations shall be held responsible for renewing a certificate upon expiration. Failure to renew a registration prior to its expiration date shall result in its cancellation.

(f) An organization registration certificate issued shall be valid only for the organization, custodian and alternate custodian mentioned and described in the certificate. A certificate shall not be transferable to another organization. The certificate and all rifles and shotguns possessed by an organization shall be available for inspection by members of the New York City Police Department. Failure by any organization to so exhibit a registration certificate shall be presumptive evidence that it is not duly registered.

(g) All organizations shall abide by the laws, rules, standards, and procedures promulgated by federal, state and local jurisdictions and law enforcement agencies applicable to the organization. A violation thereof is cause for suspension or revocation of a registration certificate issued by the Rifle/Shotgun Section. Upon suspension or revocation of a registration certificate, the custodian or alternate custodian shall deposit all rifles/shotguns in the organization's possession with her/his local police precinct and forward a copy of the voucher together with the registration certificate to the Rifle/Shotgun Section, 120-55 Queens Boulevard, Kew Gardens, N.Y. 11424, Room B-11. Her/his failure to comply within ten (10) calendar days from the date of suspension or revocation may result in arrest or other action by the Police Department.

(h) An organization registration certificate may be revoked or suspended by the Rifle/Shotgun Section for good cause by the issuance of a Notice of Determination Letter to the organization, which shall state in brief the grounds for the suspension or revocation and notify the organization of the opportunity for a hearing.

(i) Upon issuance of a written Notice of Determination Letter from the Rifle/Shotgun Section notifying the organization of suspension or revocation of a registration certificate by the Rifle/Shotgun Section, the organization shall have thirty (30) calendar days from the date of the notice to submit a written request for a hearing to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York, New York 10038.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-05 Custodian Appointment and Duties.

(a) Upon application an organization shall appoint two (2) active members or employees of the organization to be personally responsible for all rifles and shotguns possessed by the organization, its employees or members. These individuals shall be known as the custodian and alternate custodian.

(b) It shall be certified upon an application for registration that the custodian and alternate custodian are rifle/shotgun permit holders; the identification numbers thereof; that they are active members or employees of the organization; that they undertake to supervise the acts of the employees and members of the organization while they use any rifles or shotguns possessed by the organization; and that they have not been previously denied or had revoked appointment as a custodian or alternate custodian for the applicant or any other organization. If the organization does not have two active members or employees, the custodian shall be an active member or employee and the alternate custodian shall be a suitable designated individual who possesses a rifle/shotgun permit.

(c) The Rifle/Shotgun Section reserves the right to require the custodian and alternate custodian to be fingerprinted and/or photographed in contemplation of issuing an organization registration certificate.

(d) The custodian and alternate custodian shall ensure that all members or employees using rifles and shotguns registered by the organization are licensed by the Rifle/Shotgun Section to possess rifles and shotguns. The provisions of §2-05(d) shall not be applicable to the following organizations:

(1) An organization actively engaged in the instruction of minors in the use of rifles and/or shotguns or the supervision of a competition or target practice for minors. A custodian and alternate custodian, designated by an

organization of this nature, shall closely supervise all minors using rifles and/or shotguns registered by the organization, and ensure that such minors are instructed in the safe use of rifles and/or shotguns.

(2) A paramilitary organization actively engaged in the presentation of military drill or parade. A custodian and alternate custodian designated by an organization of this nature shall closely supervise all individuals using rifles and/or shotguns during all military drills or parades. The custodian and alternate custodian shall also ensure that such rifles and/or shotguns are not loaded during such events.

(e) The conviction of a custodian or alternate custodian anywhere of a felony or serious offense as defined in §265.00(17) of the New York State Penal Law, or of a misdemeanor crime of domestic violence as defined in §921(a) of title 18, United States Code, may require suspension or revocation of an organization's registration certificate. An organization's registration certificate may be suspended or revoked if the custodian or alternate custodian is the subject or recipient of an order of protection or a temporary order of protection, or the subject of an ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(f) A custodian or alternate custodian shall immediately notify the Rifle/Shotgun Section by telephone, followed by written notice within ten (10) calendar days, of any incident or violation of law or rules of federal, state, or local jurisdictions regarding the custodian or alternate custodian, or affecting the premises or business operations. For purposes of this subdivision, an incident includes:

(1) arrest, indictment or conviction in any jurisdiction;

(2) summons (except traffic infraction);

(3) suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act;

(4) the fact that the custodian or alternate custodian is or becomes the subject or recipient of an order of protection or a temporary order of protection;

(5) admission to any psychiatric institution, sanitarium and/or the receipt of psychiatric treatment;

(6) receipt of treatment for alcoholism or drug abuse;

(7) the presence or occurrence of a disability or condition that may affect the handling of a rifle/shotgun, including but not limited to epilepsy, diabetes, fainting spells, blackouts, temporary loss of memory, or nervous disorder;

(8) lost, stolen, altered or mutilated certificate of registration or organization registration certificate; or

(9) unlawful discharge of a rifle/shotgun.

(g) An organization shall inform the Rifle/Shotgun Section in writing of any proposed change of custodianship or any other amendment of its registration. An organization shall not alter a registration certificate without the permission of the Rifle/Shotgun Section.

(h) The custodian and alternate custodian shall each be required to sign an acknowledgment that s/he shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to each type of license or permit issued to her/him and to the organization. The Rifle/Shotgun Section shall provide the custodian and alternate custodian with the acknowledgment statement. These acknowledgment statements shall be notarized. Failure to sign the acknowledgment statements and have them notarized shall result in denial of the application for the organization registration certificate. Upon appointment, each successive custodian and alternate custodian shall be required to sign an

acknowledgment statement and have it notarized. Failure to do so shall result in the suspension or revocation of the organization's registration certificate. Custodians and alternate custodians shall be held responsible for having knowledge of all new laws and rules that may be enacted by local, state, or federal legislatures or promulgated by the New York City Police Department affecting their organization.

(i) The custodian and alternate custodian shall be responsible for securing all rifles and shotguns and all ammunition possessed by the organization at the close of business/activities every day. Failure to do so shall constitute good cause for suspension or revocation of the organization's registration certificate.

(j) Pursuant to New York City Administrative Code §10-311(a), it shall be unlawful for any person or business enterprise to dispose of any rifle or shotgun which does not contain a safety locking device, defined as a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user. The following types of safety locking devices will be deemed to comply with this provision:

(1) a trigger lock, which prevents the pulling of the trigger without the use of a key; or

(2) a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers; or

(3) a detachable or non-detachable locking device, composed primarily of steel or other metal of significant gauge to inhibit breaking, utilizing a metallic key or combination lock, rendering the weapon inoperable until the locking device is removed by an authorized person.

(k) Pursuant to New York City Administrative Code §10-311(b), it shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to dispose of any rifle or shotgun in New York City unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the rifle or shotgun and on a separate sheet of paper included within the packaging enclosing the rifle or shotgun: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

(l) Pursuant to New York City Administrative Code §10-311(c), any person who applies for and obtains authorization to purchase, or otherwise lawfully obtains, a rifle or shotgun shall be required to purchase or obtain a safety locking device at the time s/he purchases or obtains the rifle or shotgun.

(m) Pursuant to New York City Administrative Code §10-311(d), the City of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of a safety locking device that may have been purchased in compliance with these rules.

(n) Organizations, custodians and alternate custodians shall cooperate with all reasonable requests by the Police Department for information and assistance in matters relating to the certificate.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-06 Storage of Rifles and Shotguns and Ammunition.

(a) Pursuant to New York City Administrative Code §10-312, it shall be a criminal violation for any person who is the lawful owner or lawful custodian of a rifle or shotgun to store or otherwise place or leave such weapon in such a manner or under circumstances that it is out of her/his immediate possession or control, without having rendered such weapon inoperable by employing a safety locking device as defined in §2-05(j) of this chapter. Such offense shall constitute a misdemeanor if the offender has previously been found guilty of such violation or if the violation is committed under circumstances which create a substantial risk of physical injury to another person. The Rifle/Shotgun Section recognizes that all organizations have incurred an obligation by being registered to maintain and use rifles and shotguns in a responsible fashion. In order to assist organizations, the Rifle/Shotgun Section has issued the following safety guidelines for storing rifles and shotguns on the premises:

(1) All rifle and shotgun cases shall be kept locked and secured at all times and shall be inaccessible to unauthorized individuals. All keys to such cases shall not leave the control of the custodian or alternate custodian.

(2) Rifles and shotguns shall be incapable of firing when not in use. Rifles and shotguns may be temporarily deactivated by removing magazines or bolts; by securing with bars or chains through the trigger guard; or by using individual trigger locks or other safety locking devices composed primarily of steel or other metal of significant gauge to inhibit breaking.

(3) A custodian and alternate custodian shall keep one updated inventory of all rifles and shotguns possessed by the organization in the event of loss or theft. Such inventory shall include a full description of each rifle and shotgun including manufacturer, model, serial number, if applicable, and calibre or gauge. The certificate of registration issued

for each rifle and shotgun shall accompany these records.

(4) In the event of loss or theft of any rifle or shotgun, certificate of registration, ammunition, or organization registration certificate, the custodian or alternate custodian is required to report the loss or theft to her/his local precinct and notify the Rifle/Shotgun Section by telephone on the next business day after discovery of the loss or theft. Follow up with a written notification to the Rifle/Shotgun Section within 10 calendar days of discovery of the loss or theft is also required.

(b) Any organization that stores in excess of two hundred (200) cartridges shall be required to obtain a storage permit from the Fire Commissioner. The storage of ammunition without a valid permit issued by the Fire Commissioner shall be deemed sufficient cause to revoke an organization's registration certificate.

(c) The quantities of cartridges and other ammunition stored on the premises shall not exceed the amounts fixed by the Fire Commissioner for storage of ammunition. The quantities so fixed shall be stated in the storage permit.

(d) All ammunition kept on the premises shall not be stored in an area where other materials of a highly flammable nature are manufactured or stored.

(e) Ammunition shall be stored in an area of the premises that can be reasonably secured. Only the custodian, alternate custodian, and authorized members or employees shall have access to this storage area.

(f) A custodian and alternate custodian shall take reasonable precautions to make the premises secure. These precautions shall include but not be limited to all applicable measures as listed below:

(1) Adequately protecting and securing all rear windows, doors and skylights.

(2) Securing windows at or near ground level with expanded metal welded to belted angle-iron frames.

(3) Installing alarms or other appropriate security/service systems upon the premises.

(4) Posting signs prominently on the premises warning of the presence of electronic or other types of security systems and containing penalties for criminal violations.

(5) Installing high-security cylinder locks in all doors.

(6) Illuminating fully the exterior and interior of the premises at night, and during the hours when business is not conducted within.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) par (2) amended City Record Aug. 9, 1999 eff. Sept. 8, 1999. [See T38 §1-05 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-07 Security Plan.

In order to properly protect an organization's premises and the rifles, shotguns and ammunition stored within, the Rifle/Shotgun Section requires that custodians utilize the New York City Police Department's Crime Prevention Security Survey. A member of the New York City Police Department will come to an organization's premises and inspect the building for security measures. After the inspection, the officer will recommend and suggest various methods designed to better protect the premises. These recommendations may include the choice of locks, gates, and alarm systems suitable for the premises. The inspection is free of charge. An organization shall contact its local police precinct, and request an appointment with the Crime Prevention Officer or the Community Policing Supervisor for a survey of the premises of the organization.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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***** Current through December 2009 ****

38 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 2 ORGANIZATIONS POSSESSING RIFLES AND SHOTGUNS*1

§2-08 Separability.

If any clause, sentence, paragraph, or part of these Rules of the application to any organization, custodian, or circumstances shall be determined to be invalid, such determination shall not affect, impair or invalidate the remainder thereof.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

NOTE

References within this chapter to the masculine shall be presumed to include the feminine and neuter. References to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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***** Current through December 2009 ****

38 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-01 Introduction.

All New York City rifle and shotgun permittees shall be aware of the responsibilities incurred by accepting a permit. The permittee should especially be familiar with the rules applicable to the possession of a rifle or shotgun or both. The following rules for the proper and safe use of rifles and shotguns have been promulgated by the Police Commissioner of the New York City Police Department. A violation of these provisions may be cause for suspension or revocation of a rifle/shotgun permit.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-02 Application for Permit.

(a) The applicant shall complete the application supplied to her/him by the Police Department.

(b) The minimum age for obtaining a permit is 18 years of age.

(c)(1) If the applicant was ever arrested for any crime or violation s/he shall submit a certificate of disposition indicating the offense and final disposition of the charges. The applicant shall do this even if the case was dismissed, the record sealed or the case nullified by operation of law (**e.g.,** Youthful Offender Status). Any omission of a previous arrest may result in the denial of the application.

(2) If the applicant was ever convicted in New York State of a felony or a serious offense as defined in §265.00(17) of the New York State Penal Law, s/he shall get a New York State Certificate of Relief from Disabilities.

(3) No permit shall be issued or renewed to any applicant who has been convicted of a misdemeanor crime of domestic violence, as defined in §921(a) of title 18 of the United States Code, or who is the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(d) If the applicant was discharged from the Armed Forces under other than honorable conditions s/he shall submit a copy of her/his separation papers and a notarized statement explaining the reason for discharge.

(e) If the applicant's answer to Question 2, 3 or 4 on the application is YES s/he shall submit a letter from a

licensed physician stating that s/he has examined the applicant within the last 30 days, that the examination included a review of the applicant's medical record and all pertinent hospital and institutional records, and shall conclude that the applicant is capable of possessing a rifle or a shotgun without presenting a danger of harm to the applicant or to others. Further evidence may be requested.

(f) Four color photographs, $1^1/_2 \times 1^1/_2$ inches, of the applicant, from the chest up, taken within the past thirty (30) days shall accompany the application. The wearing of any article of clothing or other adornment obscuring the identification of the wearer is not acceptable.

(g) Payment of applicable fees shall be made by certified check or money order, made payable to the N.Y.C. Police Department or to the N.Y.S. Division of Criminal Justice Services, respectively.

(h) All permittees shall be required to sign an acknowledgment that they shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to this permit. The Rifle/Shotgun Section shall provide the permittee with the acknowledgment statement. This acknowledgment statement shall be notarized. Failure to sign the acknowledgment statement and have it notarized shall result in denial of the permit application.

(i) During the pendency of the application, the applicant shall notify the Rifle/Shotgun Section of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-03 Grounds for Denial of Permit.

An application for rifle/shotgun permit may be denied if:

(a) The applicant has been arrested, indicted or convicted for any crime or violation except minor traffic violations, in any jurisdiction, federal, state or local.

(b) The applicant has been other than honorably discharged from the Armed Forces of this country.

(c) The applicant has or has had any disability or condition that may affect the ability to safely possess or use a rifle or a shotgun.

(d) The applicant has received psychiatric treatment or been confined for alcoholism, mental illness or drug addiction.

(e) The applicant makes a false statement on her/his application.

(f) The applicant is the subject or recipient of an order of protection or a temporary order of protection.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. An applicant's prior arrest for assault can constitute grounds for denial of a rifle/shotgun permit. Even though the charges against the applicant were adjourned in contemplation of dismissal, and were eventually dismissed, the department can consider the circumstances surrounding the arrest. Peric v New York City Police Dept., 5 A.D.3d 142, 772 N.Y.S.2d 507 (1st Dept. 2004).

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-04 Right to Appeal Following Denial of Permit.

If for any reason her/his application is denied the applicant has the right to an appeal.

(a) If the applicant's original application is denied, the applicant shall receive a written "Notice of Application Disapproval" from the Rifle/Shotgun Section indicating the reason(s) for the disapproval. If the applicant wishes to appeal the decision s/he shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, One Police Plaza, Room 110A, New York, New York 10038 within thirty (30) calendar days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the applicant or her/his New York State licensed attorney shall not be accepted.

(b) All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the applicant of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of her/his disapproval is denied, the applicant shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section amended City Record Apr. 12, 1993 eff. May 12, 1993.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-05 Suspension or Revocation of Permit.

(a) The permittee shall immediately notify the Rifle/Shotgun Section by telephone, followed by written notice within ten (10) calendar days, of any incident or violation of law or rules of federal, state, or local jurisdictions. For purposes of this subdivision, an incident includes:

(1) arrest, indictment or conviction in any jurisdiction;

(2) summons (except traffic infraction);

(3) suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act;

(4) the fact that the permittee is or becomes the subject or recipient of an order of protection or a temporary order of protection;

(5) admission to any psychiatric institution, sanitarium and/or the receipt of psychiatric treatment;

(6) receipt of treatment for alcoholism or drug abuse; or

(7) the presence or occurrence of a disability or condition that may affect the handling of a rifle/shotgun, including but not limited to epilepsy, diabetes, fainting spells, blackouts, temporary loss of memory, or nervous disorder; or

(8) unlawful discharge of a rifle/shotgun.

(b) The permittee's rifle/shotgun permit may be subject to suspension or revocation if:

(1) The permittee is arrested, indicted or convicted for any crime or violation, except minor traffic violations, in any jurisdiction, federal, state or local, or is the subject or recipient of an order of protection or a temporary order of protection, or is the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(2) The permittee is other than honorably discharged.

(3) The permittee has or has had any disability or condition that may affect the ability to safely possess or use a rifle or a shotgun.

(4) The permittee has received or is receiving psychiatric treatment or is or has been confined for alcoholism, mental illness or drug addiction.

(5) The permittee violates any of the rules pertaining to the permit to possess rifles and shotguns.

(c) If her/his permit is suspended or revoked, the permittee shall be required to deposit any rifles or shotguns as well as any handgun license and any handguns in her/his possession with her/his local police precinct and forward a copy of the voucher together with her/his permit to the Rifle/Shotgun Section, 120-55 Queens Boulevard, Kew Gardens, N.Y. 11424, Room B-11. Her/his failure to comply within ten (10) calendar days from the date of suspension or revocation may result in the arrest of the permittee.

(d) If her/his permit is suspended or revoked, the suspended/former permittee shall be issued a Notice of Determination Letter by the Rifle/Shotgun Section, which shall state in brief the grounds for the suspension or revocation and notify the permittee of the opportunity for a hearing. The permittee shall have a right to submit a written request for a hearing within thirty (30) calendar days from the date of the Notice of Determination Letter to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York 10038. Before a hearing is scheduled the permittee shall be required to submit the above documents and any additional documents requested in the suspension or revocation notice. A permittee whose arrest or summons resulted in suspension or revocation of her/his permit may only submit a written request for a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law §1.20(16)(c). If the suspension or revocation resulted from the permittee becoming the subject of an order of protection or a temporary order of protection, the permittee may only submit a written request for a hearing within thirty (30) calendar days after the expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply.

(e) Upon receipt of the permittee's letter, the License Division shall schedule the permittee for a hearing and notify the permittee by mail. However, requests for hearings shall not be entertained, and a hearing shall not be scheduled, unless the permittee complies with the provisions of subdivision (c) above, and forwards a Certificate of Final Disposition or Certificate of Relief from Disabilities, if applicable, to the License Division.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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***** Current through December 2009 ****

38 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-06 Renewal of Permit.

Prior to the expiration of her/his rifle/shotgun permit the permittee shall be sent a renewal notice. The permittee shall answer all questions, comply with all instructions, submit a certified check or money order made payable to the N.Y.C. Police Department as required, sign and date the notice and forward it to the Rifle/Shotgun Section. In the event the permittee does not wish to renew her/his permit, s/he shall surrender her/his permit and all rifles/shotguns to her/his local precinct or otherwise lawfully dispose of the rifles/shotguns in accordance with §3-10 or §3-12 below. Any delays in renewing the permit may result in confiscation of all the permittee's rifles/shotguns by the New York City Police Department. Renewal of the permit may be disapproved if the permittee makes a false statement in connection with the renewal.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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***** Current through December 2009 ****

38 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-07 Possession and Registration of Permit.

(a) The permit issued to the permittee by the Rifle/Shotgun Section enables the permittee to possess only rifles or shotguns that are properly registered under her/his permit.

(b) The permittee shall have the permit to possess rifles and shotguns in her/his possession at all times when in possession or carrying a rifle and/or shotgun in addition to a separate certificate of registration for that particular rifle and/or shotgun.

(c) Permittees are not permitted to purchase, acquire, sell, transfer or otherwise dispose of any rifle and/or shotgun and ammunition from or to gun dealers or individuals without exhibiting a Rifle/Shotgun Permit.

(d) The permit is not transferable.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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***** Current through December 2009 ****

38 RCNY 3-08

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-08 Change of Address.

The permittee shall notify the Rifle/Shotgun Section of any change in address within ten (10) calendar days.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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***** Current through December 2009 ****

38 RCNY 3-09

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-09 Lost or Stolen Documents and Rifles/Shotguns.

All lost or stolen documents and rifles/shotguns shall be reported to the precinct in which the permittee resides or the theft or loss was discovered. The permittee shall obtain a complaint number from the precinct and report in person the loss or theft to the Rifle/Shotgun Section within five (5) calendar days of the loss. A fee of two (2) dollars is charged for each document for which a replacement is requested. This fee shall be paid by certified check or money order made payable to the N.Y.C. Police Department and shall accompany the report. The permittee shall not send cash. For lost permits two color photos of permittee, $1^1/_2 \times 1^1/_2$ inches, from the chest up, taken within the past thirty (30) days shall also be provided. The wearing of any article of clothing or other adornment obscuring the identification of the wearer is not acceptable.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-10

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-10 Request to Cancel Permit.

The permittee shall notify the Rifle/Shotgun Section if s/he wishes to cancel or decline to renew her/his rifle/shotgun permit by forwarding the permit, certificate(s) of registration, and a notarized letter to the Rifle/Shotgun Section. The letter shall inform the Rifle/Shotgun Section where the rifles/shotguns are located or how they have otherwise been disposed of.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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***** Current through December 2009 ****

38 RCNY 3-11

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-11 Purchase of Ammunition.

The certificate of registration shall be presented to a dealer in rifles and shotguns at time of purchase of ammunition to confirm calibre or gauge of said specified rifle or shotgun.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-12

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-12 Disposal of Rifles and Shotguns.

(a) The permittee may sell or dispose of her/his rifle/shotgun only to a licensed dealer in rifles and shotguns, to the holder of a valid rifle/shotgun permit, or to an individual who is exempt from the permit requirements of the City of New York. When the permittee sells her/his rifle or shotgun, s/he shall complete a certificate of registration. These forms may be obtained from the Rifle/Shotgun Section or the licensed dealer purchasing the rifle/shotgun and shall be forwarded to the Rifle/Shotgun Section within 72 hours of disposition.

(b) Pursuant to New York City Administrative Code §10-311(a), it shall be unlawful for any person or business enterprise to dispose of any rifle or shotgun which does not contain a safety locking device, defined as a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user. The following types of safety locking devices will be deemed to comply with this provision:

(1) a trigger lock, which prevents the pulling of the trigger without the use of a key; or

(2) a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers; or

(3) a detachable or non-detachable locking device, composed primarily of steel or other metal of significant gauge to inhibit breaking, utilizing a metallic key or combination lock, rendering the weapon inoperable until the locking device is removed by an authorized person.

(c) Pursuant to New York City Administrative Code §10-311(b), it shall be unlawful for any licensed

manufacturer, licensed importer, or licensed dealer to dispose of any rifle or shotgun in New York City unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the rifle or shotgun and on a separate sheet of paper included within the packaging enclosing the rifle or shotgun: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-13

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-13 Transfer of Rifles/Shotguns from an Estate.

The following procedures shall be followed to dispose of any rifles/shotguns belonging to an estate:

(a) A copy of the death certificate shall be provided.

(b) The legal heir, executor, executrix, administrator or administratrix shall establish her/his claim to be legal heir, executor or administrator. This is done by one of the following means:

(1) If there is no Will, then any person claiming to be the administrator or administratrix shall submit Letters of Administration from the Surrogate's Court.

(2) If there is a Will then the executor or executrix shall submit Letters Testamentary issued by the Surrogate's Court.

(3) All requests for transfer of rifles/shotguns shall be made on Police Department Disposition Report.

(c) If any rifles/shotguns are to be transferred to a New York City resident the person receiving the rifles/shotguns shall have a valid New York City rifle/shotgun permit.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 3-14

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 3 RIFLE/SHOTGUN PERMITS*1

§3-14 Supplemental Rules.

(a) The permittee's rifle or shotgun shall not be loaded in a public place within New York City at any time except when using it at a licensed rifle and shotgun range.

(b) When the permittee travels to and from a licensed range or hunting area, or transports her/his rifle/shotgun for any reason, it shall be carried unloaded in a locked, non-transparent case, and the ammunition shall be carried separately. If the permittee is transporting her/his rifle/shotgun in a vehicle, it shall be kept locked in the trunk or equivalent space, not in plain view. The permittee shall never leave her/his rifle/shotgun in a vehicle unless s/he is physically present in or in close proximity to the vehicle.

(c) The permittee shall never alter, remove, obliterate or deface any of the following markings that may be on her/his rifle/shotgun:

(1) name of the manufacturer;

(2) model;

(3) serial number. This information identifies the rifle or shotgun in the permittee's possession.

(d) Pursuant to New York City Administrative Code §10-311(c), any person who applies for and obtains authorization to purchase, or otherwise lawfully obtains, a rifle or shotgun shall be required to purchase or obtain a safety locking device at the time s/he purchases or obtains the rifle or shotgun. Pursuant to New York City

Administrative Code §10-311(d), the City of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of a safety locking device that may have been purchased in compliance with these rules. The permittee shall take proper safety measures at all times to keep her/his rifle/shotgun from unauthorized persons-especially children. The permittee's rifle or shotgun should be kept unloaded and locked in a secure location in her/his home. Ammunition shall be stored separately from her/his rifle or shotgun.

Note: Many rifles/shotguns that are stolen in residential burglaries are taken from bedroom closets.

(e) Pursuant to New York City Administrative Code §10-312, it shall be a criminal violation for any person who is the lawful owner or lawful custodian of a rifle or shotgun to store or otherwise place or leave such weapon in such a manner or under circumstances that it is out of her/his immediate possession or control, without having rendered such weapon inoperable by employing a safety locking device as defined in §3-12(b) of this chapter. Such offense shall constitute a misdemeanor if the offender has previously been found guilty of such violation or if the violation is committed under circumstances which create a substantial risk of physical injury to another person.

(f) While there is no limit in the number of rifles or shotguns the permittee may possess, s/he should be advised that permittees who own several rifles/shotguns shall be expected to safeguard and maintain each rifle or shotgun.

(g) Minors under the age of eighteen may carry or use the permittee's rifle or shotgun only in the permittee's actual presence. The permittee shall be held responsible for supervising closely any minor using her/his rifle/shotgun. The minor, in turn, shall be expected to abide by the same rules and restrictions as a permittee.

(h) It is recommended that new permittees take advantage of instruction and safety courses in the use of rifles/shotguns that are offered by the rifle ranges and clubs within the New York area. The permittee should consult the local consumer telephone directory to find out more about a course offered in her/his area.

(i) New laws or amendments of existing rules may be enacted by a legislature or promulgated by the Police Department affecting the ownership or use of rifles/shotguns. The permittee shall be held responsible for knowing any modification of rules pertaining to her/his permit.

(j) The permit to possess a rifle or shotgun expires three years after the last day of the month in which the permit was issued. The permittee is held responsible for applying to renew her/his permit when it expires. Failure to apply to renew the permit at such time shall result in cancellation of the permit and confiscation of any rifles/shotguns the permittee may possess.

(k) Permittees shall cooperate with all reasonable requests by the Police Department for information and assistance in matters relating to the permit.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. (e) amended City Record Aug. 9, 1999 eff. Sept. 8, 1999. Note that the language in this subd.

(e) was bracketed out of the Rules by City Record May 31, 2001 amendment.

NOTE

References within these rules to the masculine shall be presumed to include the feminine and neuter. References to

singular shall be presumed to include the plural.

HISTORICAL NOTE

Note amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter heading and chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-01 Introduction.

The following rules are hereby promulgated for the licensing and regulation of gunsmiths, manufacturers, dealers in firearms and dealers in air pistols, air rifles or similar instruments. Licensees are held responsible for the strict enforcement of and adherence to these rules. Any violation thereof is cause for suspension and/or revocation of the subject license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-02 Definitions.

Air pistols, air rifles, or similar instruments. The terms "air pistols," "air rifles," or "similar instruments" shall mean any instrument designed or redesigned, made or remade to use the energy of a spring or air to fire a projectile.

Ammunition. The term "ammunition" shall mean any explosives suitable to be fired from a firearm, machine-gun, rifle, shotgun or other dangerous weapon.

Applicant, licensee or license. The terms "applicant," "licensee" or "license" shall mean and refer to gunsmiths, manufacturers, dealers in firearms and dealers in air pistols, air rifles, or similar instruments unless expressly restricted.

Assault weapon. The term "assault weapon" shall mean an "assault weapon" as defined in §10-301(16) of the New York City Administrative Code.

Assembler. The term "assembler" shall include any person, firm, partnership, corporation or company who engages in the business of joining or fitting together any firearm or parts thereof.

Commissioner. The term "Commissioner" shall mean the Police Commissioner of the City of New York.

Dealer in air pistols, air rifles or similar instruments. The term "Dealer in air pistols, air rifles or similar instruments" shall mean any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any air pistol, air rifle or similar instrument. Dealer in air pistols, air rifles or similar instruments shall not include a wholesale dealer.

Dealer in firearms. The term "dealer in firearms" shall mean any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any pistol or revolver. Dealer in firearms shall not include a wholesale dealer.

Employee. The term "employee" shall mean any person who is employed by a licensed gunsmith, manufacturer or dealer in firearms and who has access in any manner to firearms, rifles, shotguns, machine-guns, or assault weapons.

Firearm. The term "firearm" shall mean a "firearm" as defined in §265.00 of the New York State Penal Law and shall include a pistol, a revolver, and any firearm which may be concealed upon the person.

Gunsmith. The term "gunsmith" shall mean any person, firm, partnership, corporation or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving or trueing, or who performs any mechanical operation on any rifle, shotgun, firearm, machine-gun, or assault weapon.

Machine-gun. The term "machine-gun" shall mean a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a submachine gun.

Manufacturer. The term "manufacturer" shall include any person, firm, partnership, corporation or company who engages in the business of machining, producing, constructing, or making any firearm, rifle, shotgun, machine-gun, assault weapon, firearm frames or receivers. The term "manufacturer" shall include "assembler".

Rifle. The term "rifle" shall mean a "rifle" as defined in §265.00 of the New York State Penal Law, except that for purposes of this chapter a rifle shall have a barrel length of no less than sixteen inches and an overall length of no less than twenty-six inches.

Shotgun. The term "shotgun" shall mean a "shotgun" as defined in §265.00 of the New York State Penal Law, except that for purposes of this chapter a shotgun shall have a barrel length of no less than eighteen inches and an overall length of no less than twenty-six inches.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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38 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-03 Requirements of Applicants.

(a) Applications for dealer in firearms, gunsmith, manufacturer and dealer in air pistols and air rifles shall be filed in the precinct in which the business premises is located.

(b) An applicant shall be over 21 years of age and maintain a place of business in the city, and if the applicant is a partnership, each member shall be over 21 years of age; if the applicant is a corporation each officer shall be over 21 years of age.

(c) Each applicant shall be a citizen of the United States.

(d) Each applicant shall be of good moral character.

(e) Each applicant shall never have been convicted anywhere of a felony or any other "serious offense" as defined in §265.00(17) of the New York State Penal Law, or of a misdemeanor crime of domestic violence, as defined in §921(a) of title 18 of the United States Code.

(f) No license shall be issued or renewed to any applicant who has not disclosed whether s/he is or has been the subject or recipient of an order of protection or a temporary order of protection, or the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(g) No license shall be issued or renewed to any applicant unless s/he has stated whether s/he has ever suffered any

mental illness or been confined to any hospital or institution, public or private, for mental illness.

(h) Each applicant shall be free from any disability or condition that may affect the ability to safely possess or use a rifle, shotgun, firearm, machine-gun, assault weapon, air pistol or air rifle.

(i) No license shall be transferable to any other person or premises. The license shall mention and describe the premises for which it is issued and shall be valid only for such premises.

(j) A license issued pursuant to this section shall be prominently displayed on the licensed premises. Failure of any licensee to so exhibit or display her/his license shall be presumptive evidence that s/he is not duly licensed.

(k) If applicant has any branch units in the City of New York where any firearms, rifles, shotguns, machine-guns, assault weapons, air pistols, or air rifles are stored or any activities requiring a license are conducted, a separate application shall be filed with the precinct where each branch is located and a separate license secured for each premises.

(l) Each applicant shall be fingerprinted pursuant to the provisions of New York State Penal Law §400.00.

(m) A corporation shall file a certified copy of its articles of incorporation with application.

(n) If names of current officers do not appear in articles, a certified copy of the minutes of the directors' meeting at which current officers were elected shall be submitted with application.

(o) If there is a change of officers in a corporation, the corporation shall send to the License Division, One Police Plaza, Room 110A, New York, New York 10038, a certified copy of the minutes showing names of new officers.

(p) If applicant represents a partnership or uses a trade name, a certificate from the county clerk of the county in which the certificate is recorded shall be filed with application.

(q) Change of residence address for any individual licensee, partner, officer, stockholder, or director of a corporation, except those stockholders or directors whose fingerprints are waived, shall be filed with the Commanding Officer of the precinct wherein the premises is located, within 48 hours after change becomes effective.

(r) Applications shall be submitted together with the application fee on forms supplied by the Commissioner and shall be subscribed and sworn to by all individual applicants, partners, stockholders or officers of the corporation as the case may be. The annual fee, to be submitted with the application, by certified check or money order payable to the N.Y.C. Police Department, shall be twenty-five ($25) dollars for a gunsmith or manufacturer, fifty ($50) dollars for a dealer in firearms and ten ($10) dollars for a dealer in air pistols and air rifles.

(s) A false statement on the application shall be grounds for disapproval.

(t) **Plans and Permits.** (1) Applicant shall submit architectural plans of the premises proposed to be licensed and such plans shall be prepared by a registered architect.

(2) Applicant shall submit a current class (1) Federal Firearms License.

(3) Applicant shall submit a Certificate of Occupancy (C of O) zoned for gun dealers business. The C of O will state if premises is approved for more or less than 200 rounds of ammunition. If approved for more than 200 rounds a Fire Department permit is required.

(4) Applicant shall submit a current lease or deed for license location.

(5) Commanding Officer or designee (crime prevention officer or community policing supervisor) of the local

precinct shall inspect premises to ensure that security measures are adequate. A central station alarm shall be in place and operable.

(6) Applicant shall submit any and all licenses issued to her/him by the License Division, including a New York City Rifle/Shotgun Dealer's License, handgun license, or rifle/shotgun permit.

(7) Applicant shall submit a Second-Hand Dealer's License issued by the Department of Consumer Affairs, if applicable.

(u) During the pendency of the application, the applicant shall notify the License Division of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

(v) If her/his license application is disapproved the applicant shall receive a written "Notice of Application Disapproval" from the License Division indicating the reason(s) for the disapproval. If the applicant wishes to appeal the decision s/he shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, within thirty (30) calendar days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the applicant or her/his New York State licensed attorney shall not be accepted. All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the applicant of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of her/his disapproval is denied, the applicant shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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38 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-04 Licensee Requirements.

(a) For purposes of this section, all employees, as defined in §4-02 of this chapter, of a licensed gunsmith or dealer in firearms, shall personally be in possession of the required, valid license(s) or permit(s) issued by the License Division to possess handguns, rifles and/or shotguns. No person shall be employed who has been convicted anywhere of a felony, misdemeanor, serious offense as defined in §265.00(17) of the New York State Penal Law, or a misdemeanor crime of domestic violence, as defined in §921(a) of title 18 of the United States Code. No person shall be employed who is the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act. The fitness of any employee for continued employment is subject to review by the Commissioner. The licensee may be directed to terminate such employment if such employment involves access in any manner to firearms, rifles, shotguns, machine-guns, or assault weapons, based upon an arrest for any offense, or upon previous connection with a premises wherein the license was revoked or denied, or on said employee's character or reputation, or upon the employee's being or becoming the recipient or subject of an order of protection or a temporary order of protection. Licensees shall submit a roster of employees in triplicate on a form prescribed by the Commissioner, together with original application and with each renewal application. A report of any change of personnel, or change of residence address of an employee shall be filed in writing with the Commanding Officer of the precinct wherein the premises is located, within 48 hours after such change becomes effective.

(b) No firearms shall be sold, or given away, or otherwise disposed of, except to a person expressly authorized under the provisions of Articles 265 and 400 of the New York State Penal Law and §§1.20 and 2.10 of the New York State Criminal Procedure Law to possess and have such firearm. Any police officer or peace officer as defined in the Criminal Procedure Law shall produce her/his shield and proper identification card before purchasing a pistol or

revolver. A peace officer whose status does not confer authorization to possess firearms pursuant to §2.10 of the New York State Criminal Procedure Law shall possess a handgun license or rifle/shotgun permit in order to be a lawful transferee. Therefore, before delivering a firearm, rifle, shotgun, machine-gun or assault weapon to a peace officer, the licensee shall verify that person's status as a peace officer with the License Division Incident Section at (212) 374-5538 or 5539.

(c) Pursuant to New York City Administrative Code §10-311(a), it shall be unlawful for any person or business enterprise to dispose of any firearm which does not contain a safety locking device, defined as a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user. The following types of safety locking devices will be deemed to comply with this provision:

(1) a trigger lock, which prevents the pulling of the trigger without the use of a key; or

(2) a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers; or

(3) a detachable or non-detachable locking device, composed primarily of steel or other metal of significant gauge to inhibit breaking, utilizing a metallic key or combination lock, rendering the weapon inoperable until the locking device is removed by an authorized person.

(d) Pursuant to New York City Administrative Code §10-311(b), it shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to dispose of any firearm in New York City unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the firearm and on a separate sheet of paper included within the packaging enclosing the firearm: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

(e) Pursuant to New York City Administrative Code §10-311(c), any person who applies for and obtains authorization to purchase, or otherwise lawfully obtains, a firearm shall be required to purchase or obtain a safety locking device at the time s/he purchases or obtains the firearm.

(f) Pursuant to New York City Administrative Code §10-311(d), the City of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of a safety locking device that may have been purchased in compliance with these rules.

(g) In the event that any individual lacking authority to possess a firearm, rifle, shotgun, machine-gun or assault weapon attempts to leave such weapon with a licensee for cleaning, repairing or other processing, the licensee may accept the firearm, rifle, shotgun, machine-gun or assault weapon and obtain the name, address, telephone number, etc. of the person leaving the weapon. The licensee shall immediately report the incident to the precinct wherein the premises is located. If the licensee does not accept the firearm, rifle, shotgun, machine-gun or assault weapon for cleaning, repairing, or other processing, s/he shall report the incident to the precinct wherein the premises is located as soon as the individual possessing the weapon leaves the premises.

In the event that any individual lacking authority to possess a firearm, rifle, shotgun, machine-gun or assault weapon offers to sell or otherwise dispose of such weapon to a licensee, the licensee shall attempt to obtain the name, address, and telephone number of said individual and shall notify the precinct wherein the premises is located as soon as said individual leaves the premises.

(h) The licensee and all stockholders, officers, directors, applicants, agents and employees shall at all times comply with all laws, rules, regulations and requirements of all federal, state and local jurisdictions and agencies having

authority with respect to the premises and conduct and operation of the licensed business, now in effect or hereafter adopted.

(i) The licensee shall immediately make a telephone notification to the Division Head, License Division and the Commanding Officer of the precinct wherein the premises is located, followed by written notice to both within ten (10) calendar days, of any incident or violations of law or rules of federal, state or local jurisdictions regarding her/himself, partners, officers, directors, stockholders, agents or employees of the licensed corporation affecting the premises or business operations. For purposes of this subdivision, an incident includes:

(1) arrest, indictment or conviction in any jurisdiction;

(2) summons (except traffic infraction);

(3) suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act;

(4) the fact that the individual is or becomes the subject or recipient of an order of protection or a temporary order of protection;

(5) admission to any psychiatric institution, sanitarium and/or the receipt of psychiatric treatment;

(6) receipt of treatment for alcoholism or drug abuse;

(7) the presence or occurrence of a disability or condition that may affect the handling of a firearm, rifle, shotgun, machine-gun or assault weapon including but not limited to epilepsy, diabetes, fainting spells, blackouts, temporary loss of memory, or nervous disorder;

(8) lost, stolen, altered or mutilated license; or

(9) unauthorized discharge of a firearm, rifle, shotgun, machine-gun or assault weapon on the licensee's premises.

(j) The conviction of a licensee anywhere of a felony or any other "Serious Offense" as defined in §265.00(17) of the New York State Penal Law, or of a misdemeanor crime of domestic violence, as defined in §921(a) of Title 18 of the United States Code, shall operate as a revocation of the license. A license may also be revoked or suspended by a court pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(k) If her/his license is suspended or revoked, the licensee shall be required to deposit any firearms, rifles, shotguns, machine-guns and assault weapons as well as any handgun license or rifle/shotgun permit in her/his possession with her/his local police precinct and forward a copy of the voucher together with her/his license to the License Division. Her/his failure to comply within ten (10) calendar days from the date of suspension or revocation may result in the arrest of the licensee.

(l) A license may be suspended and/or revoked by the License Division for good cause by the issuance of a Notice of Determination Letter to the licensee, which shall state in brief the grounds for the suspension or revocation and notify the licensee of the opportunity for a hearing. Upon issuance of a written Notice of Determination Letter notifying the licensee of suspension or revocation of the license, a suspended/former licensee shall have thirty (30) calendar days from the date of the notice of determination to submit a written request for a hearing to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York, New York 10038. A licensee whose arrest or summons resulted in suspension or revocation of her/his license may only submit a written request for a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law §1.20(16)(c). If the suspension or revocation resulted from the licensee becoming the subject of an order of protection

or a temporary order of protection, the licensee may only submit a written request for a hearing within thirty (30) calendar days after the expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply.

(m) A license issued shall be valid only for the premises mentioned and described in the license and shall be prominently displayed on such premises.

(n) Pursuant to New York City Administrative Code §10-312, it shall be a criminal violation for any person who is the lawful owner or lawful custodian of a firearm to store or otherwise place or leave such weapon in such a manner or under circumstances that it is out of her/his immediate possession or control, without having rendered such weapon inoperable by employing a safety locking device as defined in subdivision (c) of this section. Such offense shall constitute a misdemeanor if the offender has previously been found guilty of such violation or if the violation is committed under circumstances which create a substantial risk of physical injury to another person. Firearms may be displayed so long as the firearms are enclosed in a glass case within the premises and are removed and adequately safeguarded during the hours the business is closed. Firearms dealers may not display firearms or ammunition in the store windows or doors. Licensees are responsible for the safeguarding of their firearm inventory and the loss of firearm(s) may result in the revocation of the firearms dealer's license. All firearms shall be locked in an enclosed security room or safe, when not properly displayed.

(o) Each licensee shall cause a physical inventory to be taken prior to making application for renewal of her/his license, which shall include a listing of each firearm by make, calibre and serial number and shall be prepared in triplicate. The original copy of the inventory shall be maintained on the premises, the duplicate forwarded to the License Division and the triplicate filed in the precinct. In addition to the annual inventory, the licensee shall maintain a perpetual inventory and establish an internal security system acceptable to the Commissioner.

(p) Ammunition shall not be displayed in any area. Any ammunition required in the selling area shall be kept in a locked container not visible to the public. All other ammunition shall be stored in an area of the premises that can be secured and is not in view of the public. Only the licensee and authorized employees shall have access to this area.

(q) A record of all ammunition received and dispensed shall be maintained in a bound book with pages consecutively numbered. It shall be the responsibility of the licensee or a designated employee to make entries in this record. This book together with all invoices received shall be kept in the ammunition storage area.

(r) This record shall be arranged in columnar form as outlined below. The first page of this book shall have an inscription bearing the name and address of the premises, license number, name of the owner of the premises, name of employee designated to make entries, and the date of the book being opened. Beginning on page 2, each even numbered page shall contain a record of ammunition received and starting with page 3, each odd numbered page shall contain a record of ammunition dispersed.

AMMUNITION RECEIVED

Date	Time	Trans- porter/ Manufac- turer	Invoice	Gauge/ Cal- ibre	Type	Quan- tity	Signa- ture	Com- ments
-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-

AMMUNITION SOLD

Date	Time	Manufac-	Gauge/ Cal-	Quan- tity	Name	Ad-	Date of Birth	Identifi- cation

turer ibre dress

(how determined)

- - - - - - - - -

- - - - - - - - -

(s) Permission to deviate from the above indicated procedure shall be requested from the Division Head, License Division, through the Commanding Officer of the precinct in which the licensed premises is located.

(t) Licensees shall cooperate with all reasonable requests by the Police Department for information and assistance in matters relating to the license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subds. (c), (d) added City Record Aug. 9, 1999 eff. Sept. 8, 1999. [See T38 §1-05 Note 1]

Subds. (e)-(m) relettered (former subds. (c)-(l) City Record Aug. 9, 1999 eff. Sept. 8, 1999.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-05 Rules Affecting Gunsmiths Only.

(a) Every gunsmith shall keep a bound record book with pages numbered consecutively, in which the following information shall be entered:

(1) The name, address, age and occupation of every person for whom any work is performed on a rifle, shotgun, firearm, machine-gun, or assault weapon.

(2) Make, model, calibre, serial number of the rifle, shotgun, firearm, machine-gun, or assault weapon, and time, date and nature of the work performed.

(3) The authority to carry or possess such rifle, shotgun, firearm, machine-gun, or assault weapon; enter date and number of license or permit, if any. If the owner is a police officer or a peace officer as defined in the New York State Criminal Procedure Law, enter rank, shield number, agency, unit assigned, identification number, and license/permit number or License Division notification reference in addition to other captioned information as required.

(b) Such records shall be maintained at the premises stated in the license and permanently preserved thereat. Such records, as well as the premises and all rifles, shotguns, firearms, machine-guns, and assault weapons thereat, shall be subject to inspection at all times by members of the New York City Police Department.

(c) In the event of cancellation, suspension or revocation of the license or discontinuance of the business by a licensee, such records shall be delivered to the precinct through which the license was issued and the license forwarded to the License Division.

(d) A gunsmith shall not engage in the licensed activities of a dealer in firearms, unless s/he has first obtained a license as a dealer in firearms.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-06 Rules Affecting Dealers in Firearms Only.

(a) Every dealer in firearms shall keep a bound record book with pages numbered consecutively, in which the following information shall be entered:

(1) The date, time, name, address, age, occupation, and authority to possess, of every person or firm from whom a firearm is received, together with the make, calibre and serial number of each such firearm and the name of the employee of the dealer making the purchase. If the owner is a police officer or a peace officer as defined in the New York State Criminal Procedure Law, enter rank, shield number, agency, unit assigned, identification number, and license/permit number or License Division notification reference, in addition to other captioned information as required.

(2) When a firearm is sold, exchanged, or in any manner disposed of by the dealer, the name, age, occupation and address of the person accepting same, her/his authority to purchase, carry or possess, enter date, name of issuing officer and number of license, if any, the make, model, calibre and serial number, time and name of the dealer or person in her/his employ effecting the transaction. If the purchaser is a police officer or a peace officer, as defined in the New York State Criminal Procedure Law, rank, shield number, agency, unit assigned, identification number and license/permit number or License Division notification reference, shall be entered in addition to other required information.

(3) Such records shall be maintained on the premises stated in the license and permanently preserved thereat. Such records, as well as the premises and firearms, shall be subject to inspection at all times by members of the Police Department.

(4) In the event of cancellation, suspension or revocation of the license, or discontinuance of business by a licensee, such records as well as the permanent inventory records, shall be delivered to the precinct through which license was issued and the license shall be forwarded to the Division Head, License Division.

(b) Every licensed dealer who sells, gives or otherwise provides any authorized person with a firearm shall prepare and forward to Stolen Property Inquiry Section, Pistol Index, One Police Plaza, New York, New York 10038 within 72 hours, Form P.D. 524-101 (Pistol Index Card).

(c) Every acquisition of a second-hand firearm by a licensed dealer, by trade-in or otherwise, shall be reported and forwarded to Stolen Property Inquiry Section, Pistol Index, One Police Plaza, New York, New York 10038, within 72 hours on Form P.D. 524-151, Dealer's Report on Second-Hand Guns. Each report shall give the date, hour, name and address of each person from whom a firearm is received, the authority to possess and dispose of same, and the make, model, calibre and serial number of each such firearm. No second-hand firearm shall be sold or disposed of until the expiration of fifteen (15) days after its acquisition. The date and hour of transmission of each report required hereunder shall be entered in the permanent record book which each licensed dealer is required to maintain under these Rules.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-07 Rules Affecting Air Pistol and Air Rifle Dealers Only.

Every dealer shall keep a record of the name and address of each person purchasing air pistols, air rifles, or similar instruments, together with place of delivery and said record shall be open to inspection during regular business hours by a member of the New York City Police Department.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-08 Validity of Licenses.

(a) A license issued to a dealer in firearms, gunsmith or manufacturer shall be valid until the 1st day of the second January after date of issuance, and may be renewed annually thereafter.

(b) A license for dealers in air pistols/air rifles is an annual license which may be renewed thereafter.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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38 RCNY 4-09

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 4 GUNSMITHS AND DEALERS IN FIREARMS*1

§4-09 Familiarity with Rules and Law.

All licensees shall be required to sign an acknowledgment that they shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to each type of license or permit issued to them. Licensees are specifically reminded of the prohibitions against possession of assault weapons in New York City pursuant to New York City Administrative Code, Title 10, Chapter 3. The License Division shall provide the licensee with the acknowledgment statement to be executed. This acknowledgment statement shall be notarized. Failure to execute the acknowledgment statement and to have it notarized shall result in the license application being denied.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

NOTE

Reference within this chapter to the masculine shall be presumed to include the feminine and neuter. Reference to singular shall be presumed to include the plural.

HISTORICAL NOTE

Note amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-01 Types of Handgun Licenses.

As used in this chapter, the term "handgun" shall mean a pistol or revolver. This section contains a description of the various types of handgun licenses issued by the Police Department. Section 5-09 of this subchapter contains a description of the procedure for obtaining an exemption from New York State Penal Law Article 265, allowing pre-license possession of a handgun for the purpose of possessing and using a handgun for instructional purposes with a certified instructor in small arms at an authorized small arms range/shooting club.

(a) **Premises License-Residence or Business**. This is a restricted handgun license, issued for a specific business or residence location. The handgun shall be safeguarded at the specific address indicated on the license. This license permits the transporting of an unloaded handgun directly to and from an authorized small arms range/shooting club, secured unloaded in a locked container. Ammunition shall be carried separately.

(b) **Carry Business License.** This is an unrestricted class of license which permits the carrying of a handgun concealed on the person. In the event that an applicant is not found by the License Division to be qualified for a Carry Business License, the License Division, based on its investigation of the applicant, may offer a Limited Carry Business License or a Business Premises License to an applicant.

(c) **Limited Carry Business License.** This is a restricted handgun license which permits the licensee to carry the handgun listed on the license concealed on the person to and from specific locations during the specific days and times

set forth on the license. Proper cause, as defined in §5-03, shall need to be shown only for that specific time frame that the applicant needs to carry a handgun concealed on her/his person. At all other times the handgun shall be safeguarded at the specific address indicated on the license, and secured unloaded in a locked container.

(d) **Carry Guard License/Gun Custodian License.** These are restricted types of carry licenses, valid when the holder is actually engaged in a work assignment as a security guard or gun custodian.

(e) **Special Licenses**. Special licenses are issued according to the provisions of §400.00 of the New York State Penal Law, to persons in possession of a valid New York State County License. The revocation, cancellation, suspension or surrender of such person's County License automatically renders her/his New York City license void. The holder of a Special License shall carry her/his County License at all times when possessing a handgun pursuant to such Special License.

(1) **Special Carry Business License**. This is a special license, permitting the carrying of a concealed handgun on the person while the licensee is in New York City.

(2) **Special Carry Guard License/Gun Custodian License.** These are restricted types of special licenses that permit the carrying of a concealed handgun on the person only when the licensee is actually engaged in the performance of her/his duties as a security guard or gun custodian.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Apr. 12, 1993 eff. May 12, 1993.

Section in original publication July 1, 1991.

Subds. (b), (c) amended City Record Aug. 2, 1991 eff. Sept. 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The Police Commissioner's revision of the handgun licensing regulation so as to eliminate the category of permits for transporting guns to target ranges, is neither arbitrary nor capricious, and is a rational and proper exercise of his authority. The regulation of the number of firearms is a rational means of promoting the safety of city residents and visitors. **Murad v. City of New York,** 12 A.D.3d 194, 783 N.Y.S.2d 584 (1st Dept. 2004).

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-02 Premises Licenses.

The requirements for the issuance of a Premises License are listed below. The license application shall be investigated, including a review of the circumstances relevant to the information provided in the application. During the pendency of the application, the applicant shall notify the License Division of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

The applicant shall:

(a) Be of good moral character;

(b) Have no prior conviction for a felony or other serious offense, as defined in §265.00(17) of the New York State Penal Law, or of a misdemeanor crime of domestic violence, as defined in §921(a) of title 18 of the United States Code;

(c) Disclose whether s/he is or has been the subject or recipient of an order of protection or a temporary order of protection;

(d) Have no prior revocation of a license nor be the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act;

(e) Disclose any history of mental illness;

(f) Be free from any disability or condition that may affect the ability to safely possess or use a handgun;

(g) Reside or maintain a principal place of business within the confines of New York City;

(h) Be an applicant concerning whom no good cause exists for the denial of such license;

(i) Be at least 21 years of age.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. Pistol permit standards, even those covering a limited premises/target permit, are more stringent than those covering shotgun/rifle permits. Thus, it was not arbitrary and capricious for the Police Department to deny a pistol permit to a man who had been arrested following an incident in which he allegedly pulled out his gun. Following the arrest, the police found 11 weapons on the premises, some of them loaded. This result was reached even though the criminal charges were later dismissed, and the applicant had a record of meritorious service with the Fire Department. Nash v. Police Department, 271 A.D.2d 384, 708 N.Y.S.2d 61 (1st Dept. 2000).

¶ 2. Petitioner's arrest on theft and fencing charges in New Jersey, and failure to notify the License Division of the arrest for more than one year, were sufficient grounds for revocation of a business license to carry a pistol. Cerchiello v Kelly, 2004 WL 1351421 (App.Div. 1st Dept.).

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-03 Carry and Special Handgun Licenses.

In addition to the requirements in §5-02, an applicant seeking a carry or special handgun license shall be required to show "proper cause" pursuant to §400.00(2)(f) of the New York State Penal Law. "Proper cause" is determined by a review of all relevant information bearing on the claimed need of the applicant for the license. The following are examples of factors which will shall be considered in such a review.

(a) Exposure of the applicant by reason of employment or business necessity to extraordinary personal danger requiring authorization to carry a handgun.

Example: Employment in a position in which the applicant routinely engages in transactions involving substantial amounts of cash, jewelry or other valuables or negotiable items. In these instances, the applicant shall furnish documentary proof that her/his employment actually requires that s/he be authorized to carry a handgun, and that s/he routinely engages in such transactions.

(b) Exposure of the applicant to extraordinary personal danger, documented by proof of recurrent threats to life or safety requiring authorization to carry a handgun.

Example: Instances in which Police Department records demonstrate that the life and well-being of an individual is endangered, and that s/he should, therefore, be authorized to carry a handgun. The factors listed above are not all

inclusive, and the License Division will consider any proof, including New York City Police Department records, which document the need for a handgun license. It should be noted, however, that the mere fact that an applicant has been the victim of a crime or resides in or is employed in a "high crime area," does not establish "proper cause" for the issuance of a carry or special handgun license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-04 Carry Guard License/Gun Custodian License and Special Carry Guard License/Gun Custodian License.

(a) In addition to the requirements in §5-02 an applicant shall demonstrate the employer's need to employ armed security guards/gun custodians.

(b) Such need may be shown and documented by memorandum, letters or contract(s) for the hiring of said employer to provide armed security personnel or otherwise require the services of gun custodians.

(c) Additionally, such need may be shown by other documentation or acceptable form as required by the License Division.

(d) If applicable, an applicant shall show satisfactory evidence that such business possesses a professional license, relevant to the need for a handgun, issued by the State of New York.

(e) In addition to the requirements in §5-06 an applicant shall show proof of current employment which requires the need for a handgun license.

(f) If applicable, an applicant shall show satisfactory evidence of having a professional license, relevant to the need for a handgun issued by the State of New York.

HISTORICAL NOTE

Section renumbered and amended (formerly §5-06) City Record May 31, 2001 eff. June 30, 2001.

Former §5-04 repealed. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. (d) amended City Record Apr. 12, 1993 eff. May 12, 1993.

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-05 Application Form.

(a) An application form shall be distributed, one per person, at the License Division during normal business hours. Assistance in completing the form shall be made available at the License Division. The application form shall be completely filled out and submitted in person at the License Division, and only an original application form shall be accepted. Special license applicants should also specifically refer to paragraph (9) of subdivision (b) of this section for application requirements.

(b) The applicant shall furnish the items listed below which are applicable, either at the time s/he completes and submits her/his application in person, or no later than fourteen (14) calendar days after the date of submission of the application, either in person or by mail. All documents, certificates, licenses, etc., shall be submitted in the original. A copy certified by the issuing agency as true and complete is also acceptable. In addition, a legible photocopy of each item submitted shall accompany the original or certified copy. Originals and certified copies shall be returned. The application shall not be accepted or processed without the required fee payments described in paragraph (10) of this subdivision.

(1) **Photographs.** Two (2) color photographs of the applicant taken within the past thirty (30) days. They should measure $1^1/_2 \times 1^1/_2$ inches and show applicant from the chest up. The wearing of any article of clothing or adornment that obscures identification is not acceptable. Special license applicants should refer to paragraph (9) of this subdivision.

(2) **Birth certificate.** If there is no record of the applicant's birth on file with the New York City Department of Health Office of Vital Statistics, some other proof of applicant's birth date, **e.g.,** a military record, U.S. passport or baptismal certificate, shall be sub- mitted.

(3) **Proof of citizenship/alien registration.** If the applicant was born outside the United States, s/he shall submit her/his naturalization papers or evidence of citizenship if derived from her/his parents. All other applicants born outside the United States shall submit their Alien Registration Card. Additionally, applicants who are aliens and have resided in the United States for less than seven (7) years shall submit a good conduct certificate, or the equivalent thereof, from their country of origin and two (2) letters of reference which identify the writer's relationship to the applicant and which certify to the good character of the applicant. Inability to provide the documents mentioned in this paragraph shall not operate as an absolute bar to issuance of a handgun license.

(4) **Military discharge.** If the applicant served in the armed forces of the United States, s/he shall submit her/his separation papers (DD 214) and her/his discharge papers.

(5) **Proof of residence.** The applicant shall submit proof of her/his present address. Proof may consist of one of the following, but is not limited to: a real estate tax bill, a copy of a lease indicating ownership shares in a cooperative or condominium or a current residential lease. The License Division may request further documentation, **e.g.,** a New York State Driver's License, a New York State Income Tax Return, a current utility bill, etc.

(6) **Arrest information.** If the applicant was ever arrested for any reason s/he shall submit a Certificate of Disposition showing the offense and disposition of the charges. Also, the applicant shall submit a detailed, notarized statement describing the circumstances surrounding each arrest. The applicant shall do this even if the case was dismissed, the record sealed or the case nullified by operation of law. The New York State Division of Criminal Justice Services shall report to the Police Department every instance involving the arrest of an applicant. The applicant shall not rely on anyone's representation that s/he need not list a previous arrest. If the applicant was ever convicted or pleaded guilty to a felony or a serious offense, as defined in New York State Penal Law §265.00(17), an original Certificate of Relief from Disabilities, signed by a judge, shall be submitted. The certificate shall contain a statement granting the applicant firearm privileges under Penal Law Articles 265 and 400.

(7) **Proof of business ownership.** If the applicant is making application for a license in connection with a business, s/he shall submit proof of ownership for that business. Such proof shall clearly state the name(s) of the owner(s), or, if a corporation, the name(s) of the corporate officer(s). A corporation shall submit its corporate book to include Filing Receipt, Certificate of Incorporation and minutes of the corporate meeting reflecting current corporate officers; others shall provide their business certificate or partnership agreement, whichever is applicable. If the business requires a license or permit from any government agency, **e.g.,** alcohol or firearms sales, gunsmith, private investigation and guard agencies, the applicant shall submit the license or permit or a certified copy thereof.

(8) **Letter of necessity.** (i) A letter of necessity explains the need for the license. It shall be typewritten on current letterhead stationery; signed by a corporate officer, partner, or in the case of a sole proprietorship, the owner of the business. Self-employed applicants may submit such letter under their own signature. The letter of necessity shall be notarized. A letter of necessity shall be submitted by the following applicants:

(A) All applicants except applicants for a Premises Residence License.

(B) All employees seeking a Premises Business License for use in connection with their employment shall submit a letter of authorization signed by the owner of the business.

(ii) Regardless of whether a handgun license was previously issued by the New York City Police Department or any other issuing authority, the letter of necessity shall contain the following information:

(A) A detailed description of the applicant's employment and an explanation of why the employment requires the

carrying of a concealed handgun.

(B) A statement acknowledging that the handgun shall only be carried during the course of and strictly in connection with the applicant's job, business or occupational requirements, as described herein.

(C) A statement explaining the manner in which the handgun shall be safeguarded by the employer and/or applicant when not being carried.

(D) A statement indicating that the applicant has been trained or shall receive training in the use and safety of a handgun.

(E) A statement acknowledging that the applicant's employer or, if self-employed, the applicant, is aware of its or her/his responsibility to properly dispose of the handgun and return the license to the License Division upon the termination of the applicant's employment or the cessation of business.

(F) A statement indicating that the applicant, and if other than self-employed, a corporate officer, general partner or proprietor, has read and is familiar with the provisions of New York State Penal Law Articles 35 (use of deadly force), 265 (criminal possession and use of a firearm), and 400 (responsibilities of a handgun licensee).

(G) At the time of the applicant's interview, the applicant shall be advised whether any additional forms or documents are required. Failure to provide the information requested may result in the disapproval of the applicant's application.

(9) **Special license applicants shall submit the items listed below:**

(i) All applicants shall submit two (2) application forms, to be filled out completely and presented by the applicant in person. The applicant shall not mail the application forms.

(ii) All applicants shall submit three (3) $1\frac{1}{2} \times 1\frac{1}{2}$ inch color photographs showing the applicant from the chest up, taken within the past 30 days. The wearing of any article of clothing or adornment that obscures identification is not permitted.

(iii) The applicant shall bring her/his current County Handgun License with her/him to have her/his application processed.

(10) Upon application, required fees are payable to the New York City Police Department and the New York State Division of Criminal Justice Services. Fees to the New York City Police Department shall be paid by certified check or money order made payable to the N.Y.C. Police Department.

Note: The fee payable to N.Y.S. Division of Criminal Justice Services applies to all applicants. These fees shall be paid separately. Only U.S. Postal or bank drawn money orders shall be accepted. If the applicant has any questions concerning her/his application, s/he may call (212) 374-5553. Applications shall be submitted in person at the License Division, Room 110A, Monday through Friday, 8:30 A.M. to 4:00 P.M. The License Division is closed on all legal holidays. All fees are non-refundable.

HISTORICAL NOTE

Section renumbered and amended (formerly §5-08) City Record May 31, 2001 eff. June 30, 2001. [See

T38 Chapter 1 footnote]

DERIVATION

Section amended City Record Apr. 12, 1993 eff. May 12, 1993.

Section in original publication July 1, 1991.

Subd. (b) par (5) amended City Record Sept. 23, 1994 eff. Oct. 23, 1994. This amendment was when this was §5-08.

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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§5-06 Gun Custodian, Carry Guard and Special Licenses. Establishing Company Need for Handgun Licensing.

(a) An applicant shall initially submit a typed and notarized license application in accordance with general handgun license rules, including all personal and business documentation requested. Examples of business documentation would be a company's corporate book, including filing receipt; certificate of incorporation; minutes of the corporate meeting reflecting current corporate officers; business certificate or partnership agreement, whichever is applicable.

(b) Where the applicant for a handgun license is an owner of a security guard, courier or private investigation company, or a company providing similar services, and desires the license in connection with such business, the applicant shall:

(1) present satisfactory evidence that such business is licensed by the State of New York, and;

(2) present satisfactory evidence of contracts for armed services to be performed within the City of New York.

(c) Where an applicant for a handgun license is an owner of a check cashing business and desires the license for use in connection with such business, the applicant shall: present satisfactory evidence that such business is licensed by the State of New York Banking Department.

(d) **Carry Guards.** (1) Once a gun custodian's license has been issued in connection with a particular employer, applications for individual security guards/personnel for the same employer may be submitted.

(2) In addition to the handgun license application required of all license applicants, carry guard/personnel applicants shall submit the form Handgun License Application Company and a specific letter of necessity following the format supplied by the License Division.

HISTORICAL NOTE

Section renumbered and amended (formerly §5-09) City Record May 31, 2001 eff. June 30, 2001. [See

T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Section heading amended City Record Apr. 12, 1993 eff. May 12, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-07 License Approval/Disapproval Procedures.

(a) It takes approximately six months to process an application. If her/his application is approved the applicant shall receive a "Notice of Application Approval" in the mail. If the applicant moves during the time her/his application is being processed, the applicant shall immediately notify the License Division's Handgun License Application Section, Room 110A, One Police Plaza, New York, New York 10038, 212-374-5553, and be guided by their instructions. Failure to make timely notification may result in the disapproval/cancellation of the applicant's application.

(b) To receive her/his license the applicant shall report in person with her/his "Notice of Application Approval" letter, to the Issuing Unit-Room 152, One Police Plaza, New York, New York 10038-within thirty (30) calendar days of the date on the "Notice of Application Approval" letter. Licenses shall only be issued between the hours of 9 a.m. and 12 p.m., Monday through Thursday. The applicant should note that the Issuing Unit is closed on all legal holidays.

(c) If the applicant does not appear to pick up her/his license within thirty (30) calendar days of the date on the "Notice of Application Approval," her/his license and application shall be cancelled.

(d) With her/his license the applicant shall receive a copy of the "New York City Handgun License Rules" [Subchapter B of this chapter]. The applicant shall become knowledgeable regarding these handgun rules, as any violation of these rules may result in the suspension or revocation of her/his handgun license.

(e) If her/his license application is disapproved the applicant shall receive a written "Notice of Application Disapproval" from the License Division indicating the reason(s) for the disapproval. If the applicant wishes to appeal the decision s/he shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, within thirty (30) calendar days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the applicant or her/his New York State licensed attorney shall not be accepted.

(f) All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the applicant of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of her/his disapproval is denied, the applicant shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

HISTORICAL NOTE

Section renumbered and amended (formerly §§5-10, 5-11) City Record May 31, 2001 eff. June 30,

2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Section amended in part City Record Apr. 12, 1993 eff. May 12, 1993.

Subds. (e), (f) amended (as §5-11) City Record Sept. 23, 1994 eff. Oct. 23, 1994.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-08 Limitations.

Applicants issued licenses pursuant to this subchapter shall be subject to such conditions and limitations as established by the Police Commissioner regarding, but not necessarily limited to the permissible number, type, transportation and safeguarding of handguns.

HISTORICAL NOTE

Section renumbered and amended (formerly §5-12) City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter

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SUBCHAPTER A ISSUANCE OF HANDGUN LICENSES

§5-09 Application for Pre-License Exemption.

Each applicant desiring to obtain the exemption set forth in New York State Penal Law §265.20(a)(7-b), allowing pre-license possession of a handgun for the purpose of possessing and using a handgun for instructional purposes with a certified instructor in small arms at an authorized small arms range/shooting club, shall make such request in writing to the Division Head, License Division at the time the application for a handgun license is filed. Such request shall include a signed and verified statement by the person authorized to instruct and supervise the applicant, that s/he has met with the applicant and s/he has determined that, in her/his judgment, said applicant does not appear to be or pose a threat to be a danger to her/himself or others. S/he shall include a copy of her/his certificate as an instructor in small arms, if s/he is required to be certified, and state her/his address and telephone number. S/he shall specify the exact location by name, address and telephone number where such instruction shall take place. The Division Head, License Division shall, no later than ten (10) business days after such filing, commence an investigation and ascertain whether the applicant has a criminal record. The Division Head, License Division shall no later than ten (10) business days after the completion of such investigation determine if the applicant has been previously denied a license, been convicted of a felony, been convicted of a serious offense as defined in Penal Law §265.00(17), been convicted of a misdemeanor crime of domestic violence, as defined in §921(a) of Title 18 of the United States Code, been the subject or recipient of an order of protection or a temporary order of protection, been the subject of a suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act, or appears to be, or poses a threat to be, a danger to her/himself or others, and either approve or disapprove the applicant for

exemption purposes based upon such determinations. If the applicant is approved for the exemption, the Division Head, License Division shall notify the applicant. Such exemption shall terminate if the application for the license is denied, or at any earlier time based upon any information obtained by the Division Head, License Division which would cause the application to be rejected. The applicant shall be notified of any such rejection.

HISTORICAL NOTE

Section added City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

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[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-21 Introduction.

Any violation of this subchapter and/or the restrictions of the license, if any, may result in the suspension and/or revocation of the license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-22 Conditions of Issuance.

(a) A handgun license is issued under the following conditions:

(1) It is revocable at any time.

(2) It is not transferable to any other person or location.

(3) Any mutilation, alteration, or lamination of the license shall render it void. The licensee may not make any additions, deletions, or other changes on her/his license. Only License Division personnel may make changes on the license.

(4) If the license is mutilated, altered, laminated, lost, or destroyed an additional fee shall be required for replacement. If any of these circumstances occur, the licensee shall notify the License Division.

(5) When the license expires, and if the licensee has not renewed it, or if it is suspended, or revoked, the licensee shall immediately surrender the license with the handgun(s) to the precinct of her/his place of business or residence.

(6) The licensee shall be in possession of her/his license at all times while carrying, transporting, possessing at residence, business, or authorized small arms range/shooting club, the handgun(s) indicated on said license.

(7) If the licensee has a "Carry" or "Special Carry" type license only one (1) handgun may be carried on her/his person at any time.

(8) The licensee is authorized to own only the handgun(s) that are listed on her/his license.

(9) The licensee shall not purchase or replace a handgun prior to obtaining written permission from the Division Head, License Division (see Handgun Purchase Authorizations).

(10) A handgun may be replaced or purchased only by requesting permission in writing from the Division Head, License Division.

(11) The licensee shall not draw, expose or display handgun(s) unnecessarily.

(12) The licensee shall not leave handgun(s) in an auto, or in any place where an unauthorized person may readily obtain them.

(13) To assure maximum safety, proper safeguards shall be taken at all times to keep handguns away from unauthorized persons, especially children. Pursuant to New York City Administrative Code §10-312, it shall be a criminal violation for any person who is the lawful owner or lawful custodian of a handgun to store or otherwise place or leave such weapon in such a manner or under circumstances that it is out of her/his immediate possession or control, without having rendered such weapon inoperable by employing a safety locking device as defined in §5-25(a)(2) of this chapter. Such offense shall constitute a misdemeanor if the offender has previously been found guilty of such violation or if the violation is committed under circumstances which create a substantial risk of physical injury to another person.

(14) The licensee should endeavor to engage in periodic handgun practice at an authorized small arms range/shooting club.

(15) Any misuse of the purpose for which the license was issued, or any action or misconduct on the part of the licensee which may constitute just cause, shall result in the suspension or revocation of the license.

(16) Except for licensees with unrestricted Carry Business licenses or Special Carry Business Licenses, a licensee wishing to transport her/his handgun to a gunsmith shall request permission in writing from the Division Head, License Division. Authorization shall be provided in writing. The licensee shall carry this authorization with her/him when transporting the handgun to the gunsmith, and shall transport the handgun directly to and from the gunsmith. The handgun shall be secured unloaded in a locked container during transport.

(17) Licensees shall cooperate with all reasonable requests by the Police Department for information and assistance in matters relating to the license.

(b) In the following instances the licensee shall make an immediate report to the License Division-Incident Section, telephone #(212) 374-5538, 5539, and to the precinct where the incident occurred. (See additional requirements under "Incident Section"-§5-30).

(1) Theft/loss of handgun.

(2) Discharge of handgun other than during practice at an authorized small arms range/shooting club.

(3) Theft/loss of handgun license.

(4) Improper use/safeguarding of handgun(s).

(5) Public display of an unholstered handgun.

(c) In the following instances, the licensee shall make an immediate report to the License Division-Incident Section (see Incident Section-§5-30).

(1) Arrest, indictment, or conviction in any jurisdiction; summons other than traffic infraction; suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(2) Change of business or residence address (see Address Changes-§5-29).

(3) Change of business, occupation or employment (see Name Changes-§5-29).

(4) Any change in the circumstances for which the licensee received the license. The licensee shall immediately notify the License Division and shall then be instructed on how to proceed. The licensee may be required to report to the License Division with required documentation to have the change reviewed and effected by License Division personnel.

(5) Alteration, mutilation, destruction of handgun license.

(6) Intent to dispose of handgun. Failure to notify in writing the Division Head, License Division prior to disposing of handgun is a Class A Misdemeanor pursuant to New York State Penal Law §265.10(7).

(7) Receipt of psychiatric treatment or treatment for alcoholism or drug abuse, or the presence or occurrence of any disability or condition that may affect the ability to safely possess or use a handgun.

(8) Licensee is or becomes the subject or recipient of an order of protection or a temporary order of protection.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. The failure of a license holder to immediately notify the License Division of his arrest and of the orders of protection against him, can be grounds for revocation of a handgun license and rifle/shotgun permit. Cohen v. Kelly, 30 A.D.3d 170, 815 N.Y.S.2d 565 (1st Dept. 2006).

¶ 2. The failure to submit a notarized statement, as requested by the Licensing Division, can constitute grounds for revocation of a pistol permit. Morstadt v. Kelly, 45 A.D.3d 258, 845 N.Y.S.2d 61 (1st Dept. 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-23 Types of Handgun Licenses.

(a) **Premises License-Residence or Business.** This is a restricted handgun license, issued for the protection of a business or residence premises.

(1) The handguns listed on this license may not be removed from the address specified on the license except as otherwise provided in this chapter.

(2) The possession of the handgun for protection is restricted to the inside of the premises which address is specified on the license.

(3) To maintain proficiency in the use of the handgun, the licensee may transport her/his handgun(s) directly to and from an authorized small arms range/shooting club, unloaded, in a locked container, the ammunition to be carried separately.

(4) A licensee may transport her/his handgun(s) directly to and from an authorized area designated by the New York State Fish and Wildlife Law and in compliance with all pertinent hunting regulations, unloaded, in a locked container, the ammunition to be carried separately, after the licensee has requested and received a "Police Department-City of New York Hunting Authorization" Amendment attached to her/his license.

(b) **Carry Business License.** This is an unrestricted class of license which permits the carrying of a handgun concealed on the person.

(c) **Limited Carry Business License.** This is a restricted handgun license which permits the licensee to carry a handgun listed on the license concealed on the person to and from specific locations during the specific days and times set forth on the license. Proper cause, as defined in §5-03, shall need to be shown only for that specific time frame that the applicant needs to carry a handgun concealed on her/his person. At all other times the handgun shall be safeguarded at the specific address indicated on the license and secured unloaded in a locked container.

(d) **Carry Guard License/Gun Custodian License.** These are restricted types of carry licenses, valid when the holder is actually engaged in a work assignment as a security guard or gun custodian.

(e) **Special Licenses.** Special licenses are issued according to the provisions of §400.00 of the New York State Penal Law, to persons in possession of a valid County License. The revocation, cancellation, suspension or surrender of her/his County License automatically renders her/his New York City license void. The holder of a Special License shall carry her/his County License at all times when possessing a handgun pursuant to such Special License.

(1) **Special Carry Business**. This is a class of special license permitting the carrying of a concealed handgun on the person while the licensee is in New York City.

(2) **Special Carry Guard License/Gun Custodian License.** These are restricted types of Special Carry Licenses. The handgun listed on the license may only be carried concealed on the licensee's person while the licensee is actively on duty and engaged in the work assignment which formed the basis for the issuance of the license. The licensee may only transport the handgun concealed on her/his person when travelling directly to and from home to a work assignment.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section amended City Record Apr. 12, 1993 eff. May 12, 1993.

Section amended in part City Record Aug. 2, 1991 eff. Sept. 1, 1991.

Section in original publication July 1, 1991.

Subd. (b) par (1) amended City Record Sept. 23, 1994 eff. Oct. 23, 1994. This subd. (b) was repealed

by City Record May 31, 2001 amendment.

CASE NOTES

¶ 1. The Police Department's creation of the new premises license, which permits the transport of firearms to authorized target ranges and hunting areas did not exceed the jurisdiction of the department. Penal Law §400.00, the state's enabling statute, did not pre-empt all regulations in this field. De Illy v. Kelly, 6 A.D.3d 217, 775 N.Y.S.2d 256 (1st Dept. 2004).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-24 Gun Custodians and Carry Guards.

(a) **Gun Custodian.** (1) Once a company employs and intends to arm additional employees, a gun custodian and alternate custodian shall be designated by the company.

(2) Each designee shall submit to the License Division an additional handgun license application for gun custodian, typed and notarized, along with two (2) color photos, $1\frac{1}{2} \times 1\frac{1}{2}$ inches, taken within the past thirty (30) days, showing the applicant from the chest up, and the necessary fees.

(3) The responsibilities of the gun custodian and alternate custodian are as follows:

(i) To insure that an applicant works a minimum of twenty (20) hours per week for the company.

(ii) To insure that an applicant commences work within fifteen (15) days of issuance of license.

(iii) On a semiannual basis, the gun custodian or alternate custodian shall be required to submit the following reports to the License Division:

(A) Employment Report-indicating hours worked by each licensee per month.

(B) Employee Termination Report.

(C) Annual Handgun Inventory Report.

(iv) The gun custodian or alternate custodian or an authorized designee of the company shall be required to permit properly identified representatives of the New York City Police Department to examine company records pertaining to handgun licensees.

(v) During those periods that a security guard will not be reporting to work due to illness or vacation, the gun custodian or alternate custodian shall be responsible for the security of the handgun.

(vi) In the event of termination of employment, the custodian or alternate custodian shall see to the immediate surrender of the licensee's handgun license to the New York City Police Department License Division and return of the handgun to the company.

(vii) In the event of a licensee's death, the gun custodian or alternate custodian is responsible for the security of the handgun and for the immediate notification, in writing, to the New York City Police Department License Division.

(viii) Where a licensee becomes involved in an incident or suffers a condition which shall be reported to the License Division and/or the precinct of occurrence pursuant to subdivision (b) of this section, the gun custodian or alternate custodian shall ensure that such report is made immediately.

(4) When appearing at the License Division to pick up a license, an applicant shall present a handgun assignment letter from the gun custodian or alternate custodian. If no handgun is available from the company handgun inventory, the gun custodian or alternate custodian shall request, in writing, a purchase order by following the rules set forth in §5-25, "Handgun Purchase Authorizations," to obtain a new handgun.

(5) The purchase order shall be valid for only thirty (30) calendar days from the date of issuance.

(6) After the gun custodian or alternate custodian has purchased the handgun, s/he shall return to the License Division within 72 hours to have the handgun inspected. This handgun shall be unloaded in a locked container and accompanied by the purchase order authorization and a photocopy of the bill of sale. This handgun may not be carried or transported except as indicated in this paragraph before it has been inspected.

(7) If the gun custodian or alternate custodian makes her/his purchase from other than an authorized dealer, the seller shall be either a New York City or New York State licensee, Police Officer or a Peace Officer.

(8) A handgun may be replaced by requesting permission, in writing, from the Division Head, License Division.

(b) **Carry Guard Licensee.** (1) This license is restricted to the days and hours that the licensee is actually engaged in employment, or when a licensee is travelling from her/his residence to employment, or from employment to her/his residence. These restrictions shall be strictly interpreted by the New York City Police Department and violation of these rules shall result in the immediate suspension of the pistol license. This means that the handgun may be carried only when the licensee is actually engaged in employment by the security company the name of which appears on the face of the license. This does not permit "freelancing" on the licensee's day off. The handgun may only be carried from the licensee's residence as listed on the application, to the licensee's place of employment or assignment for that particular day.

The licensee may carry her/his handgun from employment back to her/his residence. This means that there shall be no unreasonable delay in returning to the licensee's residence where the handgun shall be secured.

Example: If the licensee does not intend to stay at her/his residence the evening prior to working at her/his place of assignment, s/he will be obligated to return home to pick up her/his handgun just prior to going to work. Carrying her/his handgun with her/him the entire evening preceding her/his next work day is a distinct violation of license

restrictions. **Example:** If the licensee finishes a 4 p.m. to midnight shift and takes action involving the handgun at 3:30 a.m. in a local tavern, s/he is in violation of license restrictions and the New York State Penal Law.

(2) A licensee has the responsibility of making an immediate report to the Division Head, License Division, the precinct where the incident occurred, and the gun custodian or alternate custodian in the following instances:

(i) Loss or theft of handgun.

(ii) Discharge of handgun (other than practice at an authorized small arms range/shooting club).

(iii) Loss or theft of handgun license.

(iv) Improper use/safeguarding of handgun(s).

(v) Public display of an unholstered handgun.

(3) An immediate report shall be made in the following instances to the Division Head, License Division and the gun custodian or alternate custodian:

(i) Change of residence.

(ii) Mutilation, alteration or destruction of handgun license.

(iii) Arrest, indictment, summons other than a traffic summons, or conviction in any jurisdiction; suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(iv) Receipt of psychiatric treatment or treatment for alcoholism or drug abuse, or the presence or occurrence of any disability or condition that may affect the ability to safely possess or use a handgun.

(v) Licensee is or becomes the subject or recipient of an order of protection or a temporary order of protection.

(4) The license shall be in the possession of the licensee at all times while the licensee is carrying the handgun.

(5) Misconduct or misuse of the purpose for which this license is issued may result in the suspension or revocation of the license.

(6) A handgun licensee is authorized to use only the handgun that is endorsed on her/his license.

(c) Failure to comply with all of the above conditions set forth herein may result in the suspension, revocation, or cancellation of any/or all handgun licenses issued to employees of the subject company.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-25 Handgun Purchase Authorizations.

(a) The licensee may not obtain a handgun without prior written authorization from the Division Head, License Division. This authorization shall be provided in the nature of a "Handgun Purchase Authorization" form. The following are the rules concerning handgun acquisition:

(1) The "Handgun Purchase Authorization" form is valid only for thirty (30) calendar days from the issuance date.

(2) Pursuant to New York City Administrative Code §10-311(a), it shall be unlawful for any person or business enterprise to dispose of any handgun which does not contain a safety locking device, defined as a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user. The following types of safety locking devices will be deemed to comply with this provision:

(i) a trigger lock, which prevents the pulling of the trigger without the use of a key; or

(ii) a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers; or

(iii) a detachable or non-detachable locking device, composed primarily of steel or other metal of significant gauge to inhibit breaking, utilizing a metallic key or combination lock, rendering the weapon inoperable until the locking

device is removed by an authorized person.

(3) Pursuant to New York City Administrative Code §10-311(b), it shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to dispose of any handgun in New York City unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the handgun and on a separate sheet of paper included within the packaging enclosing the handgun: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

(4) Pursuant to New York City Administrative Code §10-311(c), any person who applies for and obtains authorization to purchase, or otherwise lawfully obtains, a handgun shall be required to purchase or obtain a safety locking device at the time s/he purchases or obtains the handgun.

(5) Pursuant to New York City Administrative Code §10-311(d), the City of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of a safety locking device that may have been purchased in compliance with these rules.

(6) Once the licensee has purchased the handgun, s/he shall return to the License Division-Room 152, One Police Plaza, New York, New York 10038, within 72 hours to have the handgun and safety locking device inspected. The handgun may not be utilized before it has been inspected by License Division personnel and entered on the license.

(7) Handgun inspections are conducted only between the hours of 12 to 2 p.m., Monday through Friday.

Note: The License Division is closed on all legal holidays.

(8) The licensee may only purchase a handgun from the following:

(i) A licensed New York State Firearms Dealer.

(ii) The holder of a current, valid, New York State, or New York City Handgun License.

(iii) A New York State or New York City Police Officer or Peace Officer, as defined under the New York State Criminal Procedure Law.

(iv) Estate of deceased New York City/New York State handgun licensee.

(9) If the licensee purchases a handgun from a licensed New York State Firearms Dealer, s/he shall submit the following documents when s/he presents the handgun for inspection:

(i) Completed "Handgun Purchase Authorization" form.

(ii) Original Bill of Sale and a clear carbon copy or photocopy of same.

(10) If the licensee purchases a handgun from the holder of a valid New York State or New York City handgun license, s/he shall also submit the following documents when s/he presents the handgun for inspection:

(i) Completed "Handgun Purchase Authorization" form.

(ii) A signed and notarized Bill of Sale and a clear photocopy by the seller which includes the following information: make, model, calibre, and serial number of handgun sold; Seller's: name, address, license number; Buyer's: name, address, license number, date of sale.

(iii) Clear photocopy of the seller's valid, current Handgun License, listing the handgun to be purchased thereon. The front and back of the license shall be photocopied.

(11) If the licensee purchases a handgun from a New York State or New York City Police Officer or Peace Officer, s/he shall submit the following documents when s/he presents the handgun for inspection:

(i) Completed "Handgun Purchase Authorization" form.

(ii) A signed and notarized Original Bill of Sale and a clear photocopy. Bill of Sale shall include: date of sale; Seller's: name, address, agency, including command, and shield number; Buyer's: name, address, license number; make, model, calibre and serial number of handgun.

(12) The aforementioned transaction shall not be permitted if the seller is a New York City Police Officer who has not complied with Police Department guidelines regarding the sale of firearms to a handgun licensee.

(13) If the seller is a Police Officer or Peace Officer from a jurisdiction other than New York City, the License Division requires prior written notification as to the seller, so that verification of employment, etc., can be obtained. This information shall be listed in the "Handgun Purchase Authorization" request submitted by licensee.

(14) If the licensee wishes to purchase a handgun from the Estate of a deceased New York State/New York City licensee, s/he shall provide the below specified documents prior to obtaining a "Handgun Purchase Authorization" form. This transaction shall be conducted in person at the License Division, Room 152, between the hours of 9 a.m. and 12 noon, Monday through Thursday only.

(i) A written request for purchase authorization for the desired handgun(s) including make, model, calibre and reason for request; the licensee's name, address, and license number.

(ii) The license is required for this transaction.

(iii) A copy of the voucher for the handgun(s).

(iv) The decedent's license, if not previously surrendered, showing registration of the handgun(s) in question.

(v) A copy of the death certificate.

(vi) If there is a Will: The License Division requires a short certificate of Letters Testamentary, that gives the Executor or Executrix the authority to dispose of the property. Letters can be obtained from the Surrogate's Court, of the borough in which the deceased lived.

(vii) If there is no Will: The License Division requires a short certificate of Letters of Administration that gives the administrator the authority to dispose of the property. Letters can be obtained from the Surrogate's Court, of the borough in which the deceased lived.

(viii) A notarized Bill of Sale from the Executor or Administrator of the decedent's estate, indicating the weapon, make, model, calibre and serial number, and stating that they are being sold to: the licensee's name, address and license number.

(ix) Once purchased, the handgun shall be presented for inspection within seventy-two (72) hours; Monday through Friday 12 to 2 p.m.

(b) **New licensees.** A "Handgun Purchase Authorization" form shall be issued to the licensee with her/his new handgun license. As indicated previously this form is only valid for thirty (30) calendar days from the date of issuance.

(1) If the licensee does not purchase a handgun within the specified period of time, s/he shall within ten (10) calendar days of the expiration date of the "Handgun Purchase Authorization" form, surrender said form and her/his handgun license to the License Division Issuing Unit.

(2) The license is only valid if there is a handgun listed thereon.

(3) Requests for extensions for Handgun Purchase Authorizations shall be made by written request to the Division Head, License Division.

(c) **Purchasing an additional handgun.** (1) Requests for the purchase of an additional handgun shall be made in writing to the License Division-Issuing Unit-One Police Plaza, Room 152, New York, New York 10038. Pre-printed request forms are available at the Reception Desk in Room 152.

(2) The written request shall include: the licensee's name, address and license number, and the make, model and calibre of the handgun s/he wishes to purchase.

(3) The licensee shall be notified in writing of the approval or disapproval of her/his request for an additional handgun. If the request has been approved, the licensee shall receive by mail, a "Notice of Handgun Purchase Authorization Approval." To receive the purchase document the licensee shall appear at the License Division, Room 152, by the date indicated on the notice. The licensee shall bring the approval notice and her/his license with her/him to receive her/his purchase document.

(4) Purchase documents are issued only between the hours of 9 a.m. to 12 noon, Monday through Thursday.

Note: The License Division is closed on all legal holidays.

(5) "Handgun Purchase Authorizations" shall be returned to the License Division within ten (10) calendar days of their expiration date. Failure to return the document within the specified time shall result in the suspension and/or revocation of the handgun license(s).

(6) All purchasers of handguns shall also be required to prepare a "Handgun Index Card," at the License Division.

(d) **Number of handguns allowed on a handgun license.** (1) When the total number of handguns possessed by licensee(s) residing in or located in the same household/business exceeds four, the licensee(s) shall utilize a safe when handguns are stored at the premises.

(2) Requests for handguns in excess of four shall not be entertained without proof of the ownership of a safe in which the handguns shall be safeguarded when not in use. Proof of ownership consists of a Bill of Sale for the safe and two color photos of the safe, one with the door open and one with the door closed.

(3) The Division Head, License Division reserves the right to accept or reject the type of safe proposed for safeguarding the handguns.

(4) The number of handguns allowed under each type of handgun license is listed below. Requests for additional handguns shall be reviewed on an individual basis. More than four handguns requires satisfactory evidence of safeguarding to prevent theft, as approved by the Division Head, License Division-see above.

(i) Carry Business and Special Carry Business-Two handguns. The Division Head of the License Division may in her/his discretion limit to one the number of handguns that appear on the carry handgun license when the licensee's needs do not require possession of two handguns.

(ii) Limited Carry Business-One handgun.

(iii) Carry Guard and Special Carry Guard-One handgun.

(iv) Gun Custodian-Number of handguns shall be determined by the Division Head, License Division, consistent with the demonstrated needs of the applicant.

(v) Premises Business-One handgun.

(vi) Premises Residence-One handgun.

(e) **Requests for additional handguns for "Special Handgun Licenses."**

(1) Holders of "Special Handgun Licenses" shall comply with the purchase authorization request guidelines of the county in which they hold their basic handgun license. Once the addition has been made to their basic County License, a request to add the handgun to their New York City Special License may be made in writing to the Division Head, License Division. If the Division Head, License Division approves the request, the licensee shall be notified when to report to the License Division to effect the addition. The following documents shall be required at that time:

(i) The basic County License.

(ii) A copy of the county Handgun Purchase Authorization form.

(iii) A copy of the Bill of Sale.

(iv) The New York City Special Handgun License.

(2) Inquiries concerning this type of transaction may be made to the Issuing Unit at telephone numbers (212) 374-5522 or 5523.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) par (2) added, other pars renumbered City Record Aug. 9, 1999 eff. Sept. 8, 1999. [See T38 §1-05 Note 1]

Subd. (d) amended City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-26 Disposal of a Handgun Listed on the License.

(a) Any person lawfully in possession of a handgun who disposes of the same without first notifying the License Division in writing shall be guilty of a Class A Misdemeanor in accordance with the provisions of New York State Penal Law §265.10(7). Pursuant to New York City Administrative Code §10-311(a), it shall be unlawful for any person or business enterprise to dispose of any handgun which does not contain a safety locking device, defined as a design adaptation or attachable accessory that will prevent the use of the weapon by an unauthorized user. The following types of safety locking devices will be deemed to comply with this provision:

(1) a trigger lock, which prevents the pulling of the trigger without the use of a key; or

(2) a combination handle, which prevents the use of the weapon without the alignment of the combination tumblers; or

(3) a detachable or non-detachable locking device, composed primarily of steel or other metal of significant gauge to inhibit breaking, utilizing a metallic key or combination lock, rendering the weapon inoperable until the locking device is removed by an authorized person.

Note: The license becomes invalid if the licensee sells the one and only handgun on her/his license. Should the licensee wish to sell it without cancelling her/his license, s/he shall first follow the instructions to add a handgun.

(b) Pursuant to New York City Administrative Code §10-311(b), it shall be unlawful for any licensed manufacturer, licensed importer, or licensed dealer to dispose of any handgun in New York City unless it is accompanied by the following warning, which shall appear in conspicuous and legible type in capital letters, and which shall be printed on a label affixed to the handgun and on a separate sheet of paper included within the packaging enclosing the handgun: "THE USE OF A LOCKING DEVICE OR SAFETY LOCK IS ONLY ONE ASPECT OF RESPONSIBLE WEAPON STORAGE. ALL WEAPONS SHOULD BE STORED UNLOADED AND LOCKED IN A LOCATION THAT IS BOTH SEPARATE FROM THEIR AMMUNITION AND INACCESSIBLE TO CHILDREN AND ANY OTHER UNAUTHORIZED PERSONS."

(c) Pursuant to New York City Administrative Code §10-311(c), any person who applies for and obtains authorization to purchase, or otherwise lawfully obtains, a handgun shall be required to purchase or obtain a safety locking device at the time s/he purchases or obtains the handgun.

(d) Pursuant to New York City Administrative Code §10-311(d), the City of New York and its agencies, officers or employees shall not be liable to any party by reason of any incident involving, or the use or misuse of a safety locking device that may have been purchased in compliance with these rules.

(e) The buyer may only be a:

(1) Licensed New York State Firearms Dealer.

(2) A New York State/New York City Handgun License Holder.

(3) A New York State/New York City Police Officer or Peace Officer.

(f) If the licensee sells to a licensed New York State Firearms Dealer the following documentation shall be required to process the transaction:

(1) The "Original Bill of Sale" from the dealer and photocopy.

(2) The "Bill of Sale" shall show the Dealer's License number, name, address; the make, model, calibre and serial number of the handgun sold; the licensee's name, address, license number and expiration date of the license; the date of sale; the bill shall clearly indicate that the Dealer purchased the handgun(s).

(3) The licensee shall appear at the License Division, Room 152, with her/his license to process this transaction.

(g) If the licensee sells to a New York State/New York City Handgun license holder, the following documentation shall be required to process the transaction:

(1) An "Original Bill of Sale," signed by the seller and the purchaser, with both signatures notarized.

(2) The "Bill of Sale" shall include: the seller's name, address and license number, expiration date of license; the purchaser's name, address, license number and expiration date; the make, model, calibre, and serial number of the handgun(s) sold, the date of sale.

(3) A copy of the purchaser's handgun license, front and back.

(4) A copy of the buyer's "Handgun Purchase Authorization form."

(5) The licensee shall be required to appear at the License Division-Room 152, with her/his license, to process this transaction.

(h) Once the licensee has sold her/his handgun(s), s/he shall appear in person to delete them from her/his license

within ten (10) calendar days of the transaction.

(i) If the licensee wishes to sell her/his handgun to a New York State/New York City Police Officer or Peace Officer the following documentation shall be required to process the transaction:

(1) A notarized "Bill of Sale" showing the make, model, calibre and serial number of the handgun sold; the name, address, shield number, Agency and Command of the Police Officer/Peace Officer. The bill of sale shall be signed by both the seller and the purchaser, dated, and each signature shall be notarized.

(2) If the purchaser is a New York City Police Officer or Peace Officer, the License Division requires prior written notification relative to the purchaser so that verification of employment, etc., can be obtained.

(3) Once the licensee has sold her/his handgun s/he shall appear at the License Division, Room 152, with her/his license and the aforementioned documentation to process this transaction.

(j) If the licensee wants to transfer her/his handgun(s) to another New York State/New York City license s/he also possesses s/he shall make a written request to the Division Head, License Division. The request shall include the following information:

(1) The licensee's name, address and telephone number.

(2) The license number; make, model, calibre, and serial number of the handgun the licensee wishes transferred; and the number of the license to which the licensee wants to transfer the handgun.

(3) The licensee shall enclose copies of both licenses front and back.

(4) The licensee shall receive a written response. If the request is approved, the licensee shall have to appear at the License Division with both licenses to process the transaction.

(k) If the licensee wishes to sell all of her/his handguns and cancel her/his license, s/he may do so by submitting the applicable documentation and her/his handgun license, by mail. (See Cancellation Procedures below.)

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) amended City Record Aug. 9, 1999 eff. Sept. 8, 1999. (Note, this amendment inadvertently

omitted closing paragraph.) [See T38 §1-05 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-27 Cancellation of the Handgun License.

(a) Anyone cancelling a New York City Handgun License shall:

(1) Legally dispose of handgun(s). To legally dispose of her/his handgun(s) the licensee shall either:

(i) Voucher the handgun at her/his local precinct, or

(ii) Sell to a licensed Firearms Dealer, or

(iii) Sell to a Police Officer or Peace Officer, or

(iv) Transfer handgun(s) to another license s/he may possess, if authorized to do so, or

(v) Sell to a licensee, if the licensee is authorized to purchase.

(2) Return license to the License Division and attach a copy of voucher or Bill of Sale.

(3) Attach letter briefly giving reason for cancellation.

(b) If the licensee intends to relocate out of State, the License Division requests verification from the local

authorities of that particular jurisdiction that the licensee has notified them that s/he is in possession of the handgun listed on her/his N.Y. license.

(c) To document proper disposal of the handgun, follow the rules listed in §5-26 concerning "Disposal of a Handgun Listed on the License."

(d) All documents and the license shall be returned to the License Division-Cancellation Unit-One Police Plaza, Room 152, New York, New York 10038, within ten (10) calendar days of the disposal of handguns, relocation, etc. If the licensee has any questions concerning these procedures s/he may call telephone number (212) 374-5531 or 5532.

Note: If the licensee relocates out of New York City or New York State, s/he shall immediately contact her/his new local Police Department and receive instructions on how to legally possess her/his handgun(s) in their jurisdiction.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. In one case, petitioner obtained a pistol permit in New York, then moved to New Jersey for several years, then returned to New York. When he moved to New Jersey, he failed to comply with the regulations applicable to gun license holders who were moving out of state. When he returned to New York, his application for a permit was denied by reason of his non-compliance with the regulations. The court held that the Police Department had sufficient basis for denial of the permit. Matter of Barreca v. Kerik, N.Y.L.J., Mar. 22, 2002, page 19, col. 4 (Sup.Ct. New York Co.).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-28 Renewal of the Handgun License.

The licensee is required to renew her/his handgun license every three (3) years. The license expires on the licensee's birthday.

(a) The renewal process generally begins sixty (60) calendar days prior to the licensee's month of birth. The licensee shall receive her/his renewal application, instructions, and other required forms and her/his invalidated license in the mail. As part of the renewal process, the License Division may require that the licensee produce all licensed handguns for inspection, either using a random selection procedure or when a review of the renewal package discloses the need for such an inspection, as directed by the Commanding Officer, License Division. The licensee shall receive appropriate instructions and a form, Affidavit of Handgun Possession, to be completed and notarized as part of the renewal package. If so directed, the licensee shall transport all licensed handguns to the License Division, One Police Plaza, Room 152, New York, New York or otherwise make the handguns available for inspection, in the manner directed by the instructions. The licensee shall examine the license, complete all required forms including providing color photos, forwarding fees (payable by certified check or money order only), etc., and return the renewal package to the License Division by mail, as soon as possible. Upon receipt of the renewal material, the License Division shall process the renewal and return the validated license to the licensee by mail.

(b) The license is not valid unless stamped and sealed by the License Division. The licensee shall sign her/his license in the designated area on the back of the license.

(c) The renewal application and related documents shall be mailed to the address on the license. If the licensee has moved and has not notified the License Division, the renewal documents shall be returned to the License Division and her/his license shall be cancelled for failure to notify the License Division of an address change (see Address Change-§5-29).

(d) If the licensee has not received her/his renewal documents thirty (30) calendar days prior to her/his birth date, s/he shall contact the Renewal Unit at telephone number (212) 374-5531, or 5532, for instructions.

(e) If the licensee has extenuating circumstances which prevent her/him from renewing prior to her/his birth date, s/he shall submit a notarized letter to the Renewal Unit explaining the circumstances. The License Division shall contact the licensee and advise her/him on how to proceed. However, if the licensee is not notified by the License Division by her/his birth date, s/he shall voucher her/his handgun(s) at her/his local precinct until the matter is resolved.

(f) Licensees shall carefully read and comply with the instructions on their renewal documents.

(g) Incomplete or incorrectly prepared renewal documents shall not be processed, and shall be returned to the licensee for completion/correction, with a letter indicating the problem, information omitted, etc. Consequently, if as a result of the licensee's error, the licensee fails to submit the required material, fees, etc., by her/his birthday, s/he shall be required to voucher her/his handgun(s) at her/his local precinct until the renewal process is completed.

(h) If the licensee's birthday has passed and s/he has not yet renewed, s/he shall immediately voucher her/his handgun(s) at her/his local precinct. The License Division shall not process any late renewals unless a copy of the voucher is attached to the complete renewal application which is to be submitted by mail.

(i) Failure to renew the license on time is cause for cancellation of the license.

(j) Possession of any unlicensed handgun is a violation of Article 265 of the New York State Penal Law, and may subject the licensee to arrest.

(k) Renewal fees shall be in the form of a money order or a certified check made payable to the N.Y.C. Police Department. Cash and personal checks shall not be accepted.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. added City Record Apr. 12, 1993 eff. May 12, 1993.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The Department has broad discretion in ruling on permit applications, and may properly deny the application for good cause. However, in this particular instance, the denial of the petitioner's application for a premises residence handgun license on the ground that petitioner failed to timely renew his prior license, or voucher his handgun was arbitrary and capricious. The petitioner had not been sent a renewal notice to his correct address, which was on file (see 38 RCNY § 5-28(c)); his military record and tax returns and letters of reference were also on file. Thus, the petitioner had a reasonable excuse for failure to renew. DiStefano v. Kelly 2008 NY Slip Op. 688, 47 AD3d 928, 850 NYS2d 203, 2008 NY App. Div. Lexis 598 (App. Div. 2nd Dept.).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-29 License Amendments.

(a) Originals of all verifying documents shall be presented along with photocopies. After the original documents have been reviewed, they shall be returned to the licensee.

(1) **Premises Residence License-address changes.**

(i) If the licensee has moved, s/he shall change the address listed on her/his license. To do so the licensee shall come to the License Division no later than ten (10) calendar days after her/his change becomes effective. S/he shall bring her/his license and verifying documents such as current utility bills. Any and all verifying documents shall include the licensee's name and the licensee's new address.

(ii) If the licensee has relocated outside of New York City, s/he shall follow the instructions for "Cancellation."

(2) **All Carry/Premises Business Licenses-address changes.** If the licensee's business name, principals, corporate officers (if a corporation), and the nature of her/his business remain the same, but s/he has changed her/his business location, the licensee shall within ten (10) calendar days, provide the License Division with a copy of a current utility bill verifying the name and new address of the business, and other verifying documents substantiating the move. This transaction shall be conducted in person. If the nature of the licensee's business has changed, s/he shall follow the instructions for "Cancellation."

(3) **Premises/business name changes.**

(i) If the licensee has a Premises Business License and changes her/his business name, but her/his business is of the same nature and at the same location, s/he shall provide the License Division with Amended Business Certificate, verifying documents, etc., within ten (10) calendar days.

(ii) If the licensee is an employee of a company, in addition to the documentation required in subparagraph (i) above, the licensee shall submit a letter on company stationery signed by the company president or owner, which states that the licensee is still employed by them in the same capacity for which the license was issued, and that the licensee still requires the handgun license for her/his employment.

(iii) If the nature of the licensee's business has changed s/he shall follow the instructions for Cancellation.

(4) **Carry Business License name changes.** If the licensee has a Carry Business License and s/he changes her/his business name-but not the nature of the business, the corporate officers, or the location, s/he shall contact the License Division immediately at telephone #(212) 374-5531 or 5532 for instructions on how to proceed.

(5) **"Special" Carry Handgun License Changes.** Licensees shall call telephone number (212) 374-5531 or 5532, for specific instructions. However, the licensee's basic County Handgun License shall be amended prior to requesting any amendment of her/his New York City "Special Handgun License."

(6) **Individual name changes.**

(i) If the licensee has changed her/his name because of marriage, registration of a domestic partnership, or for other reasons, s/he shall provide the License Division with a Marriage Certificate, affidavit or legal court documents verifying the change. Where an affidavit is provided, the Department may require additional evidence that the affiant has changed her/his name, including but not limited to a certificate of domestic partnership registration, credit cards issued to the affiant, or bills addressed to the affiant. For purposes of this subparagraph, "domestic partnership" shall mean a domestic partnership registered in accordance with applicable law with the City Clerk, or a domestic partnership registered with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the former City Department of Personnel have been transferred to the City Clerk.)

(ii) The aforementioned document(s) shall be submitted in the original, with a copy attached. The License Division shall return the original document to the licensee.

(iii) The licensee shall appear in person at the License Division-Room 152, with the required documents and her/his license to effect this change.

(b) **New business.** (1) If the licensee has changed her/his business from the one for which s/he was originally licensed, or her/his current business has had a change of name and/or corporate officers, owners, etc., or the nature of her/his business or responsibilities have changed; or if s/he has ended her/his association with the business, **i.e.,** retired, terminated, resigned, the licensee shall within ten (10) calendar days of the change surrender her/his handgun(s) and license to her/his local precinct for safekeeping. Her/his license may be subject to cancellation. (See §5-27-Cancellation of the Handgun License.) Questions may be directed to the Incident Section (212) 374-5538 or 5539.

(2) Handgun licenses are not transferable to new businesses. The licensee shall re-apply for a new handgun license for her/his new business.

(3) New applications shall not be accepted without proof of the surrender of the old license and proof of the proper disposal or surrender of the handgun(s).

(4) Failure to make proper notification of any of the above changes to the License Division shall result in immediate cancellation of the license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

DERIVATION

Section in original publication July 1, 1991.

Subd. (a) par (6) subpar (i) amended City Record Sept. 25, 1998 eff. Oct. 25, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 25, 1998:

Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City housing authority and the department of housing preservation and development. By the end of April 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55% of those registered domestic partners were heterosexual couples, and less than 45% were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

Consistent with the intent of such orders, and pursuant to the powers of the Commissioner under sections 434(b) and 1043 of the New York City Charter, the Police Department is now acting to provide that a rule applicable to spouses should now be extended to domestic partners.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-30 Incidents Involving Suspension.

(a) Whenever a handgun licensee is involved in an "Incident," the licensee shall immediately report said incident to the License Division's Incident Section-Telephone number (212) 374-5538 or 5539. Certain "Incidents" shall also be reported to the "Precinct of Occurrence" (where the incident took place).

(b) The following "Incidents" shall be immediately reported to the "Precinct of Occurrence" and the License Division Incident Section:

(1) Lost handgun(s).

(2) Stolen handgun(s).

(3) Discharge of handgun-other than at an authorize small arms range/shooting club.

(4) Lost handgun license (see lost/stolen license).

(5) Stolen handgun license (see lost/stolen license).

(6) Improper use/safeguarding of handgun(s).

(7) Public display of an unholstered handgun.

(c) The following "Incidents" shall be immediately reported to the License Division's Incident Section:

(1) Arrest, summons (except traffic infractions), indictment, or conviction of licensee, in any jurisdiction, federal, state, local, etc.; suspension or ineligibility order issued pursuant to §530.14 of the New York State Criminal Procedure Law or §842-a of the New York State Family Court Act.

(2) Admission of licensee to any psychiatric institution, sanitarium, and/or the receipt of psychiatric treatment by licensee.

(3) The receipt of treatment for alcoholism or drug abuse by licensee.

(4) The presence or occurrence of a disability or condition that may affect the handling of a handgun, including but not limited to epilepsy, diabetes, fainting spells, blackouts, temporary loss of memory, or nervous disorder.

(5) Licensee is or becomes the subject or recipient of an order of protection or a temporary order of protection.

(6) Alteration, mutilation or destruction of handgun license.

Note: The above "Incidents" shall be reported if they were not previously disclosed by licensee to the License Division, or if previously disclosed, circumstances have changed.

(d) In addition to the aforementioned "Incidents," whenever the holder of a handgun license becomes involved in a situation which comes to the attention of any police department, or other law enforcement agency, the licensee shall immediately notify the License Division's Incident Section of the details.

(e) All "Incidents" shall be reviewed and evaluated by License Division investigators. If, as a result of the "Incident" the License Division finds it necessary to suspend or revoke the license, the licensee shall receive notification by mail. Said notification shall advise the licensee of the status of her/his license and the reason for the suspension/revocation.

(f) The licensee shall be directed to immediately voucher for safekeeping all handguns, rifles and/or shotguns listed on any license and any rifle/shotgun permit s/he possesses. After the handguns, rifles and/or shotguns have been vouchered, the licensee shall immediately send her/his handgun license and any rifle/shotgun permit s/he possesses and a copy of the "Voucher" to the License Division's Incident Section.

(g) Failure to comply with these directions is a violation of the New York State Penal Law, and shall result in summary action by the Police Department. Possession of an unlicensed handgun is a crime. If a license is suspended or revoked, the handgun(s) listed thereon are no longer considered licensed. Failure to comply with the License Division's directions may result in the permanent revocation of the licensee's handgun license.

(h) If her/his license is suspended or revoked, the licensee shall be issued a written Notice of Determination Letter, which shall state in brief the grounds for the suspension or revocation of the license and notify the licensee of the opportunity for a hearing. The suspended/former licensee has the right to submit a written request for a hearing to appeal the decision. This request shall be made within thirty (30) calendar days of the date of the Notice of Determination Letter. The written request shall be submitted to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York, New York 10038. A licensee whose arrest or summons resulted in suspension or revocation of her/his license may only submit a written request for a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law §1.20(16)(c). If the suspension or revocation resulted from the licensee becoming the subject of an order of protection or a temporary order of protection, the licensee may only submit a written request for a hearing within thirty (30) calendar days after the

expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply. However, requests for hearings shall not be entertained, nor shall a hearing be scheduled until the licensee:

(1) Complies with the provisions of subdivision (f) above; and

(2) Provides a Certificate of Final Disposition, if applicable; and

(3) Provides a Certificate of Relief from Disabilities, if applicable, to the License Division.

(i) The written request for a hearing shall include:

(1) License number.

(2) Reason(s) for the request.

(3) Disposition of license(s) and handgun(s).

(j) Upon receipt of the licensee's letter, the License Division shall schedule the licensee for a hearing and notify the licensee by mail.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. The Police Department properly revoked a pistol permit where the petitioner failed to notify the License Division immediately of his arrest on charges of menacing in the third degree, and of an order of protection issued against him. Morstadt v. Kelly, 45 A.D.3d 258, 845 N.Y.S.2d 61 (1st Dept. 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-31 Mutilated, Lost or Stolen Licenses.

(a) If her/his license was lost or stolen, the licensee shall report the loss/theft to the "Precinct of Occurrence" and obtain a "Complaint Report Number."

(1) **If the licensee's license was lost, s/he shall:**

(i) Obtain a "Complaint Report Number" from the precinct of occurrence.

(ii) Report in person to the License Division-Room 152.

(iii) Bring a ten ($10) dollar money order or certified check. Cash and personal checks shall not be accepted. Make instrument payable to "N.Y.C. Police Department."

(iv) Bring two current color photos-$1\frac{1}{2} \times 1\frac{1}{2}$ inches, front view, from the chest up, taken within the past thirty (30) days. S/he shall not wear anything which would obstruct identification, **e.g.,** hats, sunglasses, etc.

(v) Bring the "Complaint Report Number."

(vi) Bring personal identification-driver's license, credit card, old Handgun License.

(vii) The licensee shall be required to prepare a duplicate application and have it notarized.

(2) **If her/his license was stolen, the licensee shall:**

(i) Obtain a Complaint Report Number from the precinct of occurrence.

(ii) Report in person to the License Division-Room 152.

(iii) Bring two color photos-$1\frac{1}{2} \times 1\frac{1}{2}$ inches, front view, from the chest up, taken within the past thirty (30) days. S/he shall not wear anything which would obstruct identification, **e.g.,** hats, sunglasses, etc.

(iv) Bring the "Complaint Report Number."

(v) Bring personal identification-driver's license, credit card, old Handgun License.

(vi) S/he shall be required to prepare a duplicate application and have it notarized.

(b) If her/his license was altered, laminated or mutilated, the licensee shall: Report in person to the License Division-Room 152 with the following:

(1) A ten ($10) dollar money order or certified check. Cash and personal checks shall not be accepted. Make instrument payable to "N.Y.C. Police Department."

(2) Two color photos-$1\frac{1}{2} \times 1\frac{1}{2}$ inches, front view, from the chest up, taken within the past thirty (30) days. S/he shall not wear anything which would obstruct identification, **e.g.,** hats, sunglasses, etc.

(3) S/he shall be required to prepare a duplicate application and have it notarized.

(4) S/he shall bring with her/him the remnants of her/his license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-32 Transfer of Records.

New York City handgun licensees who have moved out of New York City may request a transfer of their records to their new licensing jurisdiction, in accordance with §400.00, Subdivision 5, of the New York State Penal Law.

(a) This request shall be made in writing by the new licensing agency and accompanied by a five ($5.00) dollar money order, made payable to the N.Y.C. Police Department.

(b) The request shall not be processed unless the License Division has received the licensee's New York City handgun license; documentation of the legal disposition of her/his handgun(s), **i.e.,** Bill Of Sale or Voucher (see Cancellation and Disposal of Handgun(s)-§§5-26 and 5-27), her/his new address, and the name and address of her/his new licensing authority.

(c) Requests for a records transfer may be mailed to the New York City Police Department License Division-Records Unit, One Police Plaza, Room 152, New York, New York 10038. The License Division shall process her/his request as expeditiously as possible once the License Division has received the necessary information, documentation, fee, etc. If the licensee has any questions concerning this matter contact (212) 374-5522 or 5523.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 5 HANDGUN LICENSES*1

SUBCHAPTER B LICENSEE RESPONSIBILITIES

§5-33 Familiarity with Rules and Law.

All licensees shall be required to sign an acknowledgment that they shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to this license. The License Division shall provide the licensee with the acknowledgment statement. This acknowledgment statement shall be notarized. Failure to sign the acknowledgment statement and have it notarized shall result in denial of the license application.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

NOTE

Reference within this chapter to the masculine shall be presumed to include the feminine and neuter. Reference to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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38 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 6 USE OF AMBER LIGHTS BY VOLUNTEER CIVILIAN PATROL MEMBERS

§6-01 Possession and Use of Amber Lights by Volunteer Civilian Patrol Members.

(a) Only a member of a Civilian Observation Patrol sponsored by the New York City Police Department shall be eligible for a permit to possess and use an amber light pursuant to these Regulations.

(b) The Deputy Commissioner in charge of Community Affairs is responsible for the administration of the amber light program.

(c) Applications to obtain amber light permits will be available at and processed through the precinct in which the patrol is located.

(d) The permit to possess and use an amber light will be an authorization stamped on a civilian observation patrol identification card.

(e) The only type of amber light that is permitted is one that is portable with a subdued yellow light either placed on the dashboard or roof of a civilian observation patrol car by suction cups or magnets. Permit holders may possess only one such amber light.

(f) The permit to possess and use an amber light on a vehicle is non-transferable and automatically expires when the holder ceases to be a member of the Civilian Observation Patrol Group listed on his application.

(g) Only a steady non-revolving amber light will be operated while the volunteer is involved in patrol observation duty except a rotating or revolving amber light may be used under the following circumstances:

(1) At the scene of accidents.

(2) At the scene of any incident when the light is necessary to alert oncoming vehicle or to summon assistance.

(3) When necessary to alert persons of the imminent danger of a criminal act.

(h) Permittees will obey all traffic regulations at all times while on patrol and all directions of a police officer with respect to the use of amber lights. A permit must be produced when requested by a police officer.

(i) Failure to abide by these Rules and Regulations may result in the suspension or revocation of a permit to possess an amber light.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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38 RCNY 7-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 7 RADIO RECEIVING SET PERMITS

§7-01 Introduction.

Radio receiving set permits are issued pursuant to §397 of the New York State Vehicle and Traffic Law and §10-102 of the New York City Administrative Code. Violation of these statutes may result in the arrest and/or summons of the violator.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

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38 RCNY 7-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 7 RADIO RECEIVING SET PERMITS

§7-02 Permit Requirement.

It shall be unlawful for any person to equip an automobile with a radio receiving set capable of receiving signals on the frequencies allocated for police use, or use or possess an automobile so equipped, without a permit issued by the Police Commissioner, or designee in his or her discretion, and in accordance with such rules as the Commissioner may prescribe (Administrative Code §10-102).

HISTORICAL NOTE

Section in original publication July 1, 1991.

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38 RCNY 7-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 7 RADIO RECEIVING SET PERMITS

§7-03 Application Process.

(a) **Basic procedure.** To have his application for a radio receiving set permit processed, an applicant must comply with the following instructions:

(1) Complete application for radio receiving set permit; comply with instructions therein.

(2) Applications must be typed.

(3) Applications must be notarized.

(4) Applications which are incorrectly prepared or incomplete will not be accepted.

(5) Applicants must submit a "Letter of Necessity" with their application.

(i) This letter must be from the applicant's employer, on business stationery and contain a description of the applicant's duties as relates to his need for the permit.

(ii) The letter must also contain a statement indicating that the applicant is familiar with the provisions of §10-102 of the Administrative Code; with §397 of the Vehicle and Traffic Law; and with the NYC Police Department's rules for "Radio Receiving Set Permits."

(iii) The letter must also state that the applicant's employer will ensure the immediate removal of the receiving set in the event of the termination of the applicant's employment; or upon the occurrence of any aggravating events,

"incidents." (See Terms and Conditions-§7-04.)

(6) **Photos.** Two recent passport size photos 1 1/2" × 1 1/2", front view, from the chest up are required. No facial obscurences are permitted, i.e., sunglasses, hats, etc.

(7) **Fees.** A twenty-five dollar application fee must be in the form of a money order or certified check made payable to the NYC Police Department. Cash and uncertified checks will not be accepted. A twenty-nine dollar fingerprint fee must be in the form of a money order made payable to the N.Y.S. Division of Criminal Justice Services. All fees are non-refundable.

(b) **Documentation and fingerprinting.** Once the applicant has completed steps (1) through (7) above, he must contact the License Division (212) 374-5536 or 5537, for an appointment to submit his application and to be fingerprinted. When the applicant appears to submit his application, he must also bring the items listed below. These documents must be submitted in the original, or a copy certified by issuing agency. In addition, the applicant must submit photocopies of items (2) through (8); the Police Department will keep photocopies and return the originals to the applicant.

(1) Completed application, requisite fees, photos, letter of necessity, etc.

(2) Current employee identification card.

(3) Current working press card, if applicable, issued by the N.Y.C. Police Department.

(4) Driver's license with photo.

(5) Vehicle registration and insurance card for vehicle in which the "set" is to be installed.

(6) Proof of birth. Birth certificate, U.S. passport, or baptismal certificate.

(7) Proof of residence. Current gas, electric or telephone bill, in the name of applicant showing the applicant's address.

(8) Corporate filing receipt if business is corporation; if business is a sole proprietorship, or a partnership, the applicant must submit the business certificate from the Office of the County Clerk.

(9) If the applicant responded "Yes" on the application to the question regarding arrest history, he must explain the circumstances on a separate paper, sign and have his statement notarized. In addition, the applicant must submit a "Certificate of Disposition" for each arrest.

(c) **Vehicle inspection and interview.** The applicant will be contacted by his precinct, business location, for an inspection of his vehicle, and for an interview to evaluate his need for the permit. The applicant may be required to submit additional documentation to the License Division such as:

(1) Residential utility bill.

(2) Corporate papers, employer, including list of corporate officers and corporate filing receipt.

(3) Federal, state or city license for business, if applicable.

(4) Any other documentation as required.

(d) **Action following notification of approval.** The applicant will be notified in writing of the approval or disapproval of his application. If the application is approved the applicant must:

(1) Contact the License Division (212) 374-5536 or 5537 for an appointment to pick up his permit.

(2) The applicant must bring the following items with him in the original:

(i) Approval letter.

(ii) Current employee identification card.

(iii) Current working press card issued by the N.Y.C. Police Department, if applicable.

(iv) Current N.Y.S. Driver's License.

(v) Current residential utility bill - gas, electric, telephone.

(vi) Bill of sale for radio receiving set listing serial number, model, and make of radio.

(vii) Auto registration.

(e) **Procedure for appeal following Notification of Disapproval.** If the applicant's application is disapproved, he may appeal the decision as follows:

(1) Appeals must be made in writing by applicant's employer.

(2) Appeals must be made within thirty days of the date on the "Notice of Disapproval" letter.

(3) Appeals from media representatives shall be made to the Deputy Commissioner for Public Information; all other appeals shall be made to the Commanding Officer, License Division.

(f) **Grounds for disapproval.** A material false statement on an application shall be grounds for disapproval. Applicants may be disapproved for failure to meet character requirements after a background investigation is conducted.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 7-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 7 RADIO RECEIVING SET PERMITS

§7-04 Permit Conditions.

The radio receiving set permit is issued subject to the following conditions/terms:

(a) It is not transferable to any other person, vehicle, or place/type of employment.

(b) It is subject to suspension, revocation or cancellation for violation of the terms of the permit.

(c) The permittee may not alter or laminate his permit.

(d) The permit is valid for one year from the issuance date and will expire on the date indicated on the permit, unless otherwise rendered void.

(e) The permit is valid for the receiving set indicated thereon, and only when said "set" is installed in the vehicle indicated on the permit.

(f) The permittee must have his valid permit in his possession when operating the radio receiving set indicated thereon.

(g) The permittee may only operate the receiving set while actively engaged in employment/work assignment. It is not to be used for recreational or other non-authorized purposes.

(h) The receiving set may not be monitored by any other driver or passengers in the permittee's vehicle unless the permittee is present, in possession of his valid permit, and is actively engaged in work assignment.

(i) If the permittee's employment is terminated, or his permit expired, revoked, suspended or cancelled, the permittee must immediately remove the receiving set and surrender his permit to the License Division, with proof that the set has been removed from the vehicle, or that it has been rendered incapable of receiving police frequencies. A receipt from a licensed installer indicating removal or disabling of set will be accepted as "proof" of same.

(j) The radio receiving set must be permanently installed in the vehicle listed on the permit. If it is removed or the permittee wishes to replace it, the permittee must contact the License Division for instructions.

(k) If the permittee becomes involved in any of the situations, to be henceforth known as "incidents," indicated below, he must immediately notify the License Division's Incident Unit at telephone number (212) 374-5538 or 374-5539 for instructions. Failure to comply as indicated may result in the suspension and/or revocation of his permit.

(1) An arrest in any jurisdiction.

(2) Summons in any jurisdiction except parking or moving violations. However, if permittee's driver's license is suspended or revoked, he must notify the License Division.

(3) Scofflaw certification of the vehicle in which the "set" is installed.

(4) Suspension/revocation of the registration for the vehicle in which the "set" is installed; and/or cancellation/suspension of auto insurance for same.

(5) Termination of employment; change of assignment.

(6) Change of business, name, address, or corporate offices.

(7) Change of residence.

(8) Lamination, mutilation, or alteration of permit.

(l) The permittee must notify the precinct of occurrence and obtain a "Complaint Report Number" and also immediately notify the License Division-Incident Unit, if any of the below listed incidents occur:

(1) Theft/loss of permit.

(2) Theft/loss of radio receiving set.

(m) There will be a ten dollar replacement fee if the permittee alters, laminates, mutilates, or loses his permit. This fee must be in the form of money order made payable to the NYC Police Department. To replace his permit, the permittee must call for an appointment - (212) 374-5537 (after he has made other appropriate notifications and reports). When the permittee appears for a replacement permit, he must bring the items listed below with him:

(1) A current photo (see photo instructions).

(2) His current employee identification card.

(3) His current working press card, if applicable.

(4) The complaint report number, if applicable.

(5) If his permit was laminated or mutilated, he must also bring the remnants of the permit with him.

(6) If the permittee has sold/replaced the vehicle or the receiving set, or if he requires a change on his permit for another reason, he will be required to remit a replacement fee and to follow the procedures delineated above. When the

permittee calls for an appointment, he should make sure that he explains the reason for the change, as he may be required to submit additional documentation.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 7-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 7 RADIO RECEIVING SET PERMITS

§7-05 Radio Receiving Set Permit Renewals.

(a) **Renewal process.** The permit must be renewed on an annual basis. It is the permittee's responsibility to ensure that he begins the renewal process at least one month prior to the expiration of his permit.

(1) To process the renewal, the permittee must contact the License Division for the renewal application form.

(2) The completed renewal application form together with appropriate fee and documents shall be forwarded to the License Division.

(3) The permittee will also be required to submit the following items with his renewal form:

(i) Two recent passport size photos.

(ii) His current employee identification card.

(iii) His current working press card, if applicable.

(iv) Current vehicle registration.

(v) Current N.Y.S. Driver's License.

(vi) Updated "Letter of Necessity" (see §7-03(a)(5)).

(4) The permittee will be reinterviewed and his vehicle reinspected by the Commanding Officer of the precinct in which his business is located. He will be contacted for an appointment. However, if he is not contacted by two weeks prior to the expiration of his permit, he must contact the License Division and inform them of this fact.

(5) The permittee will be notified by mail of when to appear to complete the renewal process.

(b) **Failure to renew.** If the permittee fails to renew his permit by its expiration date, he must have the radio receiving set removed from his vehicle (or made inoperable) and present proof of same, prior to being allowed to renew or reapply.

HISTORICAL NOTE

Section in original publication July 1, 1991.

NOTE

References within this chapter to the masculine shall be presumed to include the feminine and neuter. References to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 8-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 8 SOUND DEVICE PERMITS

§8-01 Definition.

Sound device. "Sound device" shall mean any radio or device or apparatus for the amplification of any sound from any radio, phonograph or other sound making or sound producing device, or any device or apparatus for the reproduction or amplification of the human voice.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 8 SOUND DEVICE PERMITS

§8-02 Applications.

(a) An application for a permit will be made at least five days prior to date upon which the sound device or apparatus is to be used or operated, except in a case of a sudden event of great public interest where applicant was unable, through no fault of his or her own, to file the application within the required time.

(b) An application must be obtained from the precinct in which the device is to be used to the greatest extent, if more than one location is involved.

(1) Form P.D. 656-041 (Rev. 9-86-31). Sound Device Application and Permit must be completed - clearly printed or typewritten. Incomplete, incorrectly prepared, or illegible applications will not be accepted.

(2) If sound device or apparatus is to be used at more than two locations, a typewritten letter in duplicate containing locations and time scheduled at each location, will be attached to application by applicant.

(3) The application must also contain:

(i) The name, address and telephone number of the applicant.

(ii) If the application is made in behalf of a corporation, organization or association, it must be signed by an officer of the corporation, organization, or association; giving full name and title of office held.

(iii) In addition, the applicant must provide a certified copy of the articles of incorporation, or if not incorporated, a sworn list of names and resident addresses of officers of said organization will be filed with application, unless one has

already been filed with previous application and is on file at License Division.

(iv) Applicant will describe or specify in application the volume of sound intended to be used, measured by decibels or by any other efficient method for measuring sound.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 8-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 8 SOUND DEVICE PERMITS

§8-03 Fees.

The fee for use of each sound device or apparatus is five dollars for each day, regardless of number of locations specified in application. No fee is required for a permit issued to any agency of the United States Government, State or City of New York. The fee will be required upon approval of application and be paid to the precinct of application.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 8-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 8 SOUND DEVICE PERMITS

§8-04 Approval/Disapproval Procedures.

(a) The permittee will be notified by the precinct if his application for a permit is approved. If the permit is approved the permittee will be directed to pay the fee and to pick up the permit on the morning of the event. The permittee will be given a receipt for his application fee.

(b) If his application is disapproved, the applicant will be notified. If his application is disapproved because it is for a prohibited location, or to prevent an overlapping of permits, the applicant may be offered an alternate location in the vicinity, if available.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 8-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 8 SOUND DEVICE PERMITS

§8-05 Permit Conditions.

Sound device permits are issued under the following conditions:

(a) Permit automatically expires upon termination of occasion for which it was issued and should be returned, if possible, to Commanding Officer of precinct where it was issued, for forwarding to License Division for cancellation.

(b) A permit to operate a sound device or apparatus is valid only at the location and dates designated and during the hours specified on said permit.

(c) A sound device or apparatus will be so operated as not to unnecessarily interfere with the peace and comfort of residents at or near location.

(d) A sound device or apparatus may not be used in any vehicle or other device, while it is in transit.

(e) A sound device or apparatus may not be used between the hours of 10 p.m. and 9 a.m.

(f) The permit is revocable at any time.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 8-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 8 SOUND DEVICE PERMITS

§8-06 Prohibitions.

A sound device permit will not be issued for:

(a) Any location within 500 feet of a school, courthouse or church during hours of school, court or worship, or within 500 feet of a hospital or similar institution;

(b) Any location where the Department, upon investigation, determines that conditions of vehicular or pedestrian traffic, or both, are such that use of such a device or apparatus will constitute a threat to the safety of pedestrians or vehicle operators;

(c) Any location where the Department, upon investigation, determines that conditions of overcrowding or street repair, or other physical conditions are such that use of a sound device or apparatus will deprive the public of the right to safe, comfortable, convenient and peaceful enjoyment of any public street, park or place, or constitute a threat to the safety of pedestrians or vehicle operators;

(d) Use in any vehicle or other device while it is in transit;

(e) Between the hours of 10 p.m. to 9 a.m.

(f) A permit to use a sound device or apparatus for commercial or business advertising purposes.

Note: These Regulations do not apply to use or operation of any sound device or apparatus by any church or synagogue on or within its own premises in connection with religious rites or ceremonies.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 9-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 9 GOOD CONDUCT CERTIFICATION

§9-01 Instructions for Obtaining a Good Conduct Certificate.

An applicant for a Good Conduct Certificate who is a New York City resident must apply in person at the Public Inquiry & Request Section, located at One Police Plaza, New York, New York, Room 152-A, Monday through Friday, from 9 a.m. to 4:30 p.m.

An applicant will be fingerprinted only at the Public Inquiry & Request Section and will be required to present a thirty ($30.00) dollar Money Order or Certified Check payable to the New York City Police Department. Processing takes approximately ten working days.

HISTORICAL NOTE

Section in original publication July 1, 1991.

38 RCNY 9-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 9 GOOD CONDUCT CERTIFICATION

§9-02 Additional Instructions.

(a) **United States Citizens.** A United States citizen is required to bring a letter from the Consulate or requesting source i.e., Adoption Agency, State Liquor Authority, etc. and the following as proof of citizenship:

(1) Birth certificate or

(2) Voter's Registration Card or

(3) Passport

(b) **Non-citizens.** A Non-citizen is required to bring the following when making application:

(1) Passport or

(2) Letter from the Department of Immigration and Naturalization Service indicating applicant's name, address and current status in this Country or

(3) Letter from a Consulate which contains applicant's physical description and date of birth.

(c) **Former New York City Residents.** To obtain a Good Conduct Certificate for someone residing outside New York City, who was formerly a New York City resident, the following must be sent or delivered to the Public Inquiry & Request Section, One Police Plaza, New York, New York 10038-1497, Room 152-A:

(1) An official fingerprint chart bearing applicant's fingerprints from the location where the applicant resides. The chart must contain the signature of the official who fingerprinted the applicant and the date the applicant was fingerprinted.

(2) Thirty ($30.00) dollar Money Order or Certified Check, payable to the New York City Police Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

38 RCNY 10-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-01 Notice of Violation.

The owner or managing agent of a building, erection or place shall be given written notice of arrests occurring thereat for offenses which constitute a public nuisance as defined in §10-155, Administrative Code of the City of New York. The notice shall set forth the section of law violated, the date of violation, the address and location therein at which the violation occurred, and the court, county and docket number pertaining thereto. The notice shall further state that in the event that such arrests and/or future arrests result in two or more convictions for such public nuisance violations within a twelve month period, proceedings to close the building, erection or place may be commenced.

HISTORICAL NOTE

Section amended City Record Apr. 10, 1992 eff. May 10, 1992.

Section in original publication July 1, 1991.

38 RCNY 10-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-02 Commencement of Proceedings.

All Public Nuisance hearings shall be commenced by service of a Notice of Hearing on the owner, lessor, lessee and mortgagee (hereinafter called "respondent(s)") of a building, erection or place wherein the public nuisance is being conducted, maintained or permitted.

(a) **Service.** (1) Service of a Notice of Hearing may be made to owners and lessors by delivering such notice to the owner or lessor or to an agent of the owner or lessor or to a person of suitable age and discretion at the residence or place of business of the owner or lessor or, if upon reasonable application such delivery cannot be completed, by affixing such notice in a conspicuous place at the owner's or lessor's place of business or residence or by placing it under the entrance door at either of such locations or by delivering such notice to a person employed by the owner or lessor on the premises at which the nuisance is located and, in all instances except personal delivery upon such owner or lessor by mailing the Notice of Hearing as follows:

(i) to the person registered with the Department of Housing Preservation and Development as the owner or agent of the premises, at the address filed with such department in compliance with Article two of Subchapter four of Chapter two of Title twenty-seven of the Administrative Code; or

(ii) to the person designated as owner of the building or designated to receive real property tax or water bills for the building at the address for such person contained in one of the files compiled by the Department of Finance for the purpose of the assessment or collection of real property taxes and water charges or in the file compiled by the Department of Finance from real property transfer forms filed with the city register upon the sale or transfer of real property; or

(iii) to the person in whose name the real estate affected by the order of the Police Commissioner or such Commissioner's designee is recorded in the office of the City Register or the County Clerk, as the case may be.

(2) service of a Notice of Hearing may be made to an owner or lessor which is a corporation pursuant to section three hundred six of the Business Corporation Law.

(3) service of a Notice of Hearing may be made to lessees (i) by delivering such notice to the lessee or to a person employed by the lessee on the premises at which the nuisance is located; or (ii) by affixing such notice in a conspicuous place to the premises at which the nuisance is located or placing a copy under the entrance door of such premises and mailing a copy of such notice to the lessee at such premises.

(4) service of a Notice of Hearing may be made to mortgagees by mailing such notice to the mortgagee at the last known residence or place of business or employment of the mortgagee.

(5) proof of service pursuant to subparagraphs (a), (b), (c) and (d) of this paragraph shall be filed with the Commissioner or the Commissioner's designee.

(b) **Notice of Hearing.** A Notice of Hearing shall contain the name and address of the owner, lessor, lessee and mortgagee, the address of the building, erection or place where the public nuisance is being conducted, and a scheduled time and place for the hearing. The Notice shall cite the subsection of §10-155 being violated and contain a short and plain statement of the violation. It shall also list the dates of arrest and dates of the prior criminal convictions and cite the specific section of the law upon which they were predicated. The Notice shall also indicate the possible penalties and sanctions for violation and a warning that failure to appear may result in an order closing the building, erection or place. The Notice shall also include a statement that the respondent has a right to be represented by counsel.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) repealed and added City Record Apr. 10, 1992 eff. May 10, 1992.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-03 Hearing Officials.

(a) **Public hearing.** Hearings are generally open to the public except that if good cause is shown by either party, the Hearing Officer may exclude the public from a particular hearing or portion of a hearing.

(b) **Presiding officer.** The hearing shall be presided over by an employee of the New York City Police Department who shall be known as the Hearing Officer. The Hearing Officer serves both as impartial examiner and impartial judge and has the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of the proceedings, and to maintain order. Hearing Officers shall be assigned solely to adjudicative and related duties. It is the duty of each Hearing Officer to inquire fully into all matters in issue and to obtain a full and complete record which shall constitute a recommendation to the Commissioner. The Commissioner shall make the final decision. The Hearing Officer has all powers necessary to this end, including:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and to receive evidence;

(3) To regulate the course of hearings and the conduct of the parties and their counsel; (4) To hold conferences, both on and off the record, for settlements, simplification of issues, or any other proper purpose.

(c) **Trial attorney.** An individual designated by the Police Commissioner shall present the evidence supporting the existence of a public nuisance.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record Apr. 10, 1992 eff. May 10, 1992.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-04 Proceedings Upon Default.

(a) **Inquest.** Upon the respondent's failure to appear at the hearing or any adjournment thereof, respondent may be deemed to have pleaded "no contest" and an order closing the building, erection or place may be issued. In such event, a closing order shall not be issued unless the Hearing Officer is satisfied that a Notice of Hearing was duly served and that the evidence offered in support of the closing constitutes a public nuisance as defined in §10-155 of the Administrative Code of the City of New York. For the purpose of making this determination, the Hearing Officer shall convene the proceeding and receive all evidence in support of the closing as prescribed herein.

(b) **Application to vacate default.** An application for a hearing and stay of a default may be made within twenty (20) days of the posting of a closing order on the affected building, erection or place, or mailing of a copy of the Hearing Officer's decision, whichever is later. Such application is to be made to the License Division and shall be granted upon a showing of good cause.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-05 Conduct of Hearings.

(a) **General provisions.** The Hearing Officer shall rule upon matters of procedure and introduction of evidence and shall conduct the hearing in such manner as will best serve the attainment of justice.

(1) Any person who is entitled to notice pursuant to these Regulations may appear and be heard in person or by a duly appointed representative and may produce, under oath, evidence relevant and material to the matter under consideration.

(2) Any such person may be represented by an attorney who is a member in good standing of the Bar of the State of New York.

(3) Any person desiring to subpoena a witness, document or other evidence may do so in the manner provided for in the New York Civil Practice Law and Rules. In appropriate instances the Hearing Officer can request the issuance of an administrative subpoena pursuant to §14-137 of the Administrative Code of the City of New York.

(4) **Record.** A record of all proceedings shall be made by either stenographic transcription or electronic recording device. Typewritten copies thereof may be ordered by the parties at their own cost.

(5) No ex parte communications relating to other than ministerial matters regarding a proceeding shall be received by a Hearing Officer.

(b) **Evidence/proof.** All parties have the right to call witnesses, to conduct examinations, including

cross-examination, to present evidence, and to make objections, motions and arguments.

(1) **Burden of proof.** No public nuisance may be established except upon proof by a preponderance of the credible evidence. The Trial Attorney has the burden of proof in establishing that a public nuisance exists at the cited premises, but the proponent of any factual proposition will be required to sustain the burden of proof with respect thereto.

(2) **Order of proof.** The order of proof shall be as follows:

(i) testimony by the witness or witnesses in support of the existence of a public nuisance.

(ii) cross-examination of such witnesses;

(iii) testimony by the respondent(s) or their witnesses in defense and explanation; and

(iv) cross-examination of the respondent(s) and witnesses. The Hearing Officer may, in his discretion, change the order of proof where the circumstances so warrant.

(3) **Objections to rulings of Hearing Officers.** Objections may be taken to the rulings of the Hearing Officer by stating the reasons for such objections, but will not be deemed to have been made unless duly noted in the record.

(4) (i) **Informality of rules of evidence.** The rules of evidence governing proceedings in the courts of this State shall not be rigidly enforced in hearings before the Department. Unless objection is made and duly noted in the record, all evidence appearing in the record shall be deemed to have been validly introduced.

(ii) **Cumulative evidence.** The introduction of cumulative evidence shall be avoided and the Hearing Officer may curtail the testimony of any witness which is judged to be merely cumulative.

(iii) **Reopening of hearing for presentation of new or additional evidence.** Upon due application prior to the final determination, the hearing may be reopened for the presentation of new or additional evidence. The Department may, on its own motion, reopen a hearing for the presentation of additional evidence.

(5) **Stipulations.** Parties may, by agreement, stipulate as to any facts involved in the proceedings, provided that such stipulation is duly noted in the record.

(6) **Oral arguments only before Hearing Officer.** Oral argument may be made only before the Hearing Officer. Such oral argument may be curtailed or limited in the Hearing Officer's discretion and is to be included in the record.

(c) **Motions and adjournment.** (1) **Motion to dismiss.** Motions to dismiss may be made at the option of the respondent or respondent's attorney, but are not required and will not be deemed to be necessary to protect any right of the respondent.

(2) **Applications to adjourn.** No application for adjournment of a hearing shall be granted except for good cause shown. If such adjournment is sought on the grounds that respondent's attorney is actually engaged in a court of record, an affidavit of actual engagement by such attorney must be presented.

(3) **Imposition of penalty following application to adjourn.** Upon granting any adjournment, the Hearing Officer may direct that the matter be set down peremptory against the respondent, in which event the respondent shall be notified that there shall be no further entitlement to any adjournment.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (a) par (5) added City Record Apr. 10, 1992 eff. May 10, 1992.

Subd. (c) par (3) amended City Record Apr. 10, 1992 eff. May 10, 1992.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-06 Decisions and Orders.

(a) **Hearing Officer's recommendation.** After the conclusion of the hearing, the Hearing Officer prepares a recommendation in a written report and forwards it, with all other materials necessary for reaching a decision, to the Commissioner. The report includes a statement of (1) a recommended decision which shall consist of findings (with specific references to principal supporting items in the record) and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact and law presented on the record, and (2) an appropriate recommended ruling or order. Upon request made at or before the date of the hearing, the respondent shall be given a reasonable opportunity to review the Hearing Officer's report and submit in writing any objections thereto. Respondent's objections shall be forwarded to the Commissioner with the Hearing Officer's written report.

(b) **Final order.** The Commissioner shall approve, modify or reject (1) the recommended decision and/or (2) the recommended ruling or order.

Parties are notified promptly by regular mail of the final decision and order not later than one business day subsequent to the posting described below.

Orders of the Commissioner shall be posted at the building, erection or place where the public nuisance exists. The posted order shall state that the building, erection or place has been found to be a public nuisance by the Police Commissioner and that on the fifth business day after the posting, officers of the Police Department are authorized to discontinue such activity and/or close the building, erection or place. The posted order shall include a notice that it shall be a misdemeanor for any person to use or occupy or to permit any other person to use or occupy any building, erection or place or portion thereof ordered closed by the Commissioner. The posted order shall also contain a notice that

mutilation or removal of a posted order of the Commissioner shall be punishable by a fine of not more than $250 or by imprisonment not exceeding 15 days, or both.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Subd. (b) amended City Record Apr. 10, 1992 eff. May 10, 1992.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-07

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-07 Consent Judgments.

Any respondent wishing to settle the charges on or before the date set for a hearing may do so by entering into a consent judgment/order which shall have the effect of a decision and order. The judgment/order shall contain such terms and conditions as in the discretion of the Hearing Officer are necessary to attain the purposes of §10-155 and §10-156 of the Administrative Code of the City of New York.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-08

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-08 Vacation of Order.

Where the Commissioner issues an order closing a building, erection or place, the order may be vacated on such terms and conditions as shall satisfy the Commissioner that the nuisance shall be abated and will not be created, maintained or permitted for such period of time as the building, erection or place has been directed to be closed by the order of the Commissioner. Such terms and conditions may include but are not limited to a posting of a bond or cash security.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-09

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-09 Bond.

Any bond filed with the Department pursuant to these Regulations shall be delivered to the Hearing Officer for safekeeping until such time as its terms have been fulfilled or violated, as the case may be, or as otherwise directed by the Commissioner. In the event that the terms of the bond have been violated, such bond shall be forfeited and the proceeds thereof shall be paid into the general fund of the City.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 10-10

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 10 PADLOCK HEARINGS

§10-10 Construction.

As used herein, terms in the singular shall include the plural.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 11 PRESS CREDENTIALS

SUBCHAPTER A PRESS CARD ISSUANCE

§11-01 Working Press Card.

The Working Press Card entitles the bearer to cross a police or fire line at emergency scenes and at locations where police or fire barriers have been set up for crowd control purposes. To be eligible to receive the Working Press Card an individual must be:

(a) A full-time employee of a news gathering organization covering spot or breaking news events on a regular basis such as robbery scenes, fires, homicides, train wrecks, bombings, plane crashes, where there are established police or fire lines at the scene. The Working Press Card enables the individual to cross such lines at these emergency scenes, and at public events of a non-emergency nature such as parades and demon- strations.

(b) Newspersons (such as freelancers), not otherwise eligible for a Working Press Card, who demonstrate a need to cover the above-described spot or breaking news events on a regular and routine basis will be eligible for a Working Press Card. Such persons will be required to submit with their application at least three (3) letters from previous media employers or one (1) letter from one (1) media employer indicating there were three (3) articles or photographs published within the twelve (12) months immediately preceding the application.

(c) Supervisory news personnel in both print and broadcast media who demonstrate a need to regularly and routinely cross police or fire lines may be issued the Working Press Card.

(d) The publisher of an established newspaper and his counterpart in broadcast news may be issued the Working Press Card if their organization covers the events specified in §11-01(a).

(e) The Working Press Card is issued annually and bears the name, photograph, and news organization, if appropriate, of the person to whom it is issued.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 11 PRESS CREDENTIALS

SUBCHAPTER A PRESS CARD ISSUANCE

§11-02 Reserve Working Press Card.

This credential is limited in number and is issued only to news organizations. It bears only the name of the news organization to which it is issued. It is designed to afford maximum flexibility to print or broadcast assignment editors and to facilitate random coverage of police and fire scenes by individuals not normally entitled to the Working Press Card. This credential is also granted by the assignment editor to a freelancer that he may be using for a particular story. When the assignment is completed, the individual is to return the credential to the assignment editor.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 11 PRESS CREDENTIALS

SUBCHAPTER A PRESS CARD ISSUANCE

§11-03 Single Event Working Press Card.

Newspersons, not otherwise eligible for a Working Press Card, may apply for a Working Press Card for a single event. If the event is a planned event and is non-emergency in nature, such as a parade, the application should be made no less than two (2) weeks before the scheduled event. If the event is not planned or is emergency in nature and time is of the essence, the application for the Working Press Card may be made by phone to the Public Information Division (374-6700). The applicant must show a demonstrated need to cover the event, e.g., evidence that a news organization is interested in using the applicant's story or pictures. An applicant for a single event Working Press Card, under §11-03, will be regarded as having established a prima facie need for such card if he or she produces a letter from a news organization evidencing that the news organization is interested in using the applicant's story or pictures.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 11-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 11 PRESS CREDENTIALS

SUBCHAPTER A PRESS CARD ISSUANCE

§11-04 Press Identification Card.

This is an official Police Department press identification card. It means that the individual named on the card is employed by a legitimate news organization, but that the individual does not normally cover spot or breaking news events such as those listed in §11-01(a). These journalists include, among others, sports writers, drama critics, fashion writers, financial reporters, music critics. This credential does not entitle the bearer to cross police or fire lines and is issued as a courtesy by the Police Department recognizing a need for official identification.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 11-11

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 11 PRESS CREDENTIALS

SUBCHAPTER B APPEAL PROCEDURES AFTER DENIAL

§11-11 Hearing.

(a) Any person who is denied any of the above-described press credentials may appeal such decision, in writing, to the Commanding Officer, Public Information Division, within ten (10) days from the date of the denial. The applicant will be notified of a hearing date.

(b) At such hearing the applicant will have the right to be represented by counsel.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 11-12

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 11 PRESS CREDENTIALS

SUBCHAPTER B APPEAL PROCEDURES AFTER DENIAL

§11-12 Review by the Deputy Commissioner, Public Information.

If, after a hearing, the decision to deny the applicant's request for a press credential is upheld, the applicant will be advised in writing. An appeal of this decision may be made, in writing, to the Deputy Commissioner, Public Information, within ten (10) days of the date contained in the "Notice of Hearing Result." Any documentation in support of the appeal should be submitted with the request to the Deputy Commissioner, Public Information.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-01 Introduction.

The Property Clerk Division has established procedures regarding the return of property when claimed by the public. The classification of the property, arrest evidence, decedent's property, found property, etc., determines the documentation the claimant must provide in order to gain possession. In all cases, in addition to the necessary documentation, proper identification of the claimant is required. This can be in the form of licenses, credit cards, passports, bankbooks and utility bills (see appendix A of this chapter). In cases where the owner of property sends another person to pick up that property, the owner must provide such person a notarized letter authorizing such person to act on the owner's behalf, to be presented to the Property Clerk Division.

Listed below in this subchapter are categories and general procedures for claimants to follow, in order to obtain property in our custody. Subchapter A of this chapter contains general provisions. Subchapter B of this chapter sets forth special procedures, which are followed by the Property Clerk and the District Attorneys with respect to claims for the return of property taken or obtained in connection with an arrest. Subchapter C of this chapter sets forth special procedures that shall be followed by the Property Clerk with respect to items of jewelry recovered in the vicinity of the World Trade Center site subsequent to the terrorist attack of September 11, 2001. The claim submission procedures contained within this subchapter will be applicable until May 31, 2005.

HISTORICAL NOTE

Section amended City Record Feb. 17, 2005 §2, eff. Mar. 19, 2005. [See Chapter 12 Subchapter C footnote]

Section amended City Record Feb. 9, 1998 §2, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-02 Arrest Evidence-Crime Victim is the Owner.

Released to owner upon presentation of a court order which directs the return of specified property on a specified voucher to a specifically named individual. In other cases, upon presentation of a letter from the Property Clerk, which is sent to identifiable owners, 90 days after the termination of criminal proceedings.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-03 Arrest Evidence-Prisoner is the Owner. [Repealed]

HISTORICAL NOTE

Section repealed City Record Feb. 9, 1998 §3, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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***** Current through December 2009 ****

38 RCNY 12-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-04 Arrest Evidence-Claimed by Prisoner and Victim. [Repealed]

HISTORICAL NOTE

Section repealed City Record Feb. 9, 1998 §3, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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***** Current through December 2009 ****

38 RCNY 12-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-05 Arrest Evidence Subject to Forfeiture. [Repealed]

HISTORICAL NOTE

Section repealed City Record Feb. 9, 1998 §3, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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***** Current through December 2009 ****

38 RCNY 12-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-06 Investigatory Evidence.

Property vouchered for investigation will require the claimant to obtain a release from the investigating officer, in writing, usually on department letterhead. (Police Department Patrol Guide, procedure 113-22.)

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-07

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-07 Decedent's Property.

Claimants must produce letters testamentary or of Administration, naming the executor of the estate, when a will is involved. If there is no will, the claimant must obtain a written release from the Public Administrator of the county in which the property is held. In either case, if assets exceed $30,000.00 or if a safe deposit box key is in the Property Clerk's custody, the claimant must obtain a notice of waiver issued by the New York State Tax Commission.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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***** Current through December 2009 ****

38 RCNY 12-08

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-08 Safekeeping.

This category covers property casesremoved from aided and prisoner's personal property not required as evidence. The claimant generally produces the pink copy of the voucher or, if not issued, obtains the voucher number from the Precinct in which the property was taken. If the claimant is listed as the owner on the Property Clerk's copy, the property is returned immediately. If ownership cannot be determined, the claimant is referred to the vouchering command to obtain a letter identifying the claimant as the owner (in a limited number of cases the Property Clerk can do this by telephone).

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff.

Mar. 11, 1998. Subchapter A heading provided by editor.

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38 RCNY 12-09

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-09 Found Property-Owner Known.

Returned to owners upon demand or upon presentation of a letter of notification from Stolen Property Inquiry Section or the Property Clerk, informing them that their property has been found.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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***** Current through December 2009 ****

38 RCNY 12-10

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-10 Found Property-Finder.

When a person turns in property and the owner cannot be determined, it must be held by the Property Clerk for specific time periods as listed below:

Property having a value of less than $100.00-3 months.

Property having a value of $100.00 or more-less than $500.00-6 months.

Property having a value of $500.00 or more-less than $5,000.00-1 year.

Property having a value of $5,000.00 or more-3 years.

The Property Clerk notifies finders by mail that property is ready for release. Finder should produce pink copy of voucher and letter from Property Clerk to obtain property.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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***** Current through December 2009 ****

38 RCNY 12-11

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-11 Peddlers Property-Unlicensed General Vendor and Food Vendor.

This property is forfeited and will not be returned unless forfeiture is waived, in writing, by the Corporation Counsel. The Corporation Counsel also specifies whether any or all storage and removal fees are waived.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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***** Current through December 2009 ****

38 RCNY 12-12

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-12 Peddler's Property-Licensed General Vendor.

Property is delivered on demand-no removal and storage fees are collected. Claimant must produce pink copy of voucher and/or be listed as the owner on Property Clerk's copy.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-13

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-13 Peddler's Property-Licensed Food Vendor.

Deliver property on demand and collect appropriate removal and storage fees. Claimant must provide pink copy of voucher and/or be listed as the owner on Property Clerk's copy.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-14

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-14 Claiming Vehicle at Whitestone Auto Pound.

To claim a vehicle that is being stored at the Whitestone Auto Pound, the owner must appear at the auto pound with documents authorizing release, showing proof of ownership and proof that driver of vehicle is licensed.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-15

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-15 Proof of Ownership.

Present title for all vehicles 1973 and newer. For older vehicles, registration certificate is acceptable. Additional proof of identity of owner is also required, i.e., Driver's License, Employee Identification Card, etc.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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***** Current through December 2009 ****

38 RCNY 12-16

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-16 Evidence Vehicle.

If vehicle is being held as evidence, a District Attorneys release, Court Order or Court Disposition is required in addition;

If vehicle is not currently registered and/or insured this vehicle will not be driven from the pound. It must be towed by either a tow truck or tow chain by another properly registered vehicle. If vehicle is allowed to be driven from the pound a current driver's license must be produced by the person removing the vehicle.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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***** Current through December 2009 ****

38 RCNY 12-17

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-17 Owner's Representative Claiming Vehicle.

Whenever a vehicle owner sends a representative to claim his vehicle, a notarized letter of authorization must be presented in addition to all other documents that the owner is required to present.

Any towing and storage charge accrued to this vehicle must be paid in U.S. currency or certified check before vehicle will be released.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-18

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-18 Vehicles Being Claimed by Insurance Company.

(a) Insurance company representative present at pound need only to present identification and a notarized "Receipt for Release of Vehicle" (referred to as a 167E letter). Payment of accrued towing and storage charges, if any, is also required.

(b) Tow operators present to remove vehicle after Insurance company representative was present and signed for vehicle must have a notarized "167E letter" in name of towing company and identification for themselves.

(c) Tow operator is present and has notarized "167E letter" authorizing him as company representative, can identify self, pay any accrued charges and remove vehicle.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12-19

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER A*1 PROCEDURES FOR CLAIMING PROPERTY

§12-19 Vehicles Being Claimed by Lienholder.

Lienholders must present a copy of sales agreement which was signed by owner and a notarized statement on company letterhead stating said person is in arrears in payment.

All other regulations pertaining to payment of towing and storage charges, proof of identity, District Attorney's release, Court Disposition, Court Orders and the driving or towing of vehicles from the pound are applicable for all vehicles being released.

HISTORICAL NOTE

Section in original publication July 1, 9991.

FOOTNOTES

1

[Footnote 1]: * Section 12-01 through §12-19 designated as Subchapter A City Record Feb. 9, 1998 eff. Mar. 11, 1998. Subchapter A heading provided by editor.

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***** Current through December 2009 ****

38 RCNY 12-31

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-31 Definitions.

Arrest Evidence. The term "arrest evidence" shall mean property taken from the person or possession of an individual prior to, simultaneous with, or subsequent to an arrest because of its relation to the matter for which the person has been arrested. No property shall be deemed arrest evidence prior to the person's arrest. No property taken from a person and held by the Police Property Clerk merely for safekeeping shall be deemed arrest evidence.

Claimant. The term "claimant" shall mean the person from whose person or possession property, other than contraband, was taken or obtained, who is seeking from the police property clerk the return of such property in the police property clerk's possession or property that has been transferred by the police property clerk to the district attorney of any of the five counties of the city.

Contraband. The term "contraband" shall mean property the mere possession of which is prohibited under federal, state or local law. Property shall not be deemed to be contraband merely because it has been held as evidence or for custodial safe-keeping, or because it may be suspected or believed to be unlawfully obtained, stolen or the proceeds or instrumentality of a crime.

Days. The term "days" shall mean calendar days unless otherwise indicated.

District attorney's release. The term "district attorney's release" shall mean a statement from the appropriate district attorney's office that the subject property is no longer needed as evidence. A district attorney's release is not to be construed as a statement by the district attorney as to the possessory rights to the property of any person, including the claimant.

District attorney supervisor. The term "district attorney supervisor" shall mean an assistant district attorney with authority to review the denial of an application for a district attorney's release.

Proper identification. The term "proper identification" shall mean identification deemed acceptable and sufficient by the department of motor vehicles for the purpose of obtaining a driver's license. A list of such identification is contained in appendix A of this chapter.

Property. The term "property" shall mean and include all property, whether it is real property, personal property, money, negotiable instruments, securities, or any other thing of value or any interest in a thing of value.

Termination of criminal proceedings. The term "termination of criminal proceedings" shall mean the earliest of (i) thirty-one days following the imposition of sentence, (ii) the date of acquittal of a person arrested for an offense, (iii) where leave to file new charges or to resubmit the case to a new grand jury is required and has not been granted, thirty-one days following the dismissal of the last accusatory instrument filed in the case, or, if applicable, upon expiration of the time granted by the court or permitted by statute for filing new charges or resubmitting the case to a new grand jury, (iv) where leave to file new charges or to resubmit the case to a new grand jury is not required, thirty-one days following the dismissal of the last accusatory instrument filed in the case, or, if applicable, upon expiration of the time granted by the court or permitted by statute for filing new charges or resubmitting the case to a new grand jury, (v) six months from the issuance of an "Adjournment in Contemplation of Dismissal" order pursuant to C.P.L. §170.55, or twelve months from the issuance of such an order pursuant to C.P.L. §170.56, where the case is not restored to the court's calendar within the applicable six-month or twelve-month period, and (vi) the date when, prior to the filing of an accusatory instrument against a person arrested for an offense, the district attorney elects not to prosecute such person.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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***** Current through December 2009 ****

38 RCNY 12-32

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-32 Vouchering Procedures.

The police department and the district attorney, where applicable, of each of the five counties of the city have implemented the following procedures governing the taking or obtaining of non-contraband property from a person's possession at the time of arrest:

(a) The police shall make an inventory of such property and shall issue a voucher, which shall be given to the person as a receipt for items taken. The voucher shall contain the name of the person, a complete itemized list of all non-contraband property taken, and a brief description thereof.

(b) The person shall be given an opportunity to examine the voucher, and if such person finds the itemized list to be correct, such person may sign the voucher to acknowledge that it contains a complete list of property taken. Failure to sign the voucher shall not preclude a lawful claim being made for the property.

(c) The person must be informed that if he or she believes any additional non-contraband property was taken from his or her person or from his or her possession, or if he or she believes that property was erroneously vouchered to him or her, he or she may so indicate on the voucher. The arresting officer may sign the voucher indicating his or her concurrence with the list of items or any disagreement.

(d) A person is entitled to receive a voucher at the time of his or her arrest for property taken or obtained from his or her person or possession, and the other procedures set forth in these rules shall apply, regardless of whether the property has been denominated by the police department as "arrest evidence" or otherwise, and regardless of whether the arrest is prior to, simultaneous with, or subsequent to the taking or obtaining of the property.

(e) In bold letters on the back of the voucher, or on a separate sheet attached to the voucher, notice shall be given in plain English and Spanish setting forth the following procedures:

(i) The person from whose possession the property was taken should retain and safeguard the voucher;

(ii) In order to obtain the return of the property, the claimant or a representative authorized by a notarized writing to claim the property will be required to submit, in person or by mail, the voucher and proper identification to the office of the police property clerk located at a central location in each borough. The property may be disposed of by the police property clerk according to law unless the claimant demands the property no later than 120 days after the termination of criminal proceedings.

(iii) A claimant demanding the return of property other than arrest evidence does not require a district attorney's release and may make such a demand whether or not criminal proceedings have been instituted and, if instituted, whether or not such proceedings have been terminated. As used herein, "property other than arrest evidence" refers to non-contraband property taken from an arrestee merely for safekeeping or taken from the person or possession of an individual prior to, simultaneous with or subsequent to an arrest which is unrelated to the matter for which the individual was arrested. Following receipt of a demand for such property, the property clerk may return the property or otherwise proceed pursuant to the provisions of §§12-36 and 12-37 of this subchapter.

(iv) A claimant demanding the return of arrest evidence from the property clerk should obtain prior to the demand either a district attorney's release or a supervising district attorney's statement refusing to grant a release, although presentation of either or both of these documents to the property clerk is not required for making a timely demand. If demand for the property is made without a district attorney's release, or a supervising district attorney's statement, the claimant shall have 270 days from such demand to obtain a district attorney's release or a supervising district attorney's statement refusing to grant a release. If a release or statement refusing to grant a release is not provided to the property clerk within such period, the property may be disposed of according to law.

(v) If a claimant timely provides the property clerk with a district attorney's statement refusing to grant a release, the claimant must thereafter obtain a district attorney's release to obtain the return of the property.

(f) In addition to the notice provided by the police property clerk, the district attorney shall, unless prohibited by the local arraigning court, provide the notice described in subdivision e of §12-32 of this subchapter to each person from whose person or possession property was taken or obtained when those persons initially appear at arraignment. The notice also shall set forth the procedures by which a claimant may obtain a district attorney's release and the procedures by which a claimant may seek review in the event that a release is denied. It is not required that the district attorney provide a copy of the voucher at arraignment.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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***** Current through December 2009 ****

38 RCNY 12-33

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-33 Distribution and Posting of Notices Setting Forth the Procedures to be Followed to Obtain the Return of Property.

The police department shall make available to any person requesting information about property in the possession of the police property clerk copies of the notice described in subdivision e of §12-32 of this subchapter at each station house and at each facility maintained by the property clerk. The police department shall post such notices, in no smaller than 24-point type, in the holding areas of all station houses, in all central booking facilities within the city and in each courthouse holding area within the city, that is within the control of the police department.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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38 RCNY 12-34

RULES OF THE CITY OF NEW YORK

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CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-34 District Attorney's Release.

The district attorney of each of the five counties of the city have implemented the following procedures governing the giving of releases for property that is arrest evidence:

(a) A request for a district attorney's release may be made, in person or by mail, by the claimant or by a representative authorized by a notarized writing by the claimant.

(b) The request must be accompanied by a copy of the voucher or, if the voucher is lost or absent, an explanation for its loss or absence, proper identification and suitable case identification. In his or her discretion, the district attorney may waive any or all of these requirements.

(c) If the request for a release is accompanied by the documents specified in subdivision b hereof, the district attorney shall, if the property is no longer needed as evidence, grant a release no more than fifteen days after receipt of the request. If the property is or may be needed as evidence, the district attorney shall follow the procedures hereinafter set forth.

(d) Before the termination of criminal proceedings, the district attorney shall provide a release to a claimant upon request unless the district attorney determines that the property is or may be needed as evidence. After the termination

of criminal proceedings, the district attorney shall provide a release to a claimant upon request unless the district attorney determines that the property needs to be retained as evidence due to (i) a pending appeal; (ii) a collateral attack or notice that a collateral attack will be commenced; (iii) another specifically identified criminal proceeding or (iv) an ongoing identifiable criminal investigation. In all cases, a district attorney's determination not to provide a release to a claimant because the property is or may be needed as evidence shall be made in good faith. The district attorney's release shall be personally delivered to the claimant or mailed to the claimant at the address provided by the claimant on the form making the request for release.

(e) Whenever a release is denied to a claimant either before or following the termination of criminal proceedings, the district attorney must provide in writing the reason for the refusal no more than fifteen days after receipt of the request. The claimant also must then be informed that he or she may obtain review by a supervising assistant district attorney, who shall not be the individual who made the initial determination, which review must be provided to the claimant within ten days of the request for review. A supervising assistant district attorney's refusal to provide a claimant a release must be in writing stating the particularized reason(s) for the refusal, which reasons must be in conformity with subdivisions c and d, above. The notices provided by the district attorney shall be personally delivered to the claimant or mailed to the claimant at the address provided by the claimant on the form making the request for release.

(f) The claimant may reapply to the district attorney for a release at any time after the date of issuance of the statement upholding the denial.

(g) The district attorney may utilize standard forms, uniform throughout the five boroughs, consistent with these rules, for

(i) Claimant's request for a district attorney's release, which shall also serve as an acknowledgement of receipt;

(ii) Claimant's request for a review of a denial of a district attorney's release, a copy which shall also serve as an acknowledgement of receipt;

(iii) District attorney supervisor's statement of reasons for upholding a denial of a release; and

(iv) District attorney's release.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-35 Disposition of Property by the Police Property Clerk Where There Has Been an Arrest.

Where there has been an arrest prior to, simultaneous with, or subsequent to the taking or obtaining of the property, the property clerk shall take the following steps with regard to all vouchered property, subject to a different disposition required by other applicable federal, state or local law:

(a) Subject to the provisions of §§12-36 and 12-37, the police property clerk shall return all non-contraband property other than arrest evidence to a claimant who produces proper identification and the voucher issued to him or her for the property. The property clerk shall not require such claimant to submit a district attorney's release covering such property, and such claimant may make a demand whether or not criminal proceedings have been instituted and, if instituted, whether or not such proceedings have been terminated.

(b) Subject to the provisions of §§12-36 and 12-37, the police property clerk shall return all non-contraband arrest evidence, which is or shall hereinafter come into his or her possession or custody, upon timely demand, to a claimant who produces proper identification and who submits a written district attorney's release covering such property and the voucher issued at the time of arrest. Failure to produce the voucher shall not preclude a lawful claim being made for property, although the property clerk may require the claimant to explain the loss or absence of the voucher.

(c) A demand for the return of property shall be timely if made within 120 days after the termination of criminal

proceedings, whether or not the demand is accompanied by a district attorney's release or a statement upholding a denial of the release. A demand may be made in person or by mail by the claimant or by a representative authorized in writing to claim the property on behalf of the claimant.

(d) If a timely demand is made without a district attorney's release, the property clerk may treat such a demand as an inquiry and require a claimant to provide, within 270 days of the inquiry, the property clerk with a district attorney's release or a supervising district attorney's statement upholding the denial of the release. If the claimant fails within such 270 days to provide the property clerk with a district attorney's release or a supervising district attorney's statement upholding the denial of the release, the property clerk may dispose of the property according to law.

(e) If the claimant provides the property clerk with a district attorney's release within the time period set forth in subdivision c, the property clerk shall return the property as required by subdivision b above. If the claimant provides the property clerk with a copy of the supervising district attorney's statement upholding the denial of the release, the property clerk must retain the property and shall either (i) return the property to the claimant when the claimant thereafter provides the property clerk with a district attorney's release, or (ii) when the property clerk learns that the property is not needed as evidence, give written notice to the claimant or the claimant's representative, at his or her last known address, which may be the address of a correctional facility, that the property will be returned forthwith to that person. Property that remains unclaimed for a period of 120 days after the date of the notice specified in (ii), or the remainder of the time provided to a claimant to obtain a release under subdivision d, whichever is greater, may be disposed of by the property clerk according to law.

(f) In no event shall a claimant be required to obtain any additional documentation or evidence relating to the property or be required to submit any proof of ownership of the property other than the voucher, except if the vouchered property is a motor vehicle, then title (or a reasonable explanation for its absence) may be required.

(g) The police property clerk must provide each claimant with a written "acknowledgement of demand or inquiry," indicating the date the demand or inquiry was made and a description of the property demanded.

(h) In any situation where the property clerk has returned property to the person from whom it was taken or obtained in accordance with this subchapter, the property clerk shall not be liable to any subsequent claimant for the same property.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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38 RCNY 12-36

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SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-36 Property Clerk Forfeiture Proceedings.

Where the property clerk has reasonable cause to believe that property was unlawfully obtained or was the proceeds or instrumentality of a crime or otherwise may be subject to forfeiture under any applicable provision of law, the property clerk may refuse to return the property and may cause a civil forfeiture proceeding or other similar civil proceeding to be initiated in accordance with the following:

(a) Such proceeding may, subject to the time limitation below, be instituted either before or after a claimant makes a demand to the property clerk for the return of the property. If such proceeding is instituted before the termination of criminal proceedings against the claimant, this subchapter shall not be construed to effect any right of a party to the forfeiture proceeding to have the forfeiture proceeding stayed for such period as the court may determine. If a timely demand is made for the return of the property before the forfeiture proceeding is instituted, such proceeding shall be brought no later than (i) in the case of arrest evidence, 25 days after the claimant provides the property clerk with a district attorney's release, and (ii) in all other cases, as a district attorney's release is not required, within 25 days after the date of demand. If such proceeding is not commenced within this time period, the property clerk shall give written notice to the claimant or the claimant's representative, at his or her last known address, which may be the address of a correctional facility, that the property will be returned forthwith to that person. Property that remains unclaimed for a period of 120 days after the date of such notice may be disposed of by the property clerk according to law.

(b) Notice of commencement of a forfeiture proceeding by the property clerk shall include a statement of the grounds upon which the property clerk seeks to justify the continued retention of the property. Any such proceeding shall provide the claimant and any other interested persons with an adequate opportunity to be heard within a reasonable period of time. In any such proceeding the property clerk shall bear the burden of proving by a preponderance of the evidence that the property clerk is legally justified to continue to retain the property.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

CASE NOTES

¶ 1. Petitioners brought an action under 42 U.S.C. §1983, alleging that the seizure of their vehicles, following their arrests for driving while intoxicated, violated their civil rights. They had all pleaded guilty to the lesser charge of driving while impaired. They alleged that as a matter of due process under the Constitution and the Administrative Code, they were entitled to "probable cause" hearings on the merits of their cases, but the court rejected that claim. In effect, this means that a person whose vehicle is seized must wait and see whether the Property Clerk starts a forfeiture proceeding within the 25 day period set forth in 38 RCNY § 12-36 . If the Property Clerk fails to do so, they get their vehicles back. If the Property Clerk brings a forfeiture action within the deadline period, the vehicle owner has a right to be heard at that time. Krimstock v. Safir, N.Y.L.J., Nov. 20, 2000, page 41, col. 1 (U.S. Dist. Ct., S.D.N.Y.).

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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38 RCNY 12-37

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SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-37 Property Not Subject to Forfeiture but Subject to More Than One Claim.

When property is not subject to forfeiture under §12-36 of this subchapter, but is, or may be, subject to more than one claim, the police property clerk shall take the following action:

(a) Where the person from whom the property was taken makes a timely demand to the police property clerk for the return of the property, the property clerk shall return the property to the claimant unless an additional claim is made in writing or in person within 25 days of the claimant's demand, in which case the property clerk shall within five days of the date of the additional claim provide each interested person (including the original claimant) with the name and address of all such interested persons, and shall retain the property pending a disposition of the matter between the persons who claim it. If within 30 days thereafter no settlement is reached between the persons who claim it, and the police property clerk has received no court order regarding the property or any notice of any action pending between the persons who claim it regarding the property, the police property clerk shall release the property to the claimant from whom the property was taken.

(b) When acting as a stakeholder pursuant to the provisions of this section, the police property clerk will not be liable for costs, interest or damages arising out of the continued detention of such property or money. Nothing contained in this subchapter shall be deemed to either require or prohibit the police property clerk from initiating a stakeholder proceeding in accordance with the civil practice law and rules.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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38 RCNY 12-38

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Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER B*2 PROCEDURES RELATING TO PROPERTY TAKEN OR OBTAINED IN CONNECTION WITH AN ARREST

§12-38 Investigatory Property.

Investigatory property unconnected to an arrest (as distinguished from property seized at the time of an arrest or property seized in a case in which an arrest is later made) is not within the scope of this subchapter.

HISTORICAL NOTE

Section added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. [See T38 Chapter 12 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter added City Record Feb. 9, 1998 §4, eff. Mar. 11, 1998. Note provisions of City Record Feb. 9, 1998:

These rules codify and provide public notice of the procedures followed by the District Attorneys and the Police Department with respect to the custody and disposition of property taken or obtained from a person in connection with the arrest of such person. The rules incorporate procedures specified in the final order of the United States District Court for the Southern District of New York in McClendon v. Rosetti 70 CIV. 3851 (MEL).

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***** Current through December 2009 ****

38 RCNY 12-51

RULES OF THE CITY OF NEW YORK

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CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER C*4 PROCEDURES RELATING TO PROPERTY RECOVERED IN THE VICINITY OF THE WORLD TRADE CENTER SITE SUBSEQUENT TO THE TERRORIST ATTACK OF SEPTEMBER 11, 2001

§12-51 Introduction.

Following the attack of September 11, 2001, the City of New York undertook extraordinary efforts to locate and preserve items of personal property recovered in the vicinity of the World Trade Center site. Property was found and vouchered at three major locations: Ground Zero itself, the Office of the Chief Medical Examiner, and a special facility at Fresh Kills landfill where police officers sorted through tons of material recovered from the disaster site. The Property Clerk has cleansed, sorted, collated, and categorized all property that came into the custody of the Police Department following the terrorist attack. The Property Clerk has conducted and continues to conduct comprehensive investigations, utilizing available technology, with the goal of determining ownership of each piece of property, regardless of the property's value.

Where the Police Department has been able to establish the ownership of specific items that were recovered, those items have been returned to their owners. Thus far, property from approximately 72% of the 26,779 vouchers containing items recovered, has been returned. Ownership of the remaining vouchered property has yet to be determined. The Police Department recognizes that, whatever the monetary value of an individual piece of property may be, it may have great value to the survivors and family members of those whose lives were lost. As demonstrated by numerous requests from family members, this is particularly so as to jewelry that has been recovered. Therefore, the Police Department has committed special resources to examine and classify lost jewelry and has created a special questionnaire to assist individuals who may wish to make a claim for such items. Out of respect and concern for those who were killed and

their family members, and the survivors of the attack, the City is establishing special procedures for individuals to provide the Property Clerk with information needed to determine the ownership of unclaimed jewelry remaining in the custody of the Property Clerk.

The Police Department will also continue to process requests for the return of property other than jewelry made pursuant to the regular procedures of the Property Clerk.

Because of the volume of items and the number of possible claims, it may be some time before ownership of claimed items can be determined. In many cases, claims may be made for items that have never been recovered. In many other cases, claims may be made for items with respect to which it is not possible to make a determination of ownership. For example, it may ultimately prove virtually impossible to ascertain ownership of certain property because of its generic nature or its condition when recovered. The ultimate disposition of items which are not claimed, or of items ownership of which cannot be determined, will be decided at a future time after people have had the opportunity to file claims as provided in this subchapter.

HISTORICAL NOTE

Section added City Record Feb. 17, 2005 §1, eff. Mar. 19, 2005. [See Subchapter C footnote]

FOOTNOTES

4

[Footnote 4]: * Subchapter C added City Record Feb. 17, 2005 effective Mar. 19, 2005. Note: Statement of Basis and Purpose:

Section 10-106 of the Administrative Code of the City of New York requires that found property be turned into a police station, where it will in turn be transmitted to the Property Clerk. Section 14-140 of the Code authorizes the Property Clerk to take custody of certain types of property, including property, which is lost, and to dispose of lost property by rules enacted pursuant to General Municipal Law §250.

The Personal Property Law establishes periods of retention for found personal property in the custody of the Police Department Property Clerk. These periods have already expired with respect to all property remaining in the custody of the Police Department Property Clerk, which was recovered in the vicinity of the World Trade Center on and after September 11, 2001. Out of respect and concern for those who were killed and their family members, and the survivors of the attack, the City is establishing a special procedure to facilitate the return of unclaimed jewelry in the custody of the Property Clerk discovered in the vicinity of the World Trade Center site. The claim submission procedures will remain in effect until May 31, 2005. During this time, the Property Clerk will continue to entertain claims for other personal property recovered from the site pursuant to its regular procedures.

The procedures set forth in this rule are in addition to and are not intended to supercede any other provision of law relating to found property or to impair the right of any person, pursuant to any other provision of law, to claim such property.

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38 RCNY 12-52

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CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

SUBCHAPTER C*4 PROCEDURES RELATING TO PROPERTY RECOVERED IN THE VICINITY OF THE WORLD TRADE CENTER SITE SUBSEQUENT TO THE TERRORIST ATTACK OF SEPTEMBER 11, 2001

§12-52 Property Covered by This Subchapter.

This subchapter applies to claims for personal property recovered in the vicinity of the World Trade Center site following the attack of September 11, 2001, and within the custody of the Property Clerk as of no later than May 30, 2002.

HISTORICAL NOTE

Section added City Record Feb. 17, 2005 §1, eff. Mar. 19, 2005. [See Subchapter C footnote]

FOOTNOTES

4

[Footnote 4]: * Subchapter C added City Record Feb. 17, 2005 effective Mar. 19, 2005. Note: Statement of Basis and Purpose:

Section 10-106 of the Administrative Code of the City of New York requires that found property be turned

into a police station, where it will in turn be transmitted to the Property Clerk. Section 14-140 of the Code authorizes the Property Clerk to take custody of certain types of property, including property, which is lost, and to dispose of lost property by rules enacted pursuant to General Municipal Law §250.

The Personal Property Law establishes periods of retention for found personal property in the custody of the Police Department Property Clerk. These periods have already expired with respect to all property remaining in the custody of the Police Department Property Clerk, which was recovered in the vicinity of the World Trade Center on and after September 11, 2001. Out of respect and concern for those who were killed and their family members, and the survivors of the attack, the City is establishing a special procedure to facilitate the return of unclaimed jewelry in the custody of the Property Clerk discovered in the vicinity of the World Trade Center site. The claim submission procedures will remain in effect until May 31, 2005. During this time, the Property Clerk will continue to entertain claims for other personal property recovered from the site pursuant to its regular procedures.

The procedures set forth in this rule are in addition to and are not intended to supercede any other provision of law relating to found property or to impair the right of any person, pursuant to any other provision of law, to claim such property.

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SUBCHAPTER C*4 PROCEDURES RELATING TO PROPERTY RECOVERED IN THE VICINITY OF THE WORLD TRADE CENTER SITE SUBSEQUENT TO THE TERRORIST ATTACK OF SEPTEMBER 11, 2001

§12-53 Time for Making Claims.

(a) All claims pursuant to this subchapter shall be submitted on or before Tuesday, May 31, 2005. If the claim is mailed, it shall be deemed to have been submitted on the date the envelope is postmarked.

(b) **Claims for jewelry.** Claims for jewelry may be submitted electronically by selecting the WTC Property Claims link of the NYPD homepage at http://www.nyc.gov/nypd and utilizing the form provided on the site. Claims for jewelry may also be made on paper forms-the NYPD's WTC Jewelry Claim Form-which may be obtained in person from any police precinct, transit district, or housing bureau facility ("PSA"); by calling (888) 622-2545; or by mail from the Property Clerk Division's Manhattan Office, located at One Police Plaza, Room S-20, New York, New York 10038. Completed paper forms shall be submitted in person or by mail to the Property Clerk Division's Manhattan Office, World Trade Center Project, located at One Police Plaza, Room S-20, New York, New York 10038.

(c) Nothing in this subchapter shall limit the rights of persons to claim property under any other provision of law.

HISTORICAL NOTE

Section added City Record Feb. 17, 2005 §1, eff. Mar. 19, 2005. [See Subchapter C footnote]

FOOTNOTES

4

[Footnote 4]: * Subchapter C added City Record Feb. 17, 2005 effective Mar. 19, 2005. Note: Statement of Basis and Purpose:

Section 10-106 of the Administrative Code of the City of New York requires that found property be turned into a police station, where it will in turn be transmitted to the Property Clerk. Section 14-140 of the Code authorizes the Property Clerk to take custody of certain types of property, including property, which is lost, and to dispose of lost property by rules enacted pursuant to General Municipal Law §250.

The Personal Property Law establishes periods of retention for found personal property in the custody of the Police Department Property Clerk. These periods have already expired with respect to all property remaining in the custody of the Police Department Property Clerk, which was recovered in the vicinity of the World Trade Center on and after September 11, 2001. Out of respect and concern for those who were killed and their family members, and the survivors of the attack, the City is establishing a special procedure to facilitate the return of unclaimed jewelry in the custody of the Property Clerk discovered in the vicinity of the World Trade Center site. The claim submission procedures will remain in effect until May 31, 2005. During this time, the Property Clerk will continue to entertain claims for other personal property recovered from the site pursuant to its regular procedures.

The procedures set forth in this rule are in addition to and are not intended to supercede any other provision of law relating to found property or to impair the right of any person, pursuant to any other provision of law, to claim such property.

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SUBCHAPTER C*4 PROCEDURES RELATING TO PROPERTY RECOVERED IN THE VICINITY OF THE WORLD TRADE CENTER SITE SUBSEQUENT TO THE TERRORIST ATTACK OF SEPTEMBER 11, 2001

§12-54 Review of Claims.

(a) The Property Clerk shall review the claims submitted pursuant to this subchapter and may require additional information, including but not limited to evidence of identity, ownership and letters testamentary or letters of administration.

(b) The Property Clerk may retain any item of personal property for a reasonable time to allow for the review of all claims filed in a timely manner under this rule or other applicable provision of law. However, the Property Clerk will continue with its procedure of returning property where in its discretion it determines that conclusive evidence of ownership has been provided.

(c) Nothing contained in this subchapter shall be deemed to either require or prohibit the Property Clerk from initiating an interpleader action in accordance with the civil practice law and rules.

HISTORICAL NOTE

Section added City Record Feb. 17, 2005 §1, eff. Mar. 19, 2005. [See Subchapter C footnote]

FOOTNOTES

4

[Footnote 4]: * Subchapter C added City Record Feb. 17, 2005 effective Mar. 19, 2005. Note: Statement of Basis and Purpose:

Section 10-106 of the Administrative Code of the City of New York requires that found property be turned into a police station, where it will in turn be transmitted to the Property Clerk. Section 14-140 of the Code authorizes the Property Clerk to take custody of certain types of property, including property, which is lost, and to dispose of lost property by rules enacted pursuant to General Municipal Law §250.

The Personal Property Law establishes periods of retention for found personal property in the custody of the Police Department Property Clerk. These periods have already expired with respect to all property remaining in the custody of the Police Department Property Clerk, which was recovered in the vicinity of the World Trade Center on and after September 11, 2001. Out of respect and concern for those who were killed and their family members, and the survivors of the attack, the City is establishing a special procedure to facilitate the return of unclaimed jewelry in the custody of the Property Clerk discovered in the vicinity of the World Trade Center site. The claim submission procedures will remain in effect until May 31, 2005. During this time, the Property Clerk will continue to entertain claims for other personal property recovered from the site pursuant to its regular procedures.

The procedures set forth in this rule are in addition to and are not intended to supercede any other provision of law relating to found property or to impair the right of any person, pursuant to any other provision of law, to claim such property.

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Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 12 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 12 RETURN OF PROPERTY FROM PROPERTY CLERK DIVISION

APPENDIX A*3 PROPER IDENTIFICATION

APPENDIX A*3 PROPER IDENTIFICATION

ONE of the following:

NEW YORK STATE PHOTO DRIVER'S LICENSE

NEW YORK STATE NON-DRIVER ID CARD;

OR TWO of the following, one with signature:

VALID PHOTO DRIVER'S LICENSE ISSUED BY:

Another U.S. State, jurisdiction, territory or possession

A Canadian Province.

U.S. PASSPORT

U.S. MILITARY PHOTO ID CARD

U.S. CITIZENSHIP OR NATURALIZATION PAPERS

IMMIGRATION AND NATURALIZATION SERVICE (INS) DOCUMENTS CONTAINING PHOTOS

Resident Alien Card (I-551)

Temporary Resident Card (I-688)

Employment Authorization Card (I-688A)

FOREIGN PASSPORT

In English or with a U.S. VISA STAMP or I-94 attached. (If not in English, a certified translation by the embassy or consulate of the issuing country OR by an approved Refugee Resettlement Agency is required.)

A MAJOR CREDIT CARD

HISTORICAL NOTE

Appendix added City Record Feb. 9, 1998 §5, eff. Mar. 11, 1998. [See T38 Chapter 12 footnote]

FOOTNOTES

3

[Footnote 3]: * Appendix A added City Record Feb. 9, 1998 §5, eff. Mar. 11, 1998. See T38 Chapter 12 Subchapter B footnote.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 13-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-01 Appointment.

(a) Pursuant to New York City Administrative Code §14-106, the Police Commissioner may appoint Special Patrolmen upon application by individuals whose employers demonstrate need for such appointment.

(b) Applications for appointment as Special Patrolman from employees, properly endorsed by the following agencies or institutions, shall be given consideration:

(1) City and state governmental agencies.

(2) Housing complexes.

(3) Hospitals, cemeteries and social welfare agencies.

(4) Educational and cultural institutions, schools, libraries, museums, etc.

(5) Financial institutions and business entities.

(6) As deemed appropriate by the Police Commissioner.

(c) Special Patrolmen are appointed in connection with special duties of employment, and such designation confers limited Peace Officer powers upon the employee pursuant to New York State Criminal Procedure Law §2.10(27). The exercise of these powers is limited to the employee's geographical area of employment and only while such employee is actually on duty. Such duties of employment may include:

(1) Issuing of summonses; or

(2) Making arrests and issuing desk appearance tickets; or

(3) Controlling crowds and maintaining order in governmental or public buildings.

(d) Special Patrolman designations shall be renewed every two years upon a showing, to the satisfaction of the Police Commissioner, of continuing fitness of the employee, continuing necessity by the employer, **i.e.,** that the duties and responsibilities of the positions require the special powers conferred by the New York City Administrative Code and New York State Criminal Procedure Law.

(e) To be eligible for appointment as a Special Patrolman, an applicant shall be of good character, as more specifically defined in these rules, cooperate in a background investigation by the License Division of the Police Department and possess the following qualifications:

(1) A citizen of the United States and resident of the City of New York unless exempted by law.

(2) Presently employed or about to be employed for the purpose of performing duties as specified in §13-01(b) above, within the City of New York for an employer approved by the Police Department. Appointments are made for the benefit of the employing agency, institution or business entity, at whose request the appointment is made, and the duration of the appointment shall be coterminous with such employment.

(3) No record of convictions for any felony or serious offense as enumerated in §265.00(17) of the New York State Penal Law. If an applicant presents a Certificate of Relief from Disabilities for a conviction as aforesaid, consideration shall be given to the circumstances of the underlying arrest, the age of the applicant when arrested, the time elapsed since the occurrence of the act which led to the arrest and conviction, and the subsequent conduct of the applicant.

(4) Be at least 21 years of age at the time of appointment.

(5) If discharged from the military service, it shall not have been dishonorably.

(6) Not possess a condition or disability which, even with reasonable accommodations, would prevent the performance of the essential functions of Special Patrolman.

(f) In addition to the above, applicants for Special Patrolman designation may be disapproved by failure to meet character requirements as disclosed by a background investigation. This determination shall be based upon a review of the circumstances of previous arrests, employment records, mental history, reports of misconduct reflecting on character as referred to above, and any other pertinent records or information.

(g) An applicant may be disapproved if a false statement is made on the application.

(h) All applicants shall be fingerprinted upon the filing of the application on forms provided by the License Division. A processing fee, required by the New York State Division of Criminal Justice Services, shall be paid at the time the applicant is fingerprinted, by a money order payable to the N.Y.S. Division of Criminal Justice Services. An application fee shall also be paid at that time, by certified check or money order made payable to the N.Y.C. Police Department. The following items of information shall be provided by applicants: Court disposition of any arrest in which Police Department records do not indicate a final determination; two color photos $1\frac{1}{2} \times 1\frac{1}{2}$ inches, front view, taken within the past thirty (30) days; certified copy of birth certificate; certified copy of DD214 and military discharge; proof of residence; if foreign born, naturalization certificate; handgun license or rifle/shotgun permit if applicable; driver's license or New York State Department of Motor Vehicles identification card. All application forms shall be typed and notarized, and co-signed by the employer's Chief of Security. The Special Patrolman Section shall be notified at least three (3) business days prior to any scheduled appointments if the applicant is unable to appear.

(i) During the pendency of the application, the applicant shall notify the License Division of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

(j) An employer seeking approval to employ one or more Special Patrolmen shall be evaluated utilizing the following criteria:

(1) Demonstrated need for Special Patrolman services.

(2) Financial ability to support adequate compensation, uniform, training, and supervision expenses.

(3) Establishment of training program and sufficient management supervision.

(4) Character and reputation of employer including any criminal activity associated with employer's operations.

(5) Prior experiences with Special Patrolmen engaged by employer.

(6) Compliance with the rules and requirements of this chapter.

(k) Once an application for Special Patrolman appointment has been disapproved, or appointment once granted has been revoked, the disqualified individual shall be ineligible to file a new application for at least two (2) years, unless reinstated earlier after a suspension or revocation hearing.

(l) Each Special Patrolman shall be required to sign an acknowledgment that s/he shall be responsible for compliance with all laws, rules, regulations, standards, and procedures promulgated by federal, state, or local jurisdictions, and by federal, state, or local law enforcement agencies, that are applicable to her/his appointment. The License Division shall provide the Special Patrolman with the acknowledgment statement. This acknowledgment statement shall be notarized. Failure to execute the acknowledgment statement and to have it notarized shall result in disapproval of the application.

(m) Special Patrolmen shall cooperate with all reasonable requests by the Police Department for information and assistance in matters relating to their designation.

(n) If her/his application for special patrolman appointment is disapproved the applicant shall receive a written "Notice of Application Disapproval" from the License Division indicating the reason(s) for the disapproval. If the applicant wishes to appeal the decision s/he shall submit a sworn written statement, which shall be known as an "Appeal of Application Disapproval," to the Division Head, License Division, within thirty (30) calendar days of the date on the "Notice of Application Disapproval" requesting an appeal of the denial, and setting forth the reasons supporting the appeal. The Appeal of Application Disapproval shall become part of the application. It shall state the grounds for the appeal and shall contain the following statement to be signed by the applicant and notarized: "Under penalty of perjury, deponent being duly sworn, says that s/he is familiar with all of the statements contained herein and that each of these statements is true, and no pertinent facts have been omitted." Appeals that are unsworn by the applicant or submitted by individuals or business entities other than the applicant or her/his New York State licensed attorney shall not be accepted. All timely appeals shall receive a complete review of the applicant's entire file by the Division Head, License Division, who shall notify the applicant of her/his determination. The Division Head, License Division shall not consider any documentation that was not submitted during the initial background investigation. There shall be no personal interviews to discuss appeals. If the appeal of her/his disapproval is denied, the applicant shall receive a "Notice of Disapproval After Appeal" letter from the Division Head, License Division. This notice concludes the Police Department's administrative review procedure.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Although 38 RCNY 13-01(g) states that an applicant may be disapproved if a false statement is made on an application, it does not require disapproval for failure to list all arrests. Matter of Langston v. City of New York, 2008 N.Y. Misc. Lexis 706, 239 N.Y.L.J. 25 (Sup.Ct. New York Co.).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 13-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-02 Cancellations, Suspensions and Revocations.

(a) A Special Patrolman and her/his employer shall immediately notify the License Division of the Police Department, Special Patrolman Section, whenever an employee, appointed as Special Patrolman is:

(1) Arrested.

(2) Suspended from employment.

(3) Terminated from employment.

(4) Disabled or subject to a condition which prevents the Special Patrolman from being able to perform the duties of a Special Patrolman.

(5) Transferred to a position not requiring such appointment.

(6) Involved in an incident which demonstrates conduct which is contrary to the purpose of appointment as a Special Patrolman, **i.e.,** the protection of property, or the safety of specific individuals or the public at large, and to her/his continued designation as a Special Patrolman.

(b) Upon receipt of this notice from the Special Patrolman, her/his employer, or otherwise, the License Division shall immediately notify the Special Patrolman and the employer that the appointment is cancelled, suspended or revoked.

(c) A Special Patrolman and her/his employer shall immediately notify the License Division of the Police Department, Special Patrolman Section, whenever said employee changes her/his address. The failure of a Special Patrolman and/or her/his employer to report a Special Patrolman's change of address to the Special Patrolman Section may result in the immediate revocation of the appointment.

(d) The appointment of a Special Patrolman may also be cancelled, suspended or revoked by the Police Commissioner on her/his own initiative for any of the reasons enumerated in §13-02(a) above, or upon a finding that a condition exists, which would be cause for a disapproval of an application, or revocation, as aforesaid. In appropriate circumstances, the approval for an employer to participate in the Special Patrolman program may be revoked.

(e) When a cancellation, suspension or revocation is initiated by the Police Department, written notice shall be given to the employer and the employee whose designation has been cancelled, suspended or revoked, advising them of the reasons for the action taken.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Disciplinary hearing for Taxi and Limousine Commission inspector whose Special Patrolman's status had been revoked following out of state marijuana arrest was not premature. Pursuant to paragraph (b) of this section, upon notification of an arrest, the Police Department immediately notified the employee that his Special Patrolman status was revoked. The fact that respondent made an application to appeal the loss of his designation pursuant to 38 RCNY §13-03 did not render the revocation non-final. Loss of designation resulted in termination from position. **Taxi and Limousine Comm'n v. Glenn,** OATH Index No. 1052/98 (Mar. 30, 1998).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 13-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-03 Appeal from Written Notice of Determination of Suspension or Revocation.

(a) An employer or suspended/former Special Patrolman may within thirty (30) calendar days from the date of the Notice of Determination Letter notifying the employer or Special Patrolman of suspension or revocation make a written request for a hearing to the Commanding Officer, License Division, One Police Plaza, Room 110A, New York, New York 10038.

(b) A Special Patrolman whose arrest or summons resulted in suspension or revocation of her/his appointment may only submit a written request for a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law §1.20(16)(c). If the suspension or revocation resulted from the Special Patrolman becoming the subject of an order of protection or a temporary order of protection, the Special Patrolman may only submit a written request for a hearing within thirty (30) calendar days after the expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section amended City Record Apr. 12, 1993 eff. May 12, 1993.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Disciplinary hearing for Taxi and Limousine Commission inspector whose Special Patrolman's status had been revoked following out of state marijuana arrest was not premature. Pursuant to section 13-02, upon receipt of the notice that the inspector had been arrested, the Police Department immediately notified the employee that his Special Patrolman status was revoked. The fact that respondent made an application to appeal the loss of his designation pursuant to this section did not render the revocation non-final. Loss of designation resulted in termination from position. **Taxi and Limousine Comm'n v. Glenn,** OATH Index No. 1052/98 (Mar. 30, 1998).

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 13-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-04 Uniform and Equipment.

(a) The shield of a Special Patrolman shall be of a design and color approved by the Police Commissioner. The Special Patrolman's uniform shall be prescribed by the employer, shall not resemble in any way the uniform of a New York City Police Officer, and shall be worn at all times while the Special Patrolman is on duty unless the Special Patrolman's identification card authorizes the wearing of civilian clothes or s/he is otherwise excused by the Police Commissioner. A Special Patrolman shall not wear her/his uniform while off-duty. (New York City Administrative Code §14-107.)

(b) When appointed, a Special Patrolman shall be provided with a shield and identification card. To insure the return of the shield, a $25 deposit shall be required for each shield issued. The deposit shall be refunded upon the return of the shield. The theft or loss of a shield or identification card shall be reported without delay to the precinct of occurrence and in writing to the License Division.

(c) Identification cards bearing the raised seal of the License Division, including an expiration date, shall be issued to Special Patrolmen who are in compliance with all applicable standards.

(d) Upon the death, resignation, termination of employment, cancellation, suspension or revocation of the appointment of a Special Patrolman, the employer shall cause the Special Patrolman's shield, identification card and pistol or revolver, if any, to be delivered to Police Department custody immediately, if this has not already been done.

(e) If handguns are required, applications for a handgun license authorizing the possession of a handgun in connection with Special Patrolman duties should be made to the License Division's Handgun License Application

Section. A determination shall be made as to whether sufficient need exists for approval. It is a crime for a Special Patrolman to possess a handgun without having a valid handgun license therefor, and grounds for revocation of the Special Patrolman designation.

(f) If handcuffs are required, Special Patrolmen are restricted to possession while on duty or while traveling to and from their assigned place of duty. Unlawful possession of handcuffs is a criminal violation (New York City Administrative Code §10-147(b)).

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 13-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-05 Conduct.

(a) It is a crime for a Special Patrolman to represent her/himself as a Police Officer (§190.25 of the New York State Penal Law).

(b) Unlawful use and possession of a police uniform, shields or emblems, as prescribed by §14-107 of the New York City Administrative Code, shall be cause for revocation of a Special Patrolman designation.

(c) A Special Patrolman shall be subject to the orders and regulations of the Police Commissioner, and shall cooperate in the performance of duty with members of the Police Department.

(d) Upon making an arrest, a Special Patrolman shall, without delay, bring the prisoner before the Desk Officer at the precinct in which the arrest is made, or directly to the Central Booking facility as appropriate.

(e) A Special Patrolman employed by a city or state governmental agency other than the New York City Police Department, which has a formalized procedure for the issuing, recording, and forwarding of summonses for personnel of the agency concerned, shall comply with the regulations of that agency. Any other Special Patrolman who serves a summons shall deliver the necessary papers to the Desk Officer of the precinct in which it was served, without delay.

(f) A Special Patrolman shall promptly notify the Special Patrolman Section of a change in residence, telephone number or employment status.

(g) If a Special Patrolman is arrested, s/he shall immediately notify her/his employer and the Special Patrolman

Section of that occurrence.

(h) Non-compliance with any provision of these rules by a Special Patrolman may result in suspension or revocation of her/his designation. Non-compliance with any of these rules by an employer may result in revocation of its approval to participate in the Special Patrolman program.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

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38 RCNY 13-06

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-06 Training.

(a) Persons appointed as Special Patrolmen by the Police Commissioner are mandated to have received training pursuant to New York State Criminal Procedure Law §2.30(1), within 12 months of their designation. Employers are solely responsible for providing such training.

(b) Employers of Special Patrolmen shall be responsible for certifying to the Division Head, License Division that their designated personnel have completed the required training and shall submit copies of completion certificates to the License Division within 30 days of such training.

(c) Non-compliance with these mandated training provisions by employers or their designated Special Patrolmen shall be cause for revocation of their designations and revocation of approval for the employer to participate in the Special Patrolman program.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

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38 RCNY 13-07

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 13 SPECIAL PATROLMEN*1

§13-07 Required Reports.

(a) Agencies, institutions, et al., employing persons appointed as Special Patrolmen are solely responsible for compliance with mandatory reporting requirements as established by the New York State Division of Criminal Justice Services. Tel: (518) 457-6101.

(b) Failure to comply with New York State Division of Criminal Justice Services mandated reporting requirements may be grounds for removal from the Special Patrolman program.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

NOTE

References within this chapter to the masculine shall be presumed to include the feminine and neuter. References to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note added City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 14-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 14 FEES

§14-01 Vehicle Accident Photograph Request.

The fee for provision of authorized persons with motor vehicle accident photographs shall be fifteen dollars ($15) for each set of photographs requested.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 14-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 14 FEES

§14-02 Vehicles or Boats in Police Custody.

(a) **Definition.** Vehicle or boat in police custody. A motor vehicle or boat abandoned, involved in an accident, or an unoccupied boat found adrift which has been taken to a department facility. (Does not include motor vehicles or boats impounded as evidence.)

(b) **Collection of fees.** When the owner or person lawfully entitled to possession appears at a Police Department facility to claim a vehicle or boat; the following fees will be collected:

(1) A fee of $25.00 if department tow or launch removes a vehicle or boat in police custody.

(2) A storage fee of $5.00 per day or part of day for an abandoned vehicle or boat or a vehicle or boat involved in accident. (No storage fee will be imposed for the day a vehicle or boat is delivered to a department facility.)

(3) A $5.00 charge per day or part of day commencing three (3) days after notice to owner by registered mail for an unoccupied boat found adrift or a stolen vehicle or boat.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 14-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 14 FEES

§14-03 Removal and Storage Fees for Licensed Vendors Equipment and Goods.

When the owner or person lawfully entitled to possession of a peddler's vehicle, cart, stand or goods appears at a Police Department facility to claim property, the following fees shall be collected:

(a)(1) Vehicle, cart, stand removed by Department vehicle-$65.00

(2) Vehicle, cart, stand not removed by Department vehicle-$20.00

(3) Goods taken into custody with vendor's vehicle, cart, stand-$10.00

(4) Goods only seized-$20.00.

(b) If goods/food and vehicle, carts, stand, etc., are stored separately, a separate storage fee will be charged for each: a storage fee of $5.00 per day or part of day.

(c) Storage fee will not be imposed for the day the vehicle, cart, stand or goods/food are initially delivered to the station house.

(d) **Return of seized property.** (1) A vehicle, cart, stand, or goods will not be released to an owner or his representative who alleges it was stolen and refuses to pay removal/storage charges.

(2) The seized property of a licensed general vendor will be returned upon demand and without the payment of any fee, when the vendor produces a valid general vendors license. An appropriate entry will be made in the "Remarks"

section of the Property Clerk's Invoice.

(e) **Retention of seized property.** Pushcarts, stands, and/or merchandise removed from an unlicensed peddler will not be returned to the claimant upon payment of removal and storage fees, but will become the subject of forfeiture proceedings per Patrol Guide procedure 113-41, "Unlicensed Peddler Forfeiture Program."

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 14-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 14 FEES

§14-04 Fees For Non-Criminal Fingerprinting.

When a person requests a member of the Department to take his or her fingerprints for purposes not related to criminal proceedings, the following fees shall be collected:

(a) Fifteen ($15.00) dollars for first set of fingerprints.

(b) One ($1.00) dollar for each additional set of prints taken at the time the first set of fingerprints is taken.

(c) The above fees shall be tendered at the time of fingerprinting by Money Order or Certified Check made payable to the New York City Police Department.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 15-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 15 ADJUDICATIONS

SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-01 Definitions.

Advocate. "Advocate" shall mean the Department Advocate or Assistant Advocates of the New York City Police Department.

Charges and Specifications. "Charges and Specifications" shall mean a written accusation or accusations of misconduct against a civilian or uniform member of the Department, specifying the activity or conduct at issue, along with the date, time and place of occurrence.

Department. "Department" shall mean the New York City Police Department.

Deputy Commissioner of Trials. "Deputy Commissioner of Trials" shall mean the Deputy Commissioner or Assistant Deputy Commissioners in charge of New York City Police Department disciplinary hearings.

Respondent. "Respondent" shall mean a uniform or civilian member of the Department against whom Charges and Specifications have been preferred.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 15-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 15 ADJUDICATIONS

SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-02 Jurisdiction.

The Deputy Commissioner of Trials shall have jurisdiction over disciplinary matters adjudicated by the Department except as provided in subchapter B of this chapter. This jurisdiction shall include the authority to render any ruling or order necessary and appropriate for the efficient adjudication of disciplinary proceedings instituted against civilian and uniform members of the Department.

(a) **Applicability.** These Rules shall apply to the conduct of all proceedings heard before the Deputy Commissioner of Trials including pre-hearing, hearing and post-hearing proceedings.

(b) **Construction, Modification and Waiver.** These Rules shall be liberally construed in order to promote just and efficient adjudication of disciplinary proceedings. Upon notice to all parties, the Deputy Commissioner of Trials shall have the authority to modify or waive these Rules where no undue hardship or prejudice to any party shall result from such modification.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Open par amended City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 15-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 15 ADJUDICATIONS

SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-03 Pre-Hearing Proceeding.

(a) **Charges and Specifications.** Charges and specifications shall be served upon the respondent and shall include a brief statement of the disciplinary matters to be adjudicated, including the activity, behavior or incident which is the subject of the disciplinary action and, where appropriate, the date, time and place of occurrence. Additionally, the Charges and Specifications shall identify the contract provision, law, policy, regulation or rule that was allegedly violated. Charges and Specifications may be amended upon notice to all parties.

(b) **Service of Charges and Specifications.** (1) The Department shall be responsible for serving the respondent with Charges and Specifications. The Charges and Specifications shall be accompanied by notice of the respondent's right to reply and the time limits within which to do so pursuant to subdivision (c) of this section, and the requirement that the individual representing the respondent shall file a Notice of Appearance with the Deputy Commissioner of Trials, prior to engaging in any act of representation.

(2) Service of the Charges and Specifications shall be made pursuant to statute, rule, contract, or other provision of law applicable to the proceeding being initiated. Absent any such applicable law, service of the Charges and Specifications shall be made in a manner reasonably calculated to achieve actual notice to the respondent. Service by certified mail, return receipt requested, contemporaneously with service by regular first-class mail, to the respondent's last address known to the Department, shall be presumed to be reasonably calculated to achieve actual notice.

Appropriate proof of service shall be required.

(c) **Response to Charges and Specifications.** If Charges and Specifications are served personally, the respondent shall have the opportunity to reply to them within eight days of service. If Charges and Specifications are served by mail, the respondent shall have the opportunity to reply to them within thirteen days of their mailing date. Upon good cause shown, the Deputy Commissioner of Trials may fix different time periods within which to reply.

(d) **Notice of Scheduling Conference or Hearing.** (1) The Department shall serve the respondent with notice of the date, time and place of the Scheduling Conference or Hearing. The Scheduling Conference shall be conducted for purposes of setting a timetable within which to proceed with the Hearing. A Hearing shall be afforded to the respondent within a reasonable time. A Notice of Hearing shall contain a statement of the authority and jurisdiction under which the Hearing is being conducted, notice of the respondent's right to be represented by an attorney or other representative, the require- ment that the respondent's representative file a Notice of Appearance with the Deputy Commissioner of Trials prior to engaging in any act of representation and notice that failure of the respondent or the respondent's representative to appear may result in an adverse decision and waiver of the right to a Hearing or other disposition as against the respondent.

(2) The Notice of Hearing or Scheduling Conference shall be served personally or by mail. Appropriate proof of service shall be required. If the respondent is served personally, there shall be at least eight days notice provided. If respondent is served by mail at least thirteen days notice shall be provided, from the time of mailing. The Deputy Commissioner of Trials may modify these time periods.

(e) **Adjournments.** (1) Hearing dates are firm commitments and will not be adjourned absent extraordinary circumstances. Scheduling Conferences and Hearings will begin promptly at 10 a.m. and continue until 5 p.m., if necessary. All Hearings shall be continued on consecutive days until concluded absent special circumstances. Where appropriate, Hearings may be conducted on weekends and holidays.

(2) Applications for adjournments shall be made to the Deputy Commissioner of Trials upon sufficient notice to other parties. Adjournments will be granted or denied by the Deputy Commissioner of Trials upon good cause shown. The Deputy Commissioner of Trials shall have authority to set an adjourned date. If an adjournment is granted, and it is not noted on the record, the requesting party shall confirm the adjournment, in writing, with other interested parties.

(3) A party requesting an adjournment because of a conflicting engagement shall file an Affirmation of Actual Engagement with the Deputy Commissioner of Trials, prior to a ruling sought on that basis. A copy of such Affirmation shall be served on the adverse party. The Affirmation shall state the name and nature of the conflicting matter, the court or tribunal hearing the matter, the judge before whom it is scheduled, the date when the conflicting engagement became known to counsel, and the date, time, place and approximate duration of the other engagement.

(4) The Deputy Commissioner of Trials may determine that a case will proceed on an expedited basis and direct shortened pre-trial and post-trial proceedings including expedited notice periods and calendaring.

(f) **Discovery.** (1) Informal discovery and the exchange of information is encouraged. Department disciplinary proceedings are not bound by formal discovery techniques or rules of civil procedure. Requests for production of relevant documents, identification of trial witnesses and inspection of real evidence to be introduced at the Hearing may be directed between the parties without leave of the Deputy Commissioner of Trials. Privileged and confidential matters shall not be subject to disclosure.

(2) Any discovery dispute shall be presented to the Deputy Commissioner of Trials sufficiently in advance of the Hearing to allow for a timely determination. Discovery motions are subject to the discretion of the Deputy Commissioner of Trials. The timeliness of discovery requests and responses, and of discovery related motions, the complexity of the case, the need for the requested discovery, and the relative resources of the parties will be among the factors within the Deputy Commissioner of Trial's exercise of discretion.

(g) **Pre-Hearing motions.** Pre-Hearing motions and other preliminary matters shall be consolidated and addressed to the Deputy Commissioner of Trials as promptly as possible and sufficiently in advance of the Hearing to permit the rendering of a timely decision.

HISTORICAL NOTE

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. Requests for subpoenas of records in other cases involving sex harassment by the same complainant should have been presented to Deputy Commissioner of Trials. The claimant should have exhausted administrative remedies before proceeding to court. Irizarry v. New York City Police Dept., 688 N.Y.S.2d 541 (App.Div. 1st Dept. 1999).

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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38 RCNY 15-04

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CHAPTER 15 ADJUDICATIONS

SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-04 Hearings.

(a) **Consolidation and severance of Hearings.** In the furtherance of justice, efficiency or convenience, all or portions of separate cases may be consolidated for Hearing. Additionally, portions of a single case may be severed for separate Hearing. Cases may be consolidated or severed at the discretion of the Deputy Commissioner of Trials.

(b) **Witnesses and documents.** Attorneys for parties to the proceedings shall have the right to subpoena witnesses. Pro Se parties shall have the right to request that the Deputy Commissioner of Trials issue a subpoena on their behalf. The parties are responsible for having their witnesses available on the Hearing date. Parties intending to introduce documents into evidence shall provide sufficient copies to the Deputy Commissioner of Trials and other parties.

(c) **Interpreters.** A party in need of an interpreter at a Scheduling Conference or Hearing shall advise the Deputy Commissioner of Trials of such need as soon as possible. The Deputy Commissioner of Trials may, within discretion, accept as an interpreter any person who can provide a fair and accurate translation.

(d) **Failure to appear.** If the respondent fails to appear at the Hearing personally or by authorized representative, without good cause, the Deputy Commissioner of Trials may conduct a Hearing in the respondent's absence. If the respondent does not appear, the Deputy Commissioner of Trials shall determine whether to hold an Inquest Hearing or proceed upon written submissions of the parties. Additionally, the Deputy Commissioner of Trials may determine that

no further proceedings shall be necessary.

(e) **Hearing evidence.** (1) Compliance with the technical rules of evidence shall not be required. Hearsay shall be admissible and may form the sole basis for making findings of fact, when consistent with existing law. Additionally, principles of civil practice and the rules of evidence may be applied, where necessary, to insure an orderly proceeding, an accurate record and to aid in the formulation of Findings of Fact. Hearing sequence may be altered by the Deputy Commissioner of Trials for the convenience of the attorneys, parties, witnesses and Deputy Commissioner of Trials. Substantial prejudice shall not result to any party as a result of change in Hearing sequence. Findings of Fact shall be made exclusively on the record as a whole.

(2) The Deputy Commissioner of Trials may limit examination, the presentation of testimonial, documentary or other evidence, and submission of rebuttal evidence. Objections to evidence offered or to other matters will be noted in the transcript. Exceptions need not be taken to rulings made over objections. The Deputy Commissioner of Trials may call or question witnesses directly.

(3) Parties shall be entitled to make opening statements. Closing statements may be made orally or in writing at the discretion of the Deputy Commissioner of Trials. On motion of the Deputy Commissioner or the parties, the Deputy Commissioner of Trials may permit written post-hearing submissions including legal briefs, proposed findings of fact, conclusions of law or any other relevant documents.

(4) Except for ministerial matters, and except on consent, or in an emergency, communications with the Deputy Commissioner of Trials concerning a case shall only occur with all parties present. If the Deputy Commissioner of Trials receives an "ex parte" communication concerning the merits of a case to which he or she is assigned, then he or she shall promptly disclose the communication by placing it on the record, in detail, including all written and oral communications and identifying all individuals with whom he or she has communicated. A party desiring to rebut the "ex parte" communication shall be allowed to do so upon request.

(f) **Official notice.** The Deputy Commissioner of Trials may take official notice of any fact which may be judicially noticed by the courts of New York State. Notice may be taken before or after submission of a case for decision on request of a party or "sua sponte".

(g) **Public access to hearings.** Hearings shall be open to the public unless the Deputy Commissioner of Trials finds a legally recognizable ground for closure of all or a portion of the Hearing. The Deputy Commissioner of Trials may also exclude witnesses from the Hearing room during proceedings other than their own testimony.

(h) **Disposition by settlement.** Unless precluded by law, informal disposition may be made of any matter which is the subject of an adjudication by methods of alternative dispute resolution, stipulation, agreed settlement, or consent order.

(i) **Transcripts.** Hearings shall be stenographically recorded. A copy of the transcript or record, or any part thereof, shall be made available to any party to the Hearing for a reasonable cost upon request.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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SUBCHAPTER A DISCIPLINARY PROCEEDINGS AGAINST CIVILIAN AND UNIFORM MEMBERS BEFORE THE DEPUTY COMMISSIONER OF TRIALS*1

§15-05 Rules of Conduct.

(a) **Conduct.** Individuals appearing before the Deputy Commissioner of Trials shall conduct themselves in a dignified and orderly manner at all times. Disruptive conduct, including failure to comply with the orders and directives of the Deputy Commissioner of Trials, will not be tolerated. The Deputy Commissioner of Trials may bar a disruptive individual from the proceedings.

(b) **Withdrawal and substitution of representatives.** A representative who has filed a Notice of Appearance, in accordance with paragraph (1) of subdivision (d) of §15-03, may not withdraw from representation of a party without the permission of the Deputy Commissioner of Trials. Withdrawal shall be granted upon sufficient showing of good cause and, where an attorney is the respondent's representative, consistent with the Code of Professional Responsibility.

(c) **Hearing Officers.** The Deputy Commissioner of Trials and Assistant Deputy Commissioners shall be assigned solely to adjudicative and related duties.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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§15-06 Report to Police Commissioner.

(a)(1) After the Hearing is concluded the Deputy Commissioner of Trials will review the testimony and evidence adduced and prepare a Report and Recommendation for submission to the Police Commissioner.

(2) The Report and Recommendation shall consist of a summary and analysis of the testimony, recommended findings of fact and conclusions of law, and recommendations for the disposition of the Charges and Specifications. The Report and Recommendation along with the transcript of the proceeding, unless waived, and all exhibits received in evidence shall be forwarded to the Police Commissioner for review and final action.

(b) All parties, and their counsel or other representative shall be sent a copy of the Report and Recommendation, at the time it is forwarded to the Police Commissioner, in order to afford them an opportunity to comment thereon. It is the respondent's or the respondent's representative's responsibility to submit written comments timely or a final determination may be made by the Police Commissioner without such comments having been considered.

(c) The respondent will be allowed a specified number of days from the receipt of the Report and Recommendation to submit comments. Such comments must be in writing and confined to the evidence in the record. The respondent shall provide a copy of such comments to the Department Advocate at the time that they are submitted to the Deputy Commissioner of Trials. Upon receipt of such comments, the Deputy Commissioner of Trials will forward them to the

Police Commissioner along with the Report and Recommendation.

(d) If the Deputy Commissioner of Trials finds the respondent guilty of any charges, the respondent's employment record will be reviewed prior to determining a recommended penalty. The respondent may review his or her employment record prior to its submission to the Deputy Commissioner of Trials.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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§15-07 Penalties.

(a) The penalty imposed upon a respondent should take into account the respondent's employment history as well as the nature of the proven misconduct.

(b) Penalties shall be imposed upon a respondent consistent with applicable provisions of the Civil Service Law and Administrative Code of the City of New York.

(c) An alternative penalty may be agreed upon by the parties, pursuant to subdivision (h) of §15-04, outside the scope of applicable statutes.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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§15-08 Final Review.

(a) After reviewing the record of the proceeding and the Report and Recommendation of the Trial Commissioner, the Police Commissioner will make a final determination. The Police Commissioner may approve the recommendation or modify the findings or the penalty consistent with the record.

(b) In the event a respondent enters a plea of guilty in return for a specific recommended sanction by the Trial Commissioner, and the Commissioner upon review imposes a greater sanction, the respondent will be allowed to accept the Commissioner's penalty or withdraw his or her guilty plea and proceed to a Hearing.

(c) The written final determination shall be served on the respondent, his attorney or representative if one appeared at the Hearing, and the Department Advocate.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Subchapter A heading amended City Record May 24, 2001 eff. June 23, 2001.

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38 RCNY 15-11

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SUBCHAPTER B SUBSTANTIATED CIVILIAN COMPLAINTS AGAINST UNIFORM MEMBERS*2

§15-11 Definitions.

Administrative Prosecution. "Administrative Prosecution" shall mean all actions taken after substantiation of a civilian complaint by CCRB in accordance with a Memorandum of Understanding executed by the CCRB and the Department during the period that such MOU is applicable.

Chair. "Chair" shall mean the Chair of the New York City Civilian Complaint Review Board.

Charges and Specifications. "Charges and Specifications" shall mean a written accusation or accusations of misconduct against a uniform member of the Department, specifying the activity or conduct at issue, along with the date, time and place of occurrence.

Civilian Complaint Review Board. "Civilian Complaint Review Board" or "CCRB" shall mean the New York City Civilian Complaint Review Board.

Department. "Department" shall mean the New York City Police Department.

Executive Director. "Executive Director" shall mean the Executive Director of the New York City Civilian Complaint Review Board.

Office of Administrative Trials and Hearings. "Office of Administrative Trials and Hearings" or "OATH" shall

mean the New York City Office of Administrative Trials and Hearings.

Police Commissioner. "Police Commissioner" or "Commissioner" shall mean the Police Commissioner of the City of New York.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter B added City Record May 24, 2001 eff. June 23, 2001, note further provisions of City Record May 24, 2001:

Statement of Basis and Purpose These proposed rules set forth amendments to the rules of the Department which implement the terms of a Memorandum of Understanding (MOU) between the Department and the Civilian Complaint Review Board. The MOU provides that the Board will take action to prosecute administratively all those cases in which the Board has substantiated civilian complaints. The Department's rules are being amended to set forth the procedures to be followed by the Department and the Board in those instances where the Board will act as the prosecutor in adjudications relating to charges against uniformed members found to be substantiated by the Board, as well as other actions which may be taken by the Board in the course of such administrative prosecutions.

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§15-12 Jurisdiction.

Civilian complaints found to be substantiated by the Civilian Complaint Review Board (CCRB) shall be prosecuted by the CCRB pursuant to a Memorandum of Understanding (MOU) executed by the CCRB and the Department during the period that such MOU is applicable. Where such prosecutions include the filing of Charges and Specifications against the subject officer, an Administrative Law Judge of the Office of Administrative Trials and Hearings (OATH) shall conduct any hearing necessary to the prosecution of the case and issue a report containing proposed findings of fact and a recommended decision to the Police Commissioner.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter B added City Record May 24, 2001 eff. June 23, 2001, note further provisions of City Record May 24, 2001:

Statement of Basis and Purpose These proposed rules set forth amendments to the rules of the Department which implement the terms of a Memorandum of Understanding (MOU) between the Department and the Civilian Complaint Review Board. The MOU provides that the Board will take action to prosecute administratively all those cases in which the Board has substantiated civilian complaints. The Department's rules are being amended to set forth the procedures to be followed by the Department and the Board in those instances where the Board will act as the prosecutor in adjudications relating to charges against uniformed members found to be substantiated by the Board, as well as other actions which may be taken by the Board in the course of such administrative prosecutions.

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§15-13 Application of Department Rules, Regulations, and Disciplinary Policies.

To assist CCRB in its prosecutorial function and OATH in its adjudicatory function, the Department shall provide to CCRB and OATH all relevant Department rules, regulations, and disciplinary policies. To the extent practicable and relevant, CCRB shall comply with Department Patrol Guide Series 206, "Disciplinary Matters" and shall utilize Department forms such as Charges and Specifications (PD468-121) and Supervisor's Complaint Report/Command Discipline Election Report (PD468-123), provided that if amendments or variations in Department forms utilized by CCRB are appropriate, they shall be developed jointly by the parties.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter B added City Record May 24, 2001 eff. June 23, 2001, note further provisions of City Record May 24, 2001:

Statement of Basis and Purpose These proposed rules set forth amendments to the rules of the Department which implement the terms of a Memorandum of Understanding (MOU) between the Department and the Civilian Complaint Review Board. The MOU provides that the Board will take action to prosecute administratively all those cases in which the Board has substantiated civilian complaints. The Department's rules are being amended to set forth the procedures to be followed by the Department and the Board in those instances where the Board will act as the prosecutor in adjudications relating to charges against uniformed members found to be substantiated by the Board, as well as other actions which may be taken by the Board in the course of such administrative prosecutions.

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§15-14 Expedited Cases.

Where the nature of the substantiated allegation and the status of the subject officer requires expedited prosecution of the substantiated case, the Department shall notify the Chair and the Executive Director of the need for expedited prosecution. CCRB shall make every reasonable effort to conclude the prosecution and provide a recommendation to the Police Commissioner within the requested time frame, including contacting OATH as necessary to request expedited procedures as provided in §1-26(c) of Title 48 of the Rules of the City of New York.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter B added City Record May 24, 2001 eff. June 23, 2001, note further provisions of

City Record May 24, 2001:

Statement of Basis and Purpose These proposed rules set forth amendments to the rules of the Department which implement the terms of a Memorandum of Understanding (MOU) between the Department and the Civilian Complaint Review Board. The MOU provides that the Board will take action to prosecute administratively all those cases in which the Board has substantiated civilian complaints. The Department's rules are being amended to set forth the procedures to be followed by the Department and the Board in those instances where the Board will act as the prosecutor in adjudications relating to charges against uniformed members found to be substantiated by the Board, as well as other actions which may be taken by the Board in the course of such administrative prosecutions.

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§15-15 Summary of Employment History.

Upon request by CCRB, the Department shall provide a summary of the employment history of the respondent as provided in the Memorandum of Understanding referenced in §15-12. CCRB may similarly obtain a summary of employment history for a witness officer upon demonstrating to the Department a particularized need for such summary based upon the facts and circumstances of a specific administrative prosecution. Such summary shall not include records relating to complaints against the respondent which are unsubstantiated, exonerated, unfounded, or open. Where the case has received a hearing at OATH and the Administrative Law Judge has determined that the petition shall be sustained in whole or in part, he or she may request the subject officer's summary of employment history from CCRB.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter B added City Record May 24, 2001 eff. June 23, 2001, note further provisions of City Record May 24, 2001:

Statement of Basis and Purpose These proposed rules set forth amendments to the rules of the Department which implement the terms of a Memorandum of Understanding (MOU) between the Department and the Civilian Complaint Review Board. The MOU provides that the Board will take action to prosecute administratively all those cases in which the Board has substantiated civilian complaints. The Department's rules are being amended to set forth the procedures to be followed by the Department and the Board in those instances where the Board will act as the prosecutor in adjudications relating to charges against uniformed members found to be substantiated by the Board, as well as other actions which may be taken by the Board in the course of such administrative prosecutions.

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§15-16 Conclusion of Administrative Prosecution.

At the conclusion of the administrative prosecution, in all instances other than cases culminating in a report and recommendation by OATH, the CCRB shall forward to the Commissioner a final recommendation reflecting the results of its prosecution of the case. The CCRB shall include all relevant forms, memoranda and background information to assist the Commissioner in making and implementing a final disciplinary determination. If the case culminated in a hearing before OATH, OATH shall forward to the Commissioner the report and recommendation accompanied by the transcript of the proceedings and the exhibits received in evidence, with a copy of the report and recommendation to CCRB. Upon receipt of a copy of the report and recommendation, CCRB may provide to the Commissioner a letter commenting on the OATH report and recommendation.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B

footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter B added City Record May 24, 2001 eff. June 23, 2001, note further provisions of City Record May 24, 2001:

Statement of Basis and Purpose These proposed rules set forth amendments to the rules of the Department which implement the terms of a Memorandum of Understanding (MOU) between the Department and the Civilian Complaint Review Board. The MOU provides that the Board will take action to prosecute administratively all those cases in which the Board has substantiated civilian complaints. The Department's rules are being amended to set forth the procedures to be followed by the Department and the Board in those instances where the Board will act as the prosecutor in adjudications relating to charges against uniformed members found to be substantiated by the Board, as well as other actions which may be taken by the Board in the course of such administrative prosecutions.

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§15-17 Police Commissioner's Determination.

(a) In all instances other than cases culminating in a report and recommendation by OATH, upon receiving the final recommendation of CCRB with accompanying documents, the Commissioner may accept, reject, or modify the recommendation presented, or may ask CCRB for additional investigative or background information in its possession. He or she may also request further investigation or development of the record in the case. If CCRB's recommendation is rejected or modified, CCRB will then be responsible for implementing the Commissioner's decision and taking the appropriate follow-up action as directed. After taking the appropriate follow-up action, the CCRB shall forward to the Commissioner a final recommendation as provided in §15-16.

(b) In cases culminating in a report and recommendation by OATH, the Commissioner may accept, reject, or modify the report and recommendation based upon the record presented. He may in the alternative remand the matter to OATH, stating his reasons therefor, with instructions for further proceedings as appropriate. In the event of such a remand, CCRB shall take appropriate steps in conformance with the reasons set forth in the Police Commissioner's statement for remand to reopen the case.

(c) The Department shall notify CCRB of the final disciplinary result and specific penalty in each case within thirty calendar days of the imposition of the specific penalty.

HISTORICAL NOTE

Section added City Record May 24, 2001 eff. June 23, 2001. [See T38 Chapter 15 Subchapter B footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter B added City Record May 24, 2001 eff. June 23, 2001, note further provisions of City Record May 24, 2001:

Statement of Basis and Purpose These proposed rules set forth amendments to the rules of the Department which implement the terms of a Memorandum of Understanding (MOU) between the Department and the Civilian Complaint Review Board. The MOU provides that the Board will take action to prosecute administratively all those cases in which the Board has substantiated civilian complaints. The Department's rules are being amended to set forth the procedures to be followed by the Department and the Board in those instances where the Board will act as the prosecutor in adjudications relating to charges against uniformed members found to be substantiated by the Board, as well as other actions which may be taken by the Board in the course of such administrative prosecutions.

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SUBCHAPTER C HEARING RULES GOVERNING SUSPENSION AND REVOCATION OF HANDGUN LICENSES, RIFLE/SHOTGUN PERMITS, DEALER'S, GUNSMITH'S AND MANUFACTURER'S LICENSES, ORGANIZATION REGISTRATION CERTIFICATES AND SPECIAL PATROLMAN DESIGNATIONS*3

§15-21 Definitions.

Department. The term "Department" shall mean the New York City Police Depart- ment.

Handgun. The term "handgun" shall mean a pistol or revolver.

Hearing Officer. The term "Hearing Officer" shall mean an individual designated by the Police Commissioner to preside over hearings pertaining to suspension and revocation of handgun licenses, rifle/shotgun permits, dealer's, gunsmith's and manufacturer's licenses, organization registration certificates and special patrolman designa- tions.

License. The term "License" shall mean a license or permit to possess handguns or rifles/shotguns, or to conduct business as a dealer, gunsmith or manufacturer, or the registration certificate allowing organizations to possess rifles or shotguns, or the granting of special patrolman designation.

License Division. The term "License Division" shall mean the New York City Police Department License Division.

Licensee. The term "Licensee" shall mean any person, business, organization or governmental agency which is

requesting a hearing to contest a decision made by the Department regarding an individual license, permit or certificate.

Party. The term "Party" shall mean the Department or any licensee involved in a hearing.

Revocation. The term "Revocation" shall mean removal of a license and privilege to possess a handgun or rifle/shotgun and/or be designated a special patrolman, or to conduct business as a dealer, gunsmith, or manufacturer, or to possess rifles or shotguns as an organization.

Special Patrolman. The term "Special Patrolman" shall mean an individual who has been granted a designation as Special Patrolman by the Police Commissioner pursuant to New York City Administrative Code §14-106.

Suspension. The term "Suspension" shall mean temporary removal of a license and privilege to possess a handgun or rifle/shotgun and/or be designated a Special Patrolman, or to conduct business as a dealer, gunsmith, or manufacturer, or to possess rifles or shotguns as an organization.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

3

[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-22 Commencement of Proceedings.

(a) **Entitlement to a Hearing.** A licensee shall be entitled to submit a written request for a hearing following issuance of a Notice of Determination Letter notifying the licensee of suspension or revocation of a license and the opportunity for a hearing.

(b) **Scheduling of Hearings.** A licensee who wishes to request a hearing relating to a suspension or revocation shall submit a written request to the Commanding Officer, License Division, following the issuance of a Notice of Determination Letter, within 30 calendar days of the date on the Notice of Determination Letter. A licensee whose arrest or summons resulted in suspension or revocation of her/his license may only submit a written request for a hearing within thirty (30) calendar days after the termination of the criminal action, as defined in New York State Criminal Procedure Law §1.20(16)(c). If the suspension or revocation resulted from the licensee becoming the subject of an order of protection or a temporary order of protection, the licensee may only submit a written request for a hearing within thirty (30) calendar days after the expiration or voiding of the order of protection or temporary order of protection. If the suspension or revocation was related to both a criminal action and an order of protection or temporary order of protection, then the later of the two waiting periods shall apply. The License Division shall schedule a hearing within a reasonable time of receipt of the request.

(c) **Notice of Hearing.** A licensee shall receive notification of the date, time and place of the hearing by regular mail addressed to the licensee's last known address. Additionally, a licensee's New York State licensed attorney shall receive notification, if the attorney has filed an appearance with the Department.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-23 Proceedings upon Default.

(a) **Failure to Appear.** (1) Upon a licensee's failure to appear at a license suspension or revocation hearing, or any adjournment thereof, without good cause, it shall be deemed that the licensee does not contest the issues underlying the suspension or revocation of the license. The Hearing Officer may recommend the suspension or revocation of the license and/or may proceed to take testimony with regard to the merits of the case.

(2) **Notice of Default.** The parties shall be notified of the Hearing Officer's declaration of default.

(3) **Application to Vacate Default.** An application for a rehearing and stay of default may be made within 20 calendar days of the date of the notification of default/hearing results. Such application shall be made to the Hearing Officer and may be granted upon a showing of good cause.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-24 Adjournments.

(a) A request for an adjournment shall be made at least 72 hours prior to the date of the hearing. An adjournment shall not be granted except for good cause shown.

(b) (1) If an adjournment is granted, the adjourned hearing date may be marked final against the licensee requesting the adjournment.

(2) Attorneys requesting an adjournment because of a conflicting engagement shall submit an Affirmation of Actual Engagement, setting forth the name of the court, case, and date and time of the proceedings.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

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§15-25 Evidence.

(a) **Evidence.** (1) Parties shall have the right to call witnesses, conduct examinations and cross-examinations, to present evidence, and make objections, motions and arguments.

(2) The rules of evidence governing proceedings in the courts of this State shall not be strictly enforced at hearings. Objections shall be timely and the basis for the objection shall be clearly stated.

(3) The introduction of cumulative or irrelevant evidence shall be avoided. The Hearing Officer may curtail the testimony of any witness which is deemed to be cumulative or irrelevant.

(4) Parties may stipulate to facts involved in the proceedings. Stipulations shall be noted on the record and shall be approved by the Hearing Officer.

(b) **Requests for Records.** Licensees or their New York State licensed attorneys may request copies of records at least three weeks in advance of the date of the hearing. Documents shall not be provided in response to such request where: (1) the documents are privileged or confidential pursuant to law or rule, or (2) where disclosure of the documents would reveal investigative techniques, would impair active investigations or judicial proceedings, would

constitute an unwarranted invasion of privacy, or would endanger the life or safety of any person.

(c) **Oral Argument.** Oral argument may be curtailed or limited, in the Hearing Officer's discretion, and shall be included in the record.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-26 Hearing Officers and Representation of Parties.

(a) **Hearing Officer.** (1) The Hearing Officer shall serve both as impartial examiner and impartial judge and shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of the proceedings, and to maintain order. It shall be the duty of a Hearing Officer to inquire fully into all matters at issue and to obtain a full and complete record. The Hearing Officer shall write a Hearing Report which includes a recommended disposition. A Hearing Officer's duties shall be restricted to adjudication and related matters.

(2) The Hearing Officer shall have all powers necessary to conduct a hearing, including the power to administer oaths and affirmations, rule upon offers of proof, receive evidence, regulate the course of hearings and the conduct of the parties and their counsel and to hold conferences, both on and off the record, for settlements, simplification of issues, or any other proper purposes.

(b) **Prosecuting Attorney.** An attorney designated by the Department's Legal Bureau may act as prosecutor to present the Department's case.

(c) **Representation of Licensees.** Licensees may be represented by an attorney who is a member in good standing of the Bar of the State of New York.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-27 Conduct of Hearings.

(a) **Public Access to Hearings.** Hearings are generally open to the public. If good cause is shown by either party, the Hearing Officer may exclude the public from a particular hearing or portion of a hearing. Additionally, the public may be excluded at the Hearing Officer's discretion.

(b) **General Provisions.** (1) The Hearing Officer shall rule upon matters of procedure and introduction of evidence and shall conduct the hearing in such manner as will best serve the attainment of justice.

(2) Licensees shall appear and testify at the hearing. They may submit evidence relevant to the matter under consideration. If a licensee fails to testify an adverse inference may be drawn against him or her by the Hearing Officer.

(3) Any licensee desiring to subpoena a witness, document or other evidence may do so in the manner provided for in the New York Civil Practice Law and Rules. The Hearing Officer shall issue administrative subpoenas to necessary individuals and may issue administrative subpoenas upon request by a party.

(4) No ex parte communications relating to other than ministerial matters regarding a proceeding shall be received by a Hearing Officer, including internal agency directives not published as rules.

(c) **Disposition by Settlement.** Informal disposition may be made of any matter which is the subject of an adjudication by means of stipulation, agreed settlement or consent order.

(d) **Transcripts.** All hearings shall be recorded on a tape recorder. A transcript of the hearing may be ordered by any party to the hearing. The transcript shall be provided upon payment of reasonable transcription costs.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-28 Hearing Officer's Report and Recommendation.

(a) After the conclusion of the hearing, the Hearing Officer shall prepare a written hearing report and recommended disposition. The report shall include a statement of the issues, findings of fact, and conclusions of law, as well as the reasons and basis therefor. Findings of fact shall be based exclusively upon all the material issues of fact and law presented in the record. The Division Head, License Division shall review the report and recommendation and make a final determination. S/he may approve the recommendation or modify the findings or the penalty consistent with the record. The Division Head's determination is the final administrative determination.

(b) Licensees shall receive a copy of the Hearing Officer's report and the Division Head's final determination, by regular mail, within a reasonable time after the conclusion of the hearing.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-29 Penalties.

Appropriate penalties may be imposed upon a licensee including suspension or revocation of the license.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

FOOTNOTES

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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§15-30 Appeals. [Repealed]

HISTORICAL NOTE

Section repealed City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section added City Record Aug. 2, 1991 eff. Sept. 1, 1991.

Subd. (a) amended City Record Sept. 23, 1994 eff. Oct. 23, 1994.

Subd. (d) added City Record Sept. 23, 1994 eff. Oct. 23, 1994.

NOTE

References within this chapter to masculine shall be presumed to include the feminine and neuter. References to the singular shall be presumed to include the plural.

HISTORICAL NOTE

Note added City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

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[Footnote 3]: * Subchapter relettered and amended (formerly Subchap. B) City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1. Subchapter also relettered from B to C by City Record May 24, 2001 eff. June 23, 2001.

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CHAPTER 16 TRANSPORT OR DELIVERY OF WEAPONS*1

§16-01 Definitions.

License Division. The term "License Division" shall mean the License Division of the New York City Police Department.

Person. The term "person" shall mean an individual, firm, partnership, corporation, company or other business entity, and shall include any common or contract carrier, shipper, transport company, weapons manufacturer, distributor or dealer.

Police Commissioner. The term "Police Commissioner" shall mean the Police Commissioner of the City of New York or her/his designee(s).

Transitory Shipment. For purposes of this chapter, the term "transitory shipment" shall mean a shipment which begins outside of the City of New York, and moves continuously and without interruption through the City of New York to a final destination outside of the City of New York. A shipment which is within the City of New York and involves any off-loading of the weapons from one means of transportation, followed by subsequent on-loading of the weapons to another means of transportation, shall not be considered a transitory shipment.

Unanticipated Delay. For purposes of this chapter, the term "unanticipated delay" is an event involving the operator of a vehicle who intended to make a transitory shipment of weapons when s/he entered the City of New York with a shipment of weapons, and having done so, has experienced an unexpected mechanical problem, or other unexpected condition or set of circumstances which causes the operator to remain within the City, and off of a limited access highway, for a period of greater than one hour.

Weapon. For purposes of this chapter, the term "weapon" shall mean a "firearm," "rifle," "shotgun," or "machine-gun," as those terms are defined in §265.00 of the New York State Penal Law and shall also include anything that is defined as an "assault weapon" in §10-301 of the New York City Administrative Code.

Weapons Dealer. For purposes of this chapter, the term "weapons dealer" shall mean any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any weapon as defined in this chapter and who is licensed by the Police Commissioner pursuant to Article 400 of the New York State Penal Law and/or §10-302 of the New York City Administrative Code.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 16 TRANSPORT OR DELIVERY OF WEAPONS*1

§16-02 Applicability.

This chapter shall apply to all persons who transport or deliver one or more weapons into or within any location in the City of New York, except that it shall not apply to:

(a) the transitory shipment of weapons through New York City to a final destination outside of New York City. However, if the operator of the vehicle containing a transitory shipment of weapons experiences an unanticipated delay as that term is defined in §16-01 of this chapter, such operator shall immediately report to the nearest Police Department facility the following information:

(1) her/his current location;

(2) the location of the transporting vehicle;

(3) the cause of the unanticipated delay;

(4) the expected duration of the shipment's presence in the City; and

(5) how the shipment shall be secured during its stay in the City.

In the case of such delay, the officer receiving such notice may direct the vehicle operator to take reasonably necessary measures to secure the weapons shipment, or the officer may seize and secure the weapons until such time that the shipper makes alternative arrangements which are acceptable to the officer.

(b) the shipment or delivery of five (5) or fewer weapons from one licensed weapons dealer located in New York City directly to another licensed weapons dealer located in New York City. However, the manner of storage of such weapons during their transportation shall be in compliance with §16-05 of this chapter.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 16 TRANSPORT OR DELIVERY OF WEAPONS*1

§16-03 Authorization to Transport or Deliver Firearms.

(a) No person shall transport or deliver, or cause to be transported or delivered, weapons into or within the City of New York where s/he knows or has reasonable means of ascertaining what s/he is transporting, without first obtaining written authorization to do so from the Police Commissioner.

(b) A request by any person for authorization to transport or deliver weapons shall be made in writing to the Commanding Officer, License Division, New York City Police Department, One Police Plaza, Room 110A, New York, New York 10038, or by Facsimile transmission (212) 374-2828, so as to be received by the License Division at least ten (10) calendar days prior to the transportation within the City of New York. Such request shall include the following information:

(1) The name and address of the source of the shipment of weapons. If the source is a corporation, the name of the president or authorized representative of such corporation shall be included.

(2) The number of weapons, including the manufacturer's name, caliber, and model identification, for each type of weapon being transported.

(3) The name of the shipping company, if different from the source of the shipment, including the address and telephone number of the company's headquarters.

(4) The day, date, and the estimated time and place of arrival of the shipment into New York City.

(5) The name, address, and weapons dealer's or gunsmith's license number of the person authorized to receive the shipment in New York City.

(6) The type of vehicle to be used by the source of the shipment, or the shipping company, including any distinctive company logos or markings on the vehicle.

(7) A photocopy of the driver's license of the person scheduled to make the delivery, and a photocopy of the driver's license of an alternate driver who may be required by the source of the shipment, or the shipping company, to substitute for the principally scheduled delivery person.

(8) The application for permission to transport weapons shall contain the following statement, subscribed and sworn to by the applicant before a notary public, commissioner of deeds, or other comparable official: "I, _____, the applicant for permission to transport weapons within or through the City of New York, state that such weapons shall be transported in an unloaded condition, and in a manner that conforms with §16-05 of Chapter 38 of the Rules of the City of New York, and if upon inspection of the contents of the transporting vehicle it is discovered that such weapons are not secured in a manner conforming with said section, then any permission issued by virtue of this application shall be void and deemed to have never been granted, and it is understood that I and any of my agents, employees, or assignees, may be prosecuted for transporting weapons without permission pursuant to the New York State Penal Law and the New York City Administrative Code, and that the property being transported as well as the means of transport may be seized and forfeited pursuant to law."

(c) If a person seeking permission to transport a weapon pursuant to this section is utilizing a shipping company or other delivery service and is unable to provide information relevant to paragraphs (4), (6) or (7) of subdivision (b) of this section, a separate request for permission to transport shall be submitted by the shipping company or delivery service, which shall include the required information.

(d) Upon receiving a request for authorization to transport or deliver weapons, the Police Commissioner shall cause to be conducted a review of Police Department records to ascertain whether the intended recipient of the weapons shipment or delivery is an authorized person, and whether there exists any information which would otherwise provide a basis for denying authorization to receive such weapons shipment. The Police Commissioner or her/his designee shall then notify the requesting person that such authorization has or has not been granted.

(e) In addition to any other applicable penalties, the Police Commissioner may deny an application submitted pursuant to this chapter if the applicant has previously failed to comply with the provisions of this chapter.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 16 TRANSPORT OR DELIVERY OF WEAPONS*1

§16-04 Surrender of Firearms Not Authorized for Transportation or Delivery.

Any person who transports or delivers weapons without obtaining authorization pursuant to the requirements of this chapter shall be liable for the penalties set forth in Article 265 of the New York State Penal Law and the New York City Administrative Code, and shall further be directed by any member of the Police Department to surrender the weapons to the Police Department. In addition, the property being transported, as well as the means of transport, may be seized and forfeited pursuant to law.

HISTORICAL NOTE

Section amended City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 16 TRANSPORT OR DELIVERY OF WEAPONS*1

§16-05 Required Security Measures for Weapons Shipments in Transit.

Any person, corporation, partnership, or other business entity using a vehicle to transport weapons within or through the City of New York shall, at a minimum, employ the following security measures while such weapons are in transit:

(a) All weapons shall be transported unloaded.

(b) All weapons shall be placed in one or more containers located within the vehicle used for transportation of the weapons. Such containers shall be constructed of materials of such a sturdy character that when the container is closed and locked, it cannot be forced open by hands alone, or sliced open with a common tool such as a knife or box cutter.

(c) The above referenced container(s) shall be securely fastened, with a combination or key locking device, to the interior body structure of the transporting vehicle, in such a manner that the containers cannot be manually removed without releasing the locks.

(d) Such containers, while in transit and carrying weapons, shall be closed and locked with a heavy-duty combination or key-type lock.

(e) Ammunition shall not be stored in the same container as weapons.

(f) At all times other than loading and unloading, the cargo area of the transporting vehicle in which all of the above referenced containers shall be stored shall be closed and locked with a heavy-duty combination or key-type lock.

(g) The driver of the transporting vehicle shall carry a manifest which declares the numbers and types of weapons being transported, and the intended point of delivery. Such manifest shall not be considered valid unless it shall have written upon it the permission serial number issued by the New York City Police Department License Division.

(h)(1) The Police Commissioner may require, as a condition of the authorization to transport or deliver weapons, that shipments of weapons which will be off-loaded from one means of transportation and subsequently on-loaded to the same means or another means of transportation within the city of New York, be escorted by a uniformed member of the New York City Police Department, from the time of on-loading until such point that the shipment has left the jurisdictional boundaries of the City of New York.

(2) If the Police Commissioner elects to impose the escort requirement as a condition of the authorization to transport or deliver weapons, the applicant shall notify the Commanding Officer, License Division, of the day, date, estimated time and place of on-loading of the shipment to the second means of transportation. The escort requirement shall be deemed waived if the escort is not present at the place within the City of New York where the weapons will be on-loaded within thirty minutes of the shipment's estimated time of on-loading and departure.

HISTORICAL NOTE

Section added City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 16 TRANSPORT OR DELIVERY OF WEAPONS*1

§16-06 Requirement to Report Theft, Loss or Misdelivery.

(a) Any person, firm, corporation, or other business entity who has received permission to transport weapons pursuant to the provisions of this chapter, and who suffers a loss or theft of any part of her/his weapons shipment while it is located within New York City, shall forthwith report such loss or theft to the nearest Police Department facility and shall comply with all reasonable requests for assistance by police officers who investigate the circumstances of the loss or theft.

(b) Any person, firm, corporation or other business entity who has received permission to transport weapons pursuant to the provisions of this chapter, and who knows or reasonably should know that any part of her/his weapons shipment was delivered to a person other than the person designated in §16-03(b)(5) of this chapter, shall forthwith report such misdelivery to the Police Department's Operations Unit, at (212) 374-5580.

HISTORICAL NOTE

Section added City Record May 31, 2001 eff. June 30, 2001. [See T38 Chapter 1 footnote]

NOTE

References within this chapter to masculine shall be presumed to include the feminine and neuter. References to the singular shall be presumed to include the plural.

HISTORICAL NOTE

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[Footnote 1]: * Chapter amended City Record May 31, 2001 eff. June 30, 2001, see footnote to T38 Chapter 1.

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CHAPTER 17 PROHIBITED ASSAULT WEAPONS

§17-01 Assault Weapons Designated.

(a) Pursuant to Subparagraph 7 of Paragraph a of Subdivision 16 of §10-301 of the New York City Administrative Code, the following makes and models of weapons are determined to be particularly suitable for military and not sporting purposes and are determined to be within the statutory definition of assault weapon as set forth in §10-301 (16) of the New York City Administrative Code:

(1) Models CALICO M-900 CARBINE, CALICO M-100 CARBINE manufactured by AMERICAN INDUSTRIES,

(2) Models LIGHTNING 25-22, AP-74 manufactured by AMT,

(3) Model AR-180 manufactured by ARMALITE,

(4) Model .223 SAC manufactured by AUSTRALIAN AUTOMATIC ARMS,

(5) Models M-1-SA, 1927-A1-SA manufactured by AUTO ORDINANCE,

(6) Model LIGHT 50 82-AL manufactured by BARRETT FIREARMS,

(7) Models AR70, BM 59 manufacutured by BERETTA,

(8) Model ASSAULT RIFLE manufactured by BUSHMASTER FIREARMS,

(9) Model SR-88 manufactured by CHARTERED FIREARMS INDUSTRIES,

(10) Models AR-15 manufactured by COLT,

(11) Models MAX-1, MAX-2, K1A1, K2, USAS-12 SHOTGUN manufactured by DAEWOO INDUSTRIES,

(12) Models C90, C100, C450 manufactured by DMAX INDUSTRIES,

(13) Model MK-IV CARBINE manufactured by ENCOM,

(14) Models FN-FAL, FN-LAR, FN-FNC manufactured by FABRIQUE NATION- ALE,

(15) Model MAS 223 manufactured by FAMAS,

(16) Models AT-9 CARBINE, AT-22 CARBINE manufatured by FEATHER INDUS- TRIES,

(17) Models XC-450 AUTO OCARBINE, XC-220, XC-900 manufactured by FEDERAL ENGINEERING CORPORATION,

(18) Models SPAS-12, LAW-12 PUMP AUTO SHOTGUNS manufactured by FRANCHI,

(19) Model GC HIGH TECH CARBINE manufactured by GONCZ COMPANY,

(20) Models HK-91, HK-93, HK-94, PSG-1, G3-SA manufactured by HECKLER & KOCH,

(21) Models UZI-CARBINE, MINI-UZI CARBINE, GALIL-ARM, GALIL-AR, GALIL-SAR, GALIL-SNIPER manufactured by ISRAELI MILITARY INDUSTRIES,

(22) Model PM-30 PARATROOPER manufactured by IVER JOHNSON,

(23) Models AP-74, AP-84, AP-80, AP-85, SPECTRE AUTO CARBINE manufactured by MITCHELL ARMS,

(24) Models of the KALASHNIKOV type SEMIAUTOMATIC, including those manufactured by NORINCO (China) and HUNGARIAN ARMS,

(25) Models NDM-86 SNIPER RIFLE manufactured by NORINCO,

(26) Model M-14S manufactured by POLYTECH INDUSTRIES,

(27) Model MINI-14/5F manufactured by RUGER,

(28) Models 57-AMT, PE-57, SG550SP, SG551SP manufactured by SIGARMS,

(29) Model L1A1A manufactured by SMALL ARMS FACTORY, AUSTRALIA,

(30) Models BM-59, SAR-48, SAR-58, SAR-3, M-1A manufactured by SPRINGFIELD ARMORY,

(31) Model MK-6 manufactured by STERLING,

(32) Model AUG-SA manufactured by STEYR DAIMLER-PUSCH,

(33) Models M-76-SA, M-78-SA manufactured by VALMET CORPORATION, and

(34) Model NIGHTHAWK manufactured by WEAVER ARMS CORPORATION

HISTORICAL NOTE

Section added City Record Dec. 20, 1991 eff. Jan. 19, 1992.

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Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 17-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 17 PROHIBITED ASSAULT WEAPONS

§17-02 Disposition of Assault Weapons by Permittees, Licensees and Previously Exempt Persons.

(a) Permittees, licensees and previously exempt persons, as described in Subdivision d of §10-303.1 of the New York City Administrative Code, shall, within ninety days of the effective date of these Rules, dispose of their assault weapons pursuant to such subdivision. All assault weapons possessed by such permittees, licensees and previously exempt persons shall be subject to the provisions of such subdivision, whether defined as assault weapons in subdivision 16 of §10-301 or in these Rules.

HISTORICAL NOTE

Section added City Record Dec. 20, 1991 eff. Jan. 19, 1992.

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Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 17-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 17 PROHIBITED ASSAULT WEAPONS

§17-03 Effective Date.

(a) These Rules shall take effect in accordance with the provisions of Section 1043 of the New York City Charter, provided, however, that these Rules shall not take effect prior to the effective date of Local Law 78 of 1991.

HISTORICAL NOTE

Section added City Record Dec. 20, 1991 eff. Jan. 19, 1992.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 18-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 18*1 SEIZURE OF BICYCLES PURSUANT TO ADMINISTRATIVE CODE §19-176

§18-01 Seizure of Bicycles.

Pursuant to Administrative Code §19-176(c) a bicycle operated on a sidewalk under circumstances which create a substantial risk of physical injury to another person may be seized and impounded by a police officer or designated employee of the Department of Transportation, Department of Parks and Recreation or the Department of Sanitation.

HISTORICAL NOTE

Section added City Record Oct. 17, 1996 eff. Nov. 16, 1996. [See T38 Chapter 18 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Oct. 17, 1996 eff. Nov. 16, 1996. Note further provisions:

The Police Commissioner is authorized and directed to establish and enforce rules and regulations for the safety and welfare of the public. Pedestrian safety and use of sidewalks for the benefit of pedestrians is the basis for the New York City government banning the operation of bicycles on sidewalks. Local Law 6 of 1996 authorizes police officers and other designated officials to seize and impound any bicycle operated on a sidewalk in a manner which creates a substantial risk of physical injury to another person upon issuing a summons or

notice of violation to the offender. The Police Department is required to promulgate rules providing for the seizure and return of such bicycles.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 18-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 18*1 SEIZURE OF BICYCLES PURSUANT TO ADMINISTRATIVE CODE §19-176

§18-02 Notice.

At the time of such seizure the operator shall be given a written notice explaining the procedures for obtaining release of the bicycle. The notice shall include a brief description of the bicycle, the location where the bicycle may be claimed, the applicable charges for removal and storage, and instructions on the steps necessary to request an Environmental Control Board hearing. The notice shall also include a conspicuous notification to the operator and/or owner that he or she is required to contact the agency in possession of the bicycle to inform that agency if and when a hearing is scheduled on the matter.

If the operator is not the owner of the bicycle notice to the operator is deemed to be notice to the owner. If the operator is less than eighteen years old, the notice shall either be personally delivered to the operator's parent or guardian or shall be mailed to the parent, guardian, or, where applicable, employer if the name and address of that person is reasonably ascertainable.

HISTORICAL NOTE

Section added City Record Oct. 17, 1996 eff. Nov. 16, 1996. [See T38 Chapter 18 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Oct. 17, 1996 eff. Nov. 16, 1996. Note further provisions:

The Police Commissioner is authorized and directed to establish and enforce rules and regulations for the safety and welfare of the public. Pedestrian safety and use of sidewalks for the benefit of pedestrians is the basis for the New York City government banning the operation of bicycles on sidewalks. Local Law 6 of 1996 authorizes police officers and other designated officials to seize and impound any bicycle operated on a sidewalk in a manner which creates a substantial risk of physical injury to another person upon issuing a summons or notice of violation to the offender. The Police Department is required to promulgate rules providing for the seizure and return of such bicycles.

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38 RCNY 18-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 18*1 SEIZURE OF BICYCLES PURSUANT TO ADMINISTRATIVE CODE §19-176

§18-03 Procedure for Obtaining Release of Bicycles.

(a) A bicycle seized pursuant to Administrative Code §19-176 shall not be released to the owner or other person lawfully entitled to possession unless:

(i) the owner or operator submits documentation that he or she paid all applicable fines or penalties imposed for the violation, and pays all removal and storage fees as set forth below, or

(ii) if there is a proceeding pending before the Environmental Control Board of the City of New York (ECB), the owner or operator posts a bond or other form of security in the amount of one hundred and fifty dollars ($150.00) which will secure the payment of such fines, penalties or charges, or

(iii) a court or the ECB adjudicates the violation and finds in favor of the operator or owner. If there is such a finding in favor of the operator or owner, any amount previously paid for release of the bicycle shall be refunded.

(b) The operator or owner of a bicycle seized pursuant to Administrative Code §19-176 will be given the opportunity to receive a hearing before the ECB with respect to the seizure within five business days of the request for such a hearing in accordance with the rules and procedures of the ECB.

(c) The owner or operator may request release of the bicycle by appearing during regular business hours at the location where the bicycle may be claimed, and presenting all of the following documentation:

(i) satisfactory identification of the person requesting release of the bicycle; and

(ii) if a representative of the owner is requesting the release, a notarized letter signed by the owner expressly authorizing their representative to claim the bicycle; and

(iii) satisfactory documentation as required by subdivision a of this section of one of the following: the payment of all fines, penalties and charges, or the posting of a bond, or an adjudication in favor of the operator by a court or the ECB.

HISTORICAL NOTE

Section added City Record Oct. 17, 1996 eff. Nov. 16, 1996. [See T38 Chapter 18 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Oct. 17, 1996 eff. Nov. 16, 1996. Note further provisions:

The Police Commissioner is authorized and directed to establish and enforce rules and regulations for the safety and welfare of the public. Pedestrian safety and use of sidewalks for the benefit of pedestrians is the basis for the New York City government banning the operation of bicycles on sidewalks. Local Law 6 of 1996 authorizes police officers and other designated officials to seize and impound any bicycle operated on a sidewalk in a manner which creates a substantial risk of physical injury to another person upon issuing a summons or notice of violation to the offender. The Police Department is required to promulgate rules providing for the seizure and return of such bicycles.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 18-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 18*1 SEIZURE OF BICYCLES PURSUANT TO ADMINISTRATIVE CODE §19-176

§18-04 Abandoned Bicycles.

Any bicycle seized pursuant to Administrative Code §19-176, which is not released and removed from City property pursuant to §18-3 of these rules within 10 days following the making of a request by a representative of the Police Commissioner or of the Commissioner of Transportation or Parks and Recreation, or Sanitation to remove it, shall be deemed to be abandoned. Such request shall be mailed to the operator of the bicycle, or to the owner of the bicycle if the owner's identity is reasonably ascertainable. If the operator is less than 18 years old, the notice shall be mailed to the operator's parent or guardian, if the name and address of that person is reasonably ascertainable, in lieu of a mailing to the operator. A bicycle will not be deemed abandoned while a respondent is awaiting a hearing or adjudication in reference to such bicycle provided the respondent complies with all sections of this chapter. A respondent awaiting a hearing regarding a seized bicycle is required to notify the agency in possession of the bicycle of the date(s) of all hearings to be held in reference to such bicycle. If a bicycle is deemed abandoned pursuant to this section it may be disposed of in the same manner that the Department disposes of other abandoned property.

HISTORICAL NOTE

Section added City Record Oct. 17, 1996 eff. Nov. 16, 1996. [See T38 Chapter 18 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Oct. 17, 1996 eff. Nov. 16, 1996. Note further provisions:

The Police Commissioner is authorized and directed to establish and enforce rules and regulations for the safety and welfare of the public. Pedestrian safety and use of sidewalks for the benefit of pedestrians is the basis for the New York City government banning the operation of bicycles on sidewalks. Local Law 6 of 1996 authorizes police officers and other designated officials to seize and impound any bicycle operated on a sidewalk in a manner which creates a substantial risk of physical injury to another person upon issuing a summons or notice of violation to the offender. The Police Department is required to promulgate rules providing for the seizure and return of such bicycles.

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38 RCNY 18-05

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 18*1 SEIZURE OF BICYCLES PURSUANT TO ADMINISTRATIVE CODE §19-176

§18-05 Removal and Storage Charges.

The charge for removal of a bicycle pursuant to this section shall be twenty-five dollars ($25.00). The storage fee for storing a bicycle pursuant to this section shall be five dollars ($5.00) per day or fraction thereof computed from the day the bicycle arrives at the storage facility. All charges must be paid in cash, by certified check or by money order payable to the City of New York.

HISTORICAL NOTE

Section added City Record Oct. 17, 1996 eff. Nov. 16, 1996. [See T38 Chapter 18 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Oct. 17, 1996 eff. Nov. 16, 1996. Note further provisions:

The Police Commissioner is authorized and directed to establish and enforce rules and regulations for the safety and welfare of the public. Pedestrian safety and use of sidewalks for the benefit of pedestrians is the basis for the New York City government banning the operation of bicycles on sidewalks. Local Law 6 of 1996 authorizes police officers and other designated officials to seize and impound any bicycle operated on a sidewalk

in a manner which creates a substantial risk of physical injury to another person upon issuing a summons or notice of violation to the offender. The Police Department is required to promulgate rules providing for the seizure and return of such bicycles.

Rules of the City of New York

***** Current through December 2009 ****

38 RCNY 19-01 [Definitions of

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 19 RULES FOR PROCESSIONS AND PARADES*1

§19-01 [Definitions of Disorderly Parade and Occasions of Extraordinary Public Interest.]

(a) For purposes of §10-110(a)(1) of the administrative code of the city of New York, a parade or procession that is "disorderly in character or tends to disturb the public peace" is one that violates subdivisions 1, 4, 5, 6 or 7 of §240.20 of the Penal Law, and would otherwise present an unreasonable danger to the health or safety of the applicant, parade participants or other members of the public, or cause damage to public or private property.

(b) For purposes of §10-110(a)(4) of the administrative code of the city of New York, "occasions of extraordinary public interest" are celebrations organized by the City honoring the armed forces; sports achievements or championships; world leaders and extraordinary achievements of historic significance.

HISTORICAL NOTE

Section added City Record June 27, 2001 eff. July 27, 2001. [See T38 Chapter 19 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 19 added City Record June 27, 2001 eff. July 27, 2001. Note further provisions:

This rule is promulgated pursuant to the authority of the Police Commissioner under §§389, 435(a), 1043

of the New York City Charter. The Police Department is authorized to regulate, direct and restrict the movement of pedestrians and vehicular traffic to facilitate and to prevent the obstruction of the free passage on the public streets and to disperse unlawful assemblages. Unauthorized parades and processions are detrimental to the health, welfare and safety of the inhabitants of the city, as they substantially increase traffic hazards and the risk of injury to life and limb. Such uses also disturb the public peace and comfort and the peaceful enjoyment by the people of their right to use the public streets for street purposes. Likewise, parades disturb the peace, quiet and comfort of neighboring inhabitants. The proper regulation of parades and processions is essential to protect the health, welfare and safety of the inhabitants of the city, to secure the health, safety, comfort, convenience, and peaceful enjoyment by the people of their right to use the public streets.

These procedures are intended to provide a framework for the Police Department to assure the safety and convenience of the public while allowing the citizens to exercise their rights to assemble and march on public streets.

Rules of the City of New York

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38 RCNY

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 19 RULES FOR PROCESSIONS AND PARADES*1

§19-02 [Definitions.]

For purposes of these rules, the following terms shall have the following meanings:

(a) A "parade" is any procession or race which consists of a recognizable group of 50 or more pedestrians, vehicles, bicycles or other devices moved by human power, or ridden or herded animals proceeding together upon any public street or roadway.

(b) "Same date or time" shall mean the same actual time period or hours.

(c) "Same location" shall mean the location identified in the permit application.

(d) "Demonstration" shall mean a group activity including, but not limited to, a meeting, assembly, protest, rally or vigil, moving or otherwise, which involves the expression of views or grievances, involving more than 20 people.

(e) "Fifth Avenue" shall mean Fifth Avenue in the borough of Manhattan south of 114th Street and north of 15th Street.

(f) "Applicant" shall mean the person or entity that applies for a permit authorizing a parade. Any person or entity responsible for organizing a parade, or any person or entity that publicizes a parade through advertisements or other means of mass communication, is authorized to act as the applicant.

HISTORICAL NOTE

Section added City Record June 27, 2001 eff. July 27, 2001. [See T38 Chapter 19 footnote]

Subd. (a) amended City Record Jan. 26, 2007 §1, eff. Feb. 25, 2007. [See Note 1]

Subds. (e), (f) added City Record Jan. 26, 2007 §2, eff. Feb. 25, 2007. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Jan. 26, 2007:

The Police Department is charged with preserving the public peace and preserving order at assemblies that obstruct the free passage of public streets and sidewalks. In that connection, the Department is authorized to promulgate rules and regulations governing permits for processions, parades and races that occur on City streets and sidewalks. These amendments are intended to clarify the circumstances under which groups using City streets for purposes of assembly are required to obtain a permit. By clarifying the type of activity that constitutes a parade and is thus required to obtain a permit, these rules are designed to protect the health and safety of participants in group events on the public streets and members of the public who find themselves in the vicinity of these events.

Accordingly, in response to public comments received, the definition of parade is amended to include groups of 50 or more pedestrians, vehicles, bicycles or other devices moved by human power that proceed together on public streets.

Each of these types of activities has the likelihood to significantly disrupt vehicular and pedestrian traffic and adversely affect public health and safety, unless subject to regulatory control via the permitting process. The amendments to the rules will permit the Police Department to adequately preserve the public peace and prevent obstructions of public streets and sidewalks. In addition, these amendments have the added benefit of making it clear to all members of the public the circumstances under which parade permits must be sought.

These rules are also amended to clarify who may apply for a parade permit. So as to make it possible for someone who promotes, but does not organize, a parade to apply for a permit, these rules clarify that any person or entity that publicizes a parade through advertisements or other means of mass communication may apply for a parade permit.

FOOTNOTES

1

[Footnote 1]: * Chapter 19 added City Record June 27, 2001 eff. July 27, 2001. Note further provisions:

This rule is promulgated pursuant to the authority of the Police Commissioner under §§389, 435(a), 1043 of the New York City Charter. The Police Department is authorized to regulate, direct and restrict the movement of pedestrians and vehicular traffic to facilitate and to prevent the obstruction of the free passage on the public streets and to disperse unlawful assemblages. Unauthorized parades and processions are detrimental to the health, welfare and safety of the inhabitants of the city, as they substantially increase traffic hazards and the risk of injury to life and limb. Such uses also disturb the public peace and comfort and the peaceful enjoyment by the people of their right to use the public streets for street purposes. Likewise, parades disturb the peace, quiet and comfort of neighboring inhabitants. The proper regulation of parades and processions is essential to protect the health, welfare and safety of the inhabitants of the city, to secure the health, safety, comfort, convenience, and peaceful enjoyment by the people of their right to use the public streets.

These procedures are intended to provide a framework for the Police Department to assure the safety and convenience of the public while allowing the citizens to exercise their rights to assemble and march on public

streets.

Rules of the City of New York

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38 RCNY 19-03

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 19 RULES FOR PROCESSIONS AND PARADES*1

§19-03 Applications.

(a) An application for a permit will be made at least thirty-six hours prior to the date upon which the parade is to occur.

(b) An application in a form prescribed by the Department must be filed with the precinct in which the parade formation area is located; provided, however, that applications for parade routes including any portion of Fifth Avenue in the borough of Manhattan or for parades with 1000 or more participants must be filed with the office of the Chief of Department.

(1) Applications must be completed by clearly typing or printing the information requested. The original application must be signed, notarized and filed with the appropriate precinct or the office of the Chief of Department.

(2) The application must contain the following information:

(i) the name, address and telephone number of the applicant;

(ii) if the application is made on behalf of a corporation, organization or association, it must be signed by a representative of the corporation, organization or association giving the full name and relationship to the corporation, organization or association, if any, and a statement as to the source of the representative's authority to sign the application, if any;

(iii) the nature or purpose of the parade;

(iv) the date, time and route of the parade;

(v) the locations and approximate times for formation and dismissal of the parade;

(vi) the number of participants, animals and/or vehicles which will constitute the parade and a description of such vehicles and animals;

(vii) the width of the roadway to be occupied by the parade;

(viii) the location of any reviewing stands;

(ix) whether rifles or shotguns will be carried by parade participants;

(x) the identity of any grand marshal or chief officer of the parade, his or her name, address and telephone number; and

(xi) any additional information that the Department shall reasonably require to make a fair determination as to whether a permit should issue under §19-04 below.

HISTORICAL NOTE

Section added City Record June 27, 2001 eff. July 27, 2001. [See T38 Chapter 19 footnote]

Subd. (b) par (2) subpar (ii) amended City Record Jan. 26, 2007 §3, eff. Feb. 25, 2007. [See T38

§19-02 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 19 added City Record June 27, 2001 eff. July 27, 2001. Note further provisions:

This rule is promulgated pursuant to the authority of the Police Commissioner under §§389, 435(a), 1043 of the New York City Charter. The Police Department is authorized to regulate, direct and restrict the movement of pedestrians and vehicular traffic to facilitate and to prevent the obstruction of the free passage on the public streets and to disperse unlawful assemblages. Unauthorized parades and processions are detrimental to the health, welfare and safety of the inhabitants of the city, as they substantially increase traffic hazards and the risk of injury to life and limb. Such uses also disturb the public peace and comfort and the peaceful enjoyment by the people of their right to use the public streets for street purposes. Likewise, parades disturb the peace, quiet and comfort of neighboring inhabitants. The proper regulation of parades and processions is essential to protect the health, welfare and safety of the inhabitants of the city, to secure the health, safety, comfort, convenience, and peaceful enjoyment by the people of their right to use the public streets.

These procedures are intended to provide a framework for the Police Department to assure the safety and convenience of the public while allowing the citizens to exercise their rights to assemble and march on public streets.

Rules of the City of New York

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38 RCNY 19-04

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 19 RULES FOR PROCESSIONS AND PARADES*1

§19-04 Approval/Disapproval Procedures.

(a) The permittee will be notified by the precinct, relevant patrol borough or office of the Chief of Department if his or her application for a permit is approved or disapproved.

(b) If the application is disapproved, the applicant will be notified in writing of the basis for such disapproval.

(c) Permits shall be approved or disapproved as follows:

(i) for applications filed 90 or more days prior to the date for which the permit is sought, such permit shall be approved or disapproved no later than 45 days prior to the date for which such permit is sought.

(ii) for applications filed less than 90 days but more than 30 days prior to the date for which such permit is sought, such permit shall be approved or disapproved no later than 10 days prior to the date for which such permit is sought.

(iii) for applications filed less than 30 days but more than 10 days prior to the date for which such permit is sought, such permit shall be approved or disapproved no later than 5 days prior to the date for which such permit is sought.

(iv) for applications filed less than 10 days but at least thirty-six hours prior to the date for which such permit is sought, such permit shall be approved or disapproved as soon as reasonably practicable.

(v) for applications filed less than thirty-six hours prior to the date for which such permit is sought only where exigent circumstances exist which prevented the applicant from earlier seeking a permit, such permit shall be approved or disapproved pursuant to subdivision (d) of the section as soon as reasonably practicable, but may also be disapproved

where the size or nature of the parade reasonably requires an additional police presence and there is insufficient time to make such presence available.

(d) Permits will be disapproved under §10-110 of the administrative code under the following circumstances:

(i) The application, including any required attachments and submissions, is not fully completed and executed.

(ii) The application contains a material falsehood or misrepresentation.

(iii) A permit or other authorization has been granted to another person or group in conjunction with a parade, street fair, demonstration or other event for the same date or time and the same location requested, or permits or other authorizations have traditionally, on an annual basis, been granted to another person or group for a parade, street fair, demonstration or other event for the same date or time and the same location.

(iv) The proposed activity and surrounding events will substantially or unreasonably interfere with traffic in the area contiguous to the parade route.

(v) The concentration of persons, animals, vehicles or things at the formation and dismissal areas, along the parade route and in nearby areas will prevent proper fire and police protection or ambulance service.

(vi) The application proposes activities which would violate subdivisions 1, 4, 5, 6 or 7 of §240.20 of the Penal Law, and would otherwise present an unreasonable danger to the health or safety of the applicant, parade participants or other members of the public, or cause damage to public or private property.

(vii) The application proposes activities which would be in violation of law, rule or regulation.

(viii) The application seeks to hold a parade on Fifth Avenue in the borough of Manhattan, unless the parade was held at that location prior to the promulgation of these rules.

If a permit is disapproved under paragraphs (iii), (iv), (v) or (viii) of this subdivision, the Department shall employ reasonable efforts to offer the applicant a suitable alternative location, date and/or time for the parade.

(e) If an application is disapproved, the applicant may appeal the determination by written request filed with a designated appeals officer who may reverse, affirm or modify the original determination and will provide a written explanation of his or her finding.

(i) If a permit application is disapproved 45 days or more prior to the proposed parade, the applicant shall have 10 days from the date that such disapproval is mailed to the applicant to appeal such disapproval. The Department shall render a decision on such appeal within 10 days of its receipt of such appeal.

(ii) If a permit application is disapproved less than 45 days but more than 10 days prior to the proposed parade, the applicant shall have 5 days from the date such disapproval is mailed to the applicant to appeal such disapproval. The Department shall render a decision on such appeal within 5 days of its receipt of such appeal.

(iii) If a permit application is disapproved 10 days or less prior to the proposed parade, the applicant shall have 3 days from the date such disapproval is mailed to the applicant to appeal such disapproval. The Department shall render a decision on such appeal as soon as is reasonably practicable.

HISTORICAL NOTE

Section added City Record June 27, 2001 eff. July 27, 2001. [See T38 Chapter 19 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 19 added City Record June 27, 2001 eff. July 27, 2001. Note further provisions:

This rule is promulgated pursuant to the authority of the Police Commissioner under §§389, 435(a), 1043 of the New York City Charter. The Police Department is authorized to regulate, direct and restrict the movement of pedestrians and vehicular traffic to facilitate and to prevent the obstruction of the free passage on the public streets and to disperse unlawful assemblages. Unauthorized parades and processions are detrimental to the health, welfare and safety of the inhabitants of the city, as they substantially increase traffic hazards and the risk of injury to life and limb. Such uses also disturb the public peace and comfort and the peaceful enjoyment by the people of their right to use the public streets for street purposes. Likewise, parades disturb the peace, quiet and comfort of neighboring inhabitants. The proper regulation of parades and processions is essential to protect the health, welfare and safety of the inhabitants of the city, to secure the health, safety, comfort, convenience, and peaceful enjoyment by the people of their right to use the public streets.

These procedures are intended to provide a framework for the Police Department to assure the safety and convenience of the public while allowing the citizens to exercise their rights to assemble and march on public streets.

Rules of the City of New York

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38 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER A INTRODUCTION

§1-01 Definitions.

As used in this chapter:

Chair. "Chair" shall mean the Chair of the Civilian Complaint Review Board, appointed pursuant to New York City Charter §440(b)(1).

Civilian Complaint Review Board. "Civilian Complaint Review Board" or "Board" shall mean the entity established by Local Law No. 1 for the year 1993, codified as §440 of the New York City Charter.

Commissioner. "Commissioner" shall mean the Police Commissioner of the New York City Police Department.

Executive Director. "Executive Director" shall mean the chief executive officer of the Civilian Complaint Review Board, appointed pursuant to New York City Charter §440(c)(5).

Mediation. "Mediation" shall mean an informal process, voluntarily agreed to by a complainant and the subject officer and conducted with the assistance of a neutral third party, engaged in for the purpose of fully and frankly discussing alleged misconduct and attempting to arrive at a mutually agreeable resolution of a complaint.

Police Department. "Police Department" shall mean the New York City Police Department.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

Executive Director amended City Record July 6, 2009 §1, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Rules of the City of New York

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38 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER A INTRODUCTION

§1-02 Jurisdiction.

The Board shall receive, investigate, hear, make findings and recommend action upon complaints by members of the public against uniformed members of the New York City Police Department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. The jurisdiction of the Board shall include the prosecution of substantiated civilian complaints pursuant to a Memorandum of Understanding (MOU) executed by the Board and the Police Department during the period that such MOU is applicable. The findings and recommendations of the Board, and the basis therefor, regarding case investigations and administrative prosecutions shall be submitted to the Police Commissioner.

HISTORICAL NOTE

Section amended City Record June 15, 2001 eff. July 15, 2001. [See T38-A Subchapter E footnote]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

Rules of the City of New York

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38 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER B INITIAL PROCEDURES*3

§1-11 Written Complaints.

Written complaints may be mailed to the Board office or may be submitted in person at that office during operating hours. Written complaints may be filed on forms furnished by the Board. The Board will accept written complaints filed at local precincts and forwarded by the Police Department.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

3

[Footnote 3]: * Subchapter B heading amended City Record July 6, 2009 §2, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER B INITIAL PROCEDURES*3

§1-12 Telephone or In-Person Complaints.

Telephone complaints will be received twenty-four hours a day, seven days a week by the Board. Complainants may also report complaints in person at the Board office during operating hours. Complaints may also be filed at public locations to be designated by the Board.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

3

[Footnote 3]: * Subchapter B heading amended City Record July 6, 2009 §2, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER B INITIAL PROCEDURES*3

§1-13 Referrals of Complaints.

(a) Where the Board receives allegations about persons or matters falling within the sole jurisdiction of another agency (and not that of the Board), the Board or the Executive Director shall refer such allegations to such other agency.

(b) Where the Board receives allegations about persons or matters falling partly within the sole jurisdiction of another agency (and not that of the Board) and partly within the joint jurisdiction of both the other agency and the Board, the Board or the Executive Director may refer the entire complaint to the other agency if in the determination of the Board or the Executive Director it is appropriate for the entire complaint to be investigated by one single agency.

HISTORICAL NOTE

Section amended City Record July 6, 2009 §3, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

3

[Footnote 3]: * Subchapter B heading amended City Record July 6, 2009 §2, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER B INITIAL PROCEDURES*3

§1-14 Notification to the Police Department.

With respect to complaints about officers and matters within the Board's jurisdiction, the Board shall notify the Police Department of the actions complained of within a reasonable period of time after receipt of the complaint.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

3

[Footnote 3]: * Subchapter B heading amended City Record July 6, 2009 §2, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER C FACT-FINDING PROCESS

§1-21 Statement of Policy.

The procedures to be followed in investigating complaints shall be such as in the opinion of the Board will best facilitate accurate, orderly and thorough fact-finding.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER C FACT-FINDING PROCESS

§1-22 Method of Investigation of Complaints.

In investigating a complaint, Board investigatory personnel may utilize one or more of the methods set forth in this subchapter, and any other techniques not enumerated here, as may be useful in conducting an investigation.

HISTORICAL NOTE

Section amended City Record July 6, 2009 §4, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

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CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER C FACT-FINDING PROCESS

§1-23 Obtaining Documentary and Other Evidence.

(a) Board investigators may make written or oral requests for information or docu- ments.

(b) Board investigators or, as provided in §1-32(c), a panel established pursuant to §1-31, may interview the complainant, the subject officer or witnesses.

(c) Board investigators may make field visits for purposes such as examining the site of alleged misconduct and interviewing witnesses.

(d) Upon a majority vote of members of the Board, subpoenas ad testificandum and duces tecum may be served. Board subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules.

(e) The Board may obtain records and other materials from the Police Department which are necessary for the investigation of complaints submitted to the Board, except such records and materials that cannot be disclosed by law. In the event that requests for records or other evidence are not complied with, investigators may request that the Board issue a subpoena duces tecum or a subpoena ad testificandum.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

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CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER C FACT-FINDING PROCESS

§1-24 Conduct of Interviews.

(a) It is the intent of these Rules not to alter the rights afforded to police officers by the Police Department Patrol Guide with respect to interviews so as to diminish such rights, including but not limited to the right to notice of an interview, the right to counsel, and the right not to be compelled to incriminate oneself.

(b) A member of the Police Department who is the subject of a complaint shall be given two business days notice prior to the date of an interview, to obtain and consult with counsel. A member of the Police Department who is a witness in an investigation of a complaint shall be given a period of time, up to two business days, to confer with counsel.

(c) All persons interviewed may be accompanied by up to two representatives, including counsel. Such counsel or representative may advise the person interviewed as circumstances may warrant, but may not otherwise participate in the proceeding.

(d) Prior to the commencement of the interviewing of a police officer, the following statement shall be read to such officer:

"You are being questioned as part of an official investigation of the Civilian Complaint Review Board. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the

rights and privileges guaranteed by the laws of the State of New York, the Constitution of this State and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation. If you refuse to testify or to answer questions relating to the performance of your official duties, your refusal will be reported to the Police Commissioner and you will be subject to Police Department charges which could result in your dismissal from the Police Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent Police Department charges."

(e) Interviews shall be scheduled at a reasonable hour, and reasonable requests for interview scheduling or rescheduling shall be accommodated. If possible, an interview with a police officer shall be scheduled when such officer is on duty and during daytime hours. Interviews may be conducted at the Board's offices or other locations designated by the Board.

(f) The interviewer shall inform a member of the Police Department of the name and position of the person in charge of the investigation, name and position of the interviewer, the identity of all persons present at the interview, whether the member is a subject or witness in the investigation, the nature of the complaint and information concerning all allegations, and the identity of witnesses and complainants, except that addresses need not be disclosed and confidential sources need not be identified unless they are witnesses to the alleged incident.

(g) The interviewer shall not use off-the-record questions, offensive language or threats, or promise of reward for answering questions.

(h) The interviewer shall regulate the duration of question periods with breaks for such purpose as meals, personal necessity and telephone calls. The interviewer shall record all recesses.

(i) Interviews shall be recorded either mechanically or by a stenographer.

(j) If a person participating in an interview needs an interpreter, he or she shall advise the Board investigator of such need as soon as possible after being notified of the date and time of the interview. A qualified interpreter will be obtained from an official registry of interpreters or another reliable source.

(k) Reasonable accommodations shall be made for persons with disabilities who are participating in an interview. Persons requiring such accommodations shall advise the Board investigator of such need as soon as possible after being notified of the date and time of the interview.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

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CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER D DISPOSITION OF CASES*4

§1-31 Assignment of Cases.

(a) The Chair shall assign to a panel consisting of at least three Board members, or may assign to the full Board for review, all cases which have been fully investigated, and such other cases or categories of cases as the Board may by resolution from time to time determine.

(b) Panel membership shall be determined by the Chair, but each panel shall consist of at least one member designated by the City Council, at least one designated by the Police Commissioner, and at least one designated by the Mayor. Panel membership shall be rotated on a regular basis.

HISTORICAL NOTE

Section amended City Record July 6, 2009 §6, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

4

[Footnote 4]: * Subchapter D heading amended City Record July 6, 2009 §5, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER D DISPOSITION OF CASES*4

§1-32 Panel or Board Review of Cases.

(a) The panel or the Board shall review the investigatory materials for each assigned case, and prepare a report of its findings and recommendations.

(b) The panel or the Board may, if it deems appropriate, return a case to investigative staff for further investigation or a panel may, upon approval of the Board, conduct additional fact-finding interviews in accordance with the provisions of §1-24.

(c) Panel findings and recommendations shall be deemed the findings and recommendations of the Board. However, upon request of a member of the panel, or upon the direction of the Chair at the request of any member of the Board, the case shall be referred to the full Board for its consideration.

HISTORICAL NOTE

Section amended City Record July 6, 2009 §7, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

4

[Footnote 4]: * Subchapter D heading amended City Record July 6, 2009 §5, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER D DISPOSITION OF CASES*4

§1-33 Case Dispositions.

(a) No finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the basis for any such finding or recommendation.

(b) Panels or the Board shall employ a "preponderance of the evidence" standard of proof in evaluating cases.

(c) A report of the findings and recommendations with respect to each case investigation reviewed shall be prepared and transmitted to the Police Commissioner. Where the disposition of one or more allegations is "Substantiated," as defined in subdivision (d) of this section, such report shall be forwarded in writing within five business days of such substantiation and shall include appropriate pedigree information regarding the subject officer, the case number and any other control or serial number assigned to the case, and a summary of the pertinent facts.

(d) The following categories of case investigation dispositions shall be used in reports to the Police Commissioner:

(1) Substantiated: the acts alleged did occur and did constitute misconduct.

(2) Unsubstantiated: there was insufficient evidence to establish whether or not there was an act of misconduct.

(3) Exonerated: the acts alleged did occur but did not constitute misconduct.

(4) Unfounded: the acts alleged did not occur.

(5) Complaint Withdrawn: the complainant voluntarily withdrew the complaint.

(6) Complainant Unavailable: the complainant could not be located.

(7) Victim Unavailable: the victim could not be located.

(8) Complainant Uncooperative: the participation of the complainant was insufficient to enable the Board to conduct a full investigation.

(9) Victim Uncooperative: the participation of the victim was insufficient to enable the Board to conduct a full investigation.

(10) Officer Unidentified: the board was unable to identify the officer who was the subject of the allegation.

(11) Referral: the complaint was referred to another agency.

(12) No Jurisdiction: the complaint does not fall within the jurisdiction of the Board.

(13) No Prima Facie Case: the complaint does not state a prima facie case.

(14) Mediated: the parties to the mediation agreed that the complaint should be considered as having been resolved through mediation.

(15) Mediation Attempted: the parties agreed to mediate the complaint but the civilian subsequently did not participate in the mediation.

(16) Miscellaneous: the subject of the complaint is not currently employed by the Police Department as a police officer.

(17) Other: as from time to time determined by the Board.

HISTORICAL NOTE

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

Subd. (c) amended City Record June 15, 2001 eff. July 15, 2001. [See T38-A Subchapter E footnote]

Subd. (d) amended City Record July 6, 2009 §8, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Subd. (d) open par amended City Record June 15, 2001 eff. July 15, 2001. [See T38-A Subchapter E

footnote]

FOOTNOTES

4

[Footnote 4]: * Subchapter D heading amended City Record July 6, 2009 §5, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER D DISPOSITION OF CASES*4

§1-34 Cases closed without a Full Investigation.

(a) The Board or the Executive Director may close without conducting a full investigation any case falling within categories (5) through (17) of §1-33.

(b) Prior to the closure of any case under § 1-34(a), board members must be afforded an opportunity to review such case.

HISTORICAL NOTE

Section added City Record July 6, 2009 §9, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

FOOTNOTES

4

[Footnote 4]: * Subchapter D heading amended City Record July 6, 2009 §5, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

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CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER E ADMINISTRATIVE PROSECUTION*1

§1-41 Introduction.

It is the intent of this subchapter to implement the provisions of the Memorandum of Understanding executed by the Board and the Police Department during the period that such MOU is applicable. Upon substantiation by the Board of one or more allegations of excessive use of force, abuse of authority, discourtesy or use of offensive language, the Board shall undertake the responsibility for administrative prosecution of the case. The Board shall independently conduct its administrative prosecution. At the conclusion of the administrative prosecution, the Board shall forward to the Commissioner a final recommendation reflecting the results of its prosecution of the case. The Commissioner shall retain in all respects the authority and discretion to make final disciplinary determinations.

HISTORICAL NOTE

Section added City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter E added City Record June 15, 2001 eff. June 25, 2001, note further provisions:

Statement of Substantial Need For Early Rule Implementation The Civilian Complaint Review Board (Board) hereby finds, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, that there is substantial need for the implementation, upon its publication in the City Record, of the Board's rule implementing the provisions of a Memorandum of Understanding (MOU) between the Board and the Police Department, pursuant to which the board will conduct administrative prosecutions of substantiated civilian complaints against Police Department uniformed officers in proceedings conducted by the Office of Administrative Trials and Hearings. The Memorandum of Understanding will take effect on June 25, 2001. The Board's schedule precluded adoption of these rule amendments prior to its meeting on June 13, 2001, and made necessary this finding to assure that the rule would be in effect no later than the effective date of the MOU. Prompt implementation of the rules, based on this finding and the Mayor's approval, will assure that the Board will be able to comply with the terms of the MOU on its effective date. The amendments to rules of the Police Department, which are necessary to conform the Police Department's rules to the terms of the MOU, were published in final form on May 24, 2001 and will be effective by operation of law thirty days thereafter, prior to the MOU's effective date. Statement of Basis and Purpose These proposed rules implement the terms of a Memorandum of Understanding between the Police Department and the Board, pursuant to which the Board will take over the administrative prosecution of cases where civilian complaints against uniformed police officers have been substantiated by the Board. Where charges and specifications have been preferred against such uniformed officers, the Board's staff will represent the Department at the required hearing, which will be conducted at the Office of Administrative Trials and Hearings. These rules set forth the procedures that will govern both the conduct of the adjudicative hearing and the role of the Board in those administrative prosecutions that do not result in formal hearings.

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CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER E ADMINISTRATIVE PROSECUTION*1

§1-42 Prosecutorial Discretion.

The Board may in its prosecutorial discretion consider all available levels of Police Department disciplinary penalties in evaluating a substantiated case ranging from informal discipline such as Instructions or Command Discipline through formal discipline of Charges and Specifications. The Board may conduct plea negotiations and reach agreements with subject officers and their attorneys, subject to the Commissioner's approval, or schedule cases for hearing before the New York City Office of Administrative Trials and Hearings (OATH). The Board may also elect to recommend that the case be dismissed or otherwise not be prosecuted.

HISTORICAL NOTE

Section added City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter E added City Record June 15, 2001 eff. June 25, 2001, note further provisions:

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CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER E ADMINISTRATIVE PROSECUTION*1

§1-43 Coordination with Police Department.

In the course of the administrative prosecution, the Board and Police Department shall communicate as necessary to ensure timely and effective prosecution as follows:

(a) The Police Department shall notify the Chair and the Executive Director if an expedited prosecution is necessary, and the Board shall make every reasonable effort to conclude the prosecution and provide a recommendation to the Commissioner within the requested time frame, including contacting OATH as necessary to request expedited procedures as provided in §1-26(c) of Title 48 of the Rules of the City of New York.

(b) The Board may request from the Police Department a summary of the subject officer's employment history, which shall be provided within ten business days of its receipt of the request. The Board may similarly request a summary of employment history for a witness officer upon demonstrating to the Police Department a particularized need for such summary based upon the facts and circumstances of a specific administrative prosecution.

(c) The Police Department shall advise the Board whether the subject officer is on probation, dismissal probation, or the subject of any other type of Police Department monitoring program or procedure relevant to the prosecution of the substantiated com- plaint.

(d) Where the Police Department determines that administrative prosecution of a substantiated civilian complaint

would be inadvisable or inappropriate for reasons outside the control of the Board, the Police Department may make a written request to the Chair and the Executive Director that the Board refrain from commencing or continuing its prosecution until such time as the prosecution would no longer interfere with a pending matter or otherwise be inappropriate. The request shall include any explanatory information that the Police Department can reasonably provide. Upon receiving such request, the Board shall not commence or continue a prosecution as requested until it receives a written notification from the Police Department no longer than twenty business days from the Police Department's determination that the prosecution need no longer be delayed.

(e) If the Board becomes aware of possible misconduct which falls outside its jurisdiction of excessive use of force, abuse of authority, discourtesy or use of offensive language, the Board shall immediately refer the allegation of other misconduct to the Police Department for investigation and shall not itself undertake the prosecution of such allegation. The Board shall provide assistance to the Department as requested for purposes of investigation or prosecution of the alleged misconduct. If necessary, the Board and the Police Department shall coordinate their separate prosecutions of such related cases.

HISTORICAL NOTE

Section added City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter E added City Record June 15, 2001 eff. June 25, 2001, note further provisions:

Statement of Substantial Need For Early Rule Implementation The Civilian Complaint Review Board (Board) hereby finds, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, that there is substantial need for the implementation, upon its publication in the City Record, of the Board's rule implementing the provisions of a Memorandum of Understanding (MOU) between the Board and the Police Department, pursuant to which the board will conduct administrative prosecutions of substantiated civilian complaints against Police Department uniformed officers in proceedings conducted by the Office of Administrative Trials and Hearings. The Memorandum of Understanding will take effect on June 25, 2001. The Board's schedule precluded adoption of these rule amendments prior to its meeting on June 13, 2001, and made necessary this finding to assure that the rule would be in effect no later than the effective date of the MOU. Prompt implementation of the rules, based on this finding and the Mayor's approval, will assure that the Board will be able to comply with the terms of the MOU on its effective date. The amendments to rules of the Police Department, which are necessary to conform the Police Department's rules to the terms of the MOU, were published in final form on May 24, 2001 and will be effective by operation of law thirty days thereafter, prior to the MOU's effective date. Statement of Basis and Purpose These proposed rules implement the terms of a Memorandum of Understanding between the Police Department and the Board, pursuant to which the Board will take over the administrative prosecution of cases where civilian complaints against uniformed police officers have been substantiated by the Board. Where charges and specifications have been preferred against such uniformed officers, the Board's staff will represent the Department at the required hearing, which will be conducted at the Office of Administrative Trials and Hearings. These rules set forth the procedures that will govern both the conduct of the adjudicative hearing and the role of the Board in those administrative prosecutions that do not result in formal hearings.

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SUBCHAPTER E ADMINISTRATIVE PROSECUTION*1

§1-44 Conclusion of Administrative Prosecution.

At the conclusion of the administrative prosecution, in all instances other than cases culminating in a report and recommendation by OATH, the Board shall forward to the Commissioner a final recommendation reflecting the results of its prosecution of the case. The Board shall include all relevant forms, memoranda and background information to assist the Commissioner in making and implementing a final disciplinary determination. If the case culminated in a hearing before OATH, upon receipt of a report and recommendation by OATH, CCRB may provide to the Police Commissioner a letter commenting on the OATH report and recommendation.

HISTORICAL NOTE

Section added City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter E added City Record June 15, 2001 eff. June 25, 2001, note further provisions:

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CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER E ADMINISTRATIVE PROSECUTION*1

§1-45 Police Commissioner's Determination.

(a) In all instances other than cases culminating in a report and recommendation by OATH, upon receiving the final recommendation of the Board with accompanying documents, the Commissioner may accept, reject, or modify the recommendation presented, or may ask the Board for additional investigative or background information in its possession. He or she may also request further investigation or development of the record in the case. If the Board's recommendation is rejected or modified, the Board will then be responsible for implementing the Police Commissioner's decision and taking the appropriate follow-up action as directed. After taking the appropriate follow-up action, the Board shall forward to the Police Commissioner a final recommendation as provided in §1-44.

(b) In cases culminating in a report and recommendation by OATH, the Police Commissioner may accept, reject, or modify the report and recommendation based upon the record presented. He may in the alternative remand the matter to OATH, stating his reasons therefor, with instructions for further proceedings as appropriate. In the event of such a remand, CCRB shall take appropriate steps in conformance with the reasons set forth in the Police Commissioner's statement for remand to reopen the case.

(c) The Department shall notify the Board of the final disciplinary result and specific penalty in each case within thirty calendar days of the imposition of the specific penalty.

HISTORICAL NOTE

Section added City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter E added City Record June 15, 2001 eff. June 25, 2001, note further provisions:

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER F MISCELLANEOUS MATTERS*2

§1-46 Meetings of the Board.

(a) The full Board shall meet at least one time each month, at which meeting it shall consider cases referred to it and conduct any other business.

(b) If a case has been referred to the Board, the Board may take such action as it deems appropriate, including, but not limited to, making its own findings and recommendations, remanding the case to a referring panel for further consideration or action, and remanding the case for further investigation.

HISTORICAL NOTE

Section renumbered (formerly §1-41) City Record June 15, 2001 eff. July 15, 2001.

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

2

[Footnote 2]: * Subchapter F relettered (formerly Subchapter E) City Record June 15, 2001 eff. July 15, 2001. §§1-41-1-45 renumbered 1-46-1-50.

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***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER F MISCELLANEOUS MATTERS*2

§1-47 Panel and Board Meetings: General Matters.

(a) If a Board member has a personal, business or other relationship or association with a party to or a witness in a case before a panel to which such member has been assigned, the member shall disclose this situation to the Chair, and shall request that the case be transferred to another panel. If a Board member has such relationship in a case before the full Board, the member should recuse himself or herself from deliberations or action in connection with that case.

(b) Board members must be present at a meeting of the Board or a panel in person or, subject to such limitations as the Board may by resolution from time to time determine, by videoconference in order to register their votes.

HISTORICAL NOTE

Section renumbered (formerly §1-42) City Record June 15, 2001 eff. July 15, 2001. [See T38-A Subchapter E footnote]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

Subd. (b) amended City Record July 6, 2009 §10, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

FOOTNOTES

2

[Footnote 2]: * Subchapter F relettered (formerly Subchapter E) City Record June 15, 2001 eff. July 15, 2001. §§1-41-1-45 renumbered 1-46-1-50.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER F MISCELLANEOUS MATTERS*2

§1-48 Communications with and Notifications to Complainants Regarding Status of Complaints.

(a) Within seven business days of the receipt of a complaint, the Board shall notify a complainant by telephone or letter that the Board has received his/her complaint, and shall identify the case number and staff member(s) assigned to the case.

(b) The Board shall advise a complainant by letter, within forty-five days of the filing of a complaint, of the status of his/her case. If the investigation is not completed within ninety days of the filing of a complaint, the Board shall again advise the complainant of the status of his/her case.

(c) The Board shall advise the complainant within five business days of the completion of the case investigation.

(d) The Board shall notify the Complainant by letter of its findings and recommendations regarding the case investigation within seven business days of the Board's submission of the findings and recommendations to the Police Commissioner. If the case is substantiated, the Board shall include notice to the complainant that the Board is responsible for undertaking the administrative prosecution of the complaint.

(e) Following an administrative prosecution, the Board shall notify the complainant by letter of the final action taken by the Commissioner within seven business days of the Board's receipt of the Commissioner's final decision.

(f) Where the parties have agreed to mediate a case, the provisions of paragraphs (b), (c) and (d) of this section shall not apply.

HISTORICAL NOTE

Section renumbered (formerly §1-43) City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

Subd. (d) amended City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

Subd. (e) added City Record June 15, 2001 eff. June 25, 2001. [See T38-A Subchapter E footnote]

Subd. (f) relettered (formerly subd. (e)) City Record June 15, 2001 eff. July 15, 2001. [See T38-A Subchapter E footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter F relettered (formerly Subchapter E) City Record June 15, 2001 eff. July 15, 2001. §§1-41-1-45 renumbered 1-46-1-50.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER F MISCELLANEOUS MATTERS*2

§1-49 Mediation.

(a) A complainant may choose to resolve a complaint by means of mediation, provided the subject officer agrees to mediation as provided herein, and unless the Board or a panel thereof determines that the complainant is not appropriate for mediation.

(b) Unless the Board or panel thereof determines that a complaint is not appropriate for mediation, a complainant requesting mediation and the subject officer shall be sent a notice formally offering them the opportunity to voluntarily engage in the mediation process.

(c) Both the complainant and the subject officer must agree to mediation within ten days of such notification being sent in order for mediation to proceed. In the event one or both parties do not agree to mediation, the complaint shall be referred to Board investigatory personnel for investigation. The mediator shall be designated by the Executive Director.

(d) Written notice of the time, date and location of the first mediation session shall provided to each party. Such notice shall be accompanied by a description of procedures and guidelines for mediation. Subsequent session(s) shall be scheduled by the mediator if the mediation is not completed at the first session.

(e) Those present at the mediation session shall include the complainant, the subject officer and the mediator. Where appropriate, arrangements may be made for a translator or interpreter to be present. In the case of a complainant

who is a minor, a parent or legal guardian shall be present. Where the Executive Director determines that a complainant who is an adult requires assistance in order to comprehend or participate in mediation, such adult may be accompanied by a family member or legal guardian. Parties' representatives or counsel may be available outside the room where the mediation is being conducted.

(f) All information discussed or statements made at a mediation session shall be held in confidence by the mediator, and the parties shall also agree in writing to maintain such confidentiality. No stenographic record, minutes or other record of the mediation session shall be maintained.

(g) The mediation session(s) shall continue as long as the participants believe that progress is being made toward the resolution of the issues. The mediation process shall terminate if either party announces its unwillingness to continue mediation, the mediator believes no progress is being made, or the complainant fails to attend two or more mediation sessions without good cause shown.

(h) If mediation is successful, the parties shall sign an agreement stating that each believes the issues have been satisfactorily resolved. The mediator shall advise the Board that the mediation has been successfully concluded, and the Board shall forward this information to the Police Commissioner.

(i) If the mediated case is not successfully resolved, the mediator shall notify Board staff of his or her intent to pursue a complaint, and the complaint shall be referred to Board investigatory staff for investigation.

HISTORICAL NOTE

Section renumbered (formerly §1-44) City Record June 15, 2001 eff. July 15, 2001. [See T38-A

Subchapter E footnote]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

2

[Footnote 2]: * Subchapter F relettered (formerly Subchapter E) City Record June 15, 2001 eff. July 15, 2001. §§1-41-1-45 renumbered 1-46-1-50.

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RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER F MISCELLANEOUS MATTERS*2

§1-50 Reconsideration or Reopening of Cases.

(a) The Board may on receipt of a written request from a complainant or victim or police officer re-open any case closed by a panel or the full board where new evidence or a previously unavailable or uncooperative witness becomes available and in the determination of such panel or full Board such new evidence or the prospective availability or cooperation of such witness may reasonably lead to a different finding or recommendation.

(b) The Executive Director may on receipt of a written request from a complainant or victim, re-open any case closed without a full investigation under §1-34.

(c) Where following receipt of a request to reopen a case closed without a full investigation under §1-34, the Executive Director decides not to reopen such case, such request shall (except as from time to time otherwise directed by the Board) be submitted to a panel or the full Board for its consideration.

(d) Any person considering a request to reopen a case shall have full discretion in making his or her determination, and may properly consider all relevant circumstances, including, but not limited to, any delays on the part of the person requesting that the case be reopened, new, material information as to the complainant, the subject officer or any civilian or police witness, and the practicability of conducting a full investigation of the allegations contained in the case within any applicable limitation period.

HISTORICAL NOTE

Section amended City Record July 6, 2009 §11, eff. Aug. 5, 2009. [See T38-A §1-51 Note 1]

Section renumbered (formerly §1-45) June 15, 2001 eff. July 15, 2001. [See T38-A Subchapter E

footnote]

Section added City Record Nov. 3, 1993 eff. Dec. 3, 1993.

FOOTNOTES

2

[Footnote 2]: * Subchapter F relettered (formerly Subchapter E) City Record June 15, 2001 eff. July 15, 2001. §§1-41-1-45 renumbered 1-46-1-50.

38 RCNY 1-51

RULES OF THE CITY OF NEW YORK

Title 38 Police Department

CHAPTER 1 RULES OF THE CIVILIAN COMPLAINT REVIEW BOARD

SUBCHAPTER F MISCELLANEOUS MATTERS*2

§1-51 Authority given to the Executive Director.

The authority given under these Rules to the Executive Director shall

(a) except in relation to § 1-13(b), be exercisable either by the Executive Director or by such members of the senior staff of the Board as the Executive Director may from time to time designate, and

(b) be subject to such limitations as the Board may by resolution from time to time determine.

HISTORICAL NOTE

Section added City Record July 6, 2009 §12, eff. Aug. 5, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 6, 2009:

Overview

The Civilian Complaint Review Board currently closes certain cases without conducting a full investigation, for example, when a complainant withdraws a complaint, cannot be located or does not co-operate with an investigation.

Under the Board's existing rules, such cases could only be closed following a vote by a panel of the Board.

During the period 2003 to 2007, 18,873 cases were submitted by staff to panels of the Board with the recommendation that they be closed without conducting a full investigation. The Board accepted such recommendation in 18,869 such cases. The Board, therefore, determined to amend the rules so as to authorize the Executive Director or an authorized senior staff member to close certain cases without their first being referred to a panel. Such authorization is subject to such limitations as may from time to time be determined by the Board.

The Board determined that the revised rule will permit cases to be closed without conducting a full investigation, in appropriate circumstances, more speedily and at less cost to the Board, without adversely affecting the interests of the public or of police officers.

The Board also conducted a review of its other rules, and determined that certain of them, such as the rule dealing with the referral of certain cases to other agencies and that dealing with the re-opening of cases, should be revised so as to provide greater clarity, consistency and efficiency.

Detailed Changes

Amended rule §1-13 clarifies the language dealing with the referral of complaints to other agencies and provides that where a complaint contains allegations falling partly within the sole jurisdiction of another agency and partly within the jurisdiction both of such other agency and of the Board, the Board or the Executive Director may refer the entire complaint to the other agency if the person making the determination determines that it is appropriate for the entire complaint to be investigated by one single agency.

Amended rule §1-22 is deleted, to the extent that it deals with complaints concerning persons or matters not within the jurisdiction of the Board or not stating a prima facie case. Such matters are now dealt with by §§1-33(12) and (13) and §1-34.

Amended rule §1-31 clarifies the language dealing with the assignment of cases to panels of the Board and codifies the existing practice regarding the assignment of Board members to panels, whereby each such panel contains at least one member designated by the city council, at least one designated by the police commissioner and at least one designated by the mayor.

The Amended rules delete §1-32(b), relating to cases recommended to be closed under §1-22, because the relevant provision of §1-22 is itself deleted. Such provision in §1-22 is replaced by §§1-33(12) and (13).

Amended rule §1-32(c) (formerly §1-32(d)) provides that cases referred to the full Board shall be so referred for consideration by the Board, and not, as at present, as provided in §1-41 (which concerns the administrative prosecution of cases by the Board). This change is to correct a manifest error.

Amended rule §1-33(d) simplifies certain terms used in case dispositions, so as to make them easier to understand, and defines other terms for the first time.

Amended rule §1-34 authorizes the Board or the Executive Director to close without conducting a full investigation cases in which a complainant voluntarily withdraws a complaint, a complainant or alleged victim cannot be located, the participation of a complainant or alleged victim was insufficient to enable the Board to conduct a full investigation, a subject officer cannot be identified or ceases to be employed by the police department as a police officer, a complaint is referred to another agency, does not fall within the jurisdiction of the Board or does not state a prima facie case, a case is mediated or a complainant or alleged victim agrees to mediate a case but subsequently does not participate in a mediation, or as from time to time determined by the Board. Prior to the closure of any case under §1-34, board members must be afforded an opportunity to review such case.

Amended rule §1-47 permits, subject to such limitations as the Board may by resolution from time to time determine, Board members to attend and vote by videoconference at a meeting of the Board or a panel.

Amended rule §1-50 changes the provisions concerning the re-opening of cases. Under the amended rule, the Executive Director may at the written request of a complainant or alleged victim re-open any case closed without a full investigation and must refer to a panel or the full Board for its decision any such request which he or she decides not to grant. The amended rule removes the requirement that any request to re-open a case be made within 18 months of its closure but provides that any person considering such a request shall have full discretion in making his or her determination and may properly consider, among other things, any delays on the part of the person requesting that the case be re-opened, and the practicability of conducting a full investigation within any applicable limitation period.

Amended rule §1-51 provides that where authority is granted under the rules to the Executive Director, such authority shall (except in relation to certain complaints containing allegations falling within the jurisdiction both of the Board and of another agency) be exercisable either by the Executive Director or by such members of the senior staff of the Board as the Executive Director may from time to time determine; and that the authority granted under the rules to the Executive Director shall be subject to such limitations as the Board may by resolution from time to time determine. This provision will ensure an appropriate degree of administrative flexibility, under the control of the Board, in the Board's operations.

FOOTNOTES

2

[Footnote 2]: * Subchapter F relettered (formerly Subchapter E) City Record June 15, 2001 eff. July 15, 2001. §§1-41-1-45 renumbered 1-46-1-50.

39 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 39 Department of Correction

CHAPTER 1 INMATE RULE BOOK*1

§1-01 Introduction.

This chapter sets forth rules relating to inmates of New York City Department of Correction ("Department") facilities. All inmates will also be provided separately with detailed information relating to their incarceration, including the subjects covered in section 1-02 of these rules.

HISTORICAL NOTE

Section repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of Chapter]

Former §1-01 List of Violations That May Result in Disciplinary Action in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of chapter]

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39 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 39 Department of Correction

CHAPTER 1 INMATE RULE BOOK*1

§1-02 Rights and Privileges.

(a) **Property.** When you first come to jail, any property that is taken from you that involves a criminal offense may be forwarded to the appropriate law enforcement agency for possible criminal prosecution and subject you to disciplinary action. Property taken from you that does not involve a criminal offense will be identified, receipted, stored and returned to you after your discharge from Department custody. Upon incarceration, you will be given more information about what property may be kept in jail and how to get other property back after discharge.

(b) **Recreation.** The Department may limit your right to participate in recreation for a security related reason in accordance with State Commission of Correction standards (9 NYCRR §7028.6). Upon incarceration, you will be given more information about how and when the Department can limit recreation.

(c) **Religious rights.** You may attend religious services with general population inmates unless you are found to pose a threat to the safety and security of the institution, including if the Department finds it likely that you will disrupt the service. Upon incarceration, you will be given more information about your religious rights in jail in accordance with New York City Board of Correction standards (§1-08).

(d) **Telephone calls.** The Department may limit your telephone calls if they constitute a threat to institutional safety or security, if you abuse the telephone regulations or in accordance with a court order. Upon incarceration, you will be given more information about your rights to telephone calls.

If you are affected by a determination made pursuant to this subdivision, you may appeal such determination to the New York City Board of Correction by providing written notice. Written notice must also be provided to the

Department of Correction and the Facility. You may also submit any additional relevant materials for the Board's consideration. The Board will issue a written response upon the appeal within five (5) business days after receiving the appeal.

(e) **Visits.** The Department may revoke, deny or limit your contact visits if they constitute a serious threat to institutional safety or security. Upon incarceration, you will be given more information about your right to visits and the permitted schedules of those visits.

If you are affected by a determination made pursuant to this subdivision, you may appeal such determination to the New York City Board of Correction and to the Commanding Officer by providing written notice. You may also submit any additional relevant materials for the Board's consideration. The Board, or its designee, will issue a written decision upon the appeal within five (5) business days after receiving notice of the requested review.

HISTORICAL NOTE

Section repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end

of Chapter]

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of chapter]

39 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 39 Department of Correction

CHAPTER 1 INMATE RULE BOOK*1

§1-03 Rules of Conduct.

(a) **Introduction.** This section sets forth the behavior that is prohibited in Department of Correction ("Department") facilities. The grade of each offense is listed. The acts of conspiracy, attempt, and accessory will be punishable to the same degree as the actual offense involved.

(b) **Definitions.** (1) "Accessory" shall mean assisting in any way in the violation of a Department rule, before, during or after such violation.

(2) "Any person" shall include, but not be limited to, uniformed and civilian Department staff, medical staff, contractors and their employees, volunteers, visitors and inmates.

(3) "Attempt" shall mean any act that is intended to and tends to lead to a violation of a Department rule.

(4) "Contraband" shall mean any item that is not sold in the commissary, that is not on the approved list of permissible items, that is possessed in more than the approved amount, or that the inmate does not have permission to possess. Contraband includes items that may disrupt the safety, security, good order and discipline of the facility. Any item that is illegal for an individual not on Department property to possess is also illegal to use or possess on Department property. Possession of contraband may subject an inmate to criminal prosecution as well as disciplinary action. Any person who tries to introduce contraband into a facility may also be subject to criminal prosecution.

(5) "Conspiracy" shall mean an agreement between one or more persons to violate a Department rule.

(6) "Good Time" shall mean a discretionary reduction of up to one third of the term of commitment for a definite sentence or certain civil commitments, as allowed by the New York State Correction Law.

(7) "Security Risk Group" shall mean persons such as gang members, intended or actual contraband recipients, and weapons carriers or users, whose actions violate laws or established rules of conduct, or persons who belong to groups whose purpose is antithetical to established law enforcement authority.

(8) "Unauthorized group" shall mean five or more inmates remaining in close physical proximity to each other when not authorized to do so by Department personnel.

(c) **Prohibited conduct.** (1) **Arson (setting fires)**

Grade I:

100.10. An inmate is guilty of arson when he or she intentionally starts or attempts to start any fire or causes or attempts to cause any explosion.

(2) **Assault and Fighting**

Grade I:

101.10. An inmate is guilty of assault on staff when he or she injures or attempts to injure any staff member, or when he or she spits on or throws any object or substance at any staff member. Assault or attempted assault on staff is always a Grade I offense.

101.11: An inmate is guilty of Grade I assault when he or she injures any other person, or when he or she spits on or throws any object or substance at any other person.

101.12: An inmate is guilty of Grade I assault on an inmate when he or she injures any other inmate, or when he or she spits on or throws any object or substance at any other inmate.

101.13: An inmate is guilty of assault with a weapon when he or she uses any item to assault or attempt to assault any person.

101.14: An inmate is guilty of Grade I fighting when he or she engages in a physical struggle with another inmate that results in injury to any person.

Grade II:

101.16: An inmate is guilty of Grade II assault when he or she attempts to injure any person other than a staff member, without using a weapon, but does not cause injury.

101.17: An inmate is guilty of Grade II fighting when he or she engages in a physical struggle with another inmate that does not result in injury.

Grade III:

101.18: An inmate is guilty of Grade III fighting when he or she engages in a non-violent physical struggle with another person such as horseplay, boxing, wrestling or sparring.

(3) **Bribery**

Grade I:

102.10: An inmate is guilty of bribery when he or she gives or attempts to give any benefit, including but not limited to money or valuable items, to any person, with the intent of influencing that person's conduct or obtaining a benefit for himself or herself.

(4) **Contraband**

Grade I:

103.05: Inmates shall not possess any tobacco-related products including, but not limited to, cigarettes, cigars, loose tobacco, chewing tobacco, rolling paper, matches and lighters.

103.07: Inmates shall not sell, exchange or distribute tobacco-related products including, but not limited to, cigarettes, cigars, loose tobacco, chewing tobacco, matches and lighters.

103.08: Inmates shall not make, possess, sell or exchange any amount of alcoholic beverage.

103.10: Inmates shall not make, possess, sell or exchange any type of contraband weapon. Any object that could be used as a weapon may be classified as a weapon.

103.10.5: Inmates shall not possess or transport a Department-issued razor outside the housing area.

103.10.6: Inmates shall return all Department-issued razors after shaving is completed, in accordance with Department or facility procedures. Razors shall be returned in the same condition as received; for example, blade and handle shall be intact.

103.11: Inmates shall not make, possess, sell, give or exchange any amount of narcotic, narcotic paraphernalia, or any other controlled substance.

103.12: Inmates shall not make, possess, sell, give or exchange any type of escape paraphernalia. Where there is the likelihood that an item can be used to aid an escape, it may be classified as escape paraphernalia. Keys, possession of identification belonging to another person, or fictitious person, transferring an inmate's identification to another, possession of employee clothing, or any other articles which would aid in an escape, or which suggest that an escape is being planned, are contraband.

103.12.5: Inmates shall not possess any type of electronic telecommunication and/or recording device or any part of such instrument, which is designed to transmit and/or receive telephonic, electronic, digital, cellular or radio communications The term "telecommunication device" shall include, but not be limited to, any type of instrument, device, machine or equipment which is designed to transmit and/or receive telephonic, electronic, digital, cellular or radio signals or communications or any part of such instrument, device, machine or equipment as well as any type of instrument designed to have sound, or image recording abilities and shall include, but not be limited to, a cellular or digital phone, a pager, a two-way radio text messaging or modem device (including a modem equipment device), a camera, a video recorder and a tape or digital recording device, or any other device that has such capabilities. (Radios sold in commissary are excluded from this prohibition.) Inmates shall not possess any type of device or any part of such instrument designed to have sound and/or image recording or capturing capabilities. Such devices shall include, but not be limited to, cameras (digital or film), video recorders, and tape or digital recording devices. Inmates are also prohibited from possessing any type of phone or battery charger, or A/C adapter for any electronic device prohibited by this rule.

103.12.6: Inmates shall not possess any contraband with intent to sell or distribute such contraband.

103.12.7: An inmate is guilty of the offense of Possession of Contraband Grade I when such inmate possesses money whose value exceeds twenty (20) dollars in cash or checks. Money confiscated as contraband will be deposited

in the City's treasury and will not be returned to the inmate.

Grade II:

103.13: Inmates shall not sell or exchange prescription drugs or non-prescription drugs. Inmates shall not possess prescription drugs that they are not authorized by medical staff to possess.

103.13.5: Inmates shall not possess prescription or non-prescription drugs in quantities in excess of that authorized by medical staff. Inmates are not authorized to possess expired prescription medication or drugs.

103.13.6: Inmates are not authorized to possess any drug that by prescription, or by medical order, must be ingested in view of Department and/or medical staff.

103.13.7: Inmates shall not possess more than one Department-issued razor.

103.14: Inmates shall not make, possess, sell, exchange, use or display any item that identifies the inmate as a member or associate of a Security Risk Group or of a gang. Articles of religious significance that are Security Risk Group identifiers shall only be considered contraband if they are displayed. Incidental or inadvertent exposure of the item (for example, while showering, saying the rosary or other religious observance, dressing or undressing or sleeping) shall not be considered "display" under this rule.

103.15: An inmate is guilty of the offense of Possession of Contraband Grade II when such inmate possesses money not in excess of twenty (20) dollars, or checks or credit cards. Money confiscated as contraband will be deposited in the City's treasury and will not be returned to the inmate.

Grade III:

103.16: Inmates shall not possess unauthorized hobby materials, art supplies or tattooing equipment, or writing implements.

103.17: Inmates shall not possess unauthorized amounts of jewelry, clothing, food, or personal property.

103.18: Inmates shall not possess unauthorized amounts of City-issued property.

103.19: Inmates shall not possess any other unauthorized items not specifically listed within this section.

(5) **Count Procedures**

Grade II:

104.10: Inmates shall not intentionally cause a miscount.

104.11: Inmates shall not intentionally delay the count.

(6) **Creating a Fire, Health or Safety Hazard**

Grade II:

105.10: Inmates shall not create a fire hazard, health hazard, or other safety hazard.

105.11: Inmates shall not tamper with any fire safety equipment.

105.12: Inmates shall not cause any false alarms about a fire, claimed health emergency, or create any kind of disturbance or security problem.

105.13: Inmates shall not flood any living area or other area in the facility.

Grade III:

105.14: Inmates shall not store food in their housing area or any work place, except food items bought in the commissary, which must be stored in the food containers provided.

105.15: Inmates shall not litter, spit, or throw garbage or any kind of waste or substance.

105.16: Inmates shall follow all local facility rules relating to fire, health or safety.

105.17: Inmates shall clean their cell or living area, toilet bowl, sink and all other furnishings every day. They must keep their cells and beds neatly arranged. Before leaving their cells or living areas for any purpose, they must clean their cells or areas and make their beds.

105.19: Inmates shall not obscure, block, obstruct, mark up, write on, or post any pictures or place any other articles on Department property, including any walls, windows, cells, or lighting fixtures.

105.20: Inmates shall not cook in any living area, including any cell.

105.22: Inmates must keep themselves and their clothes clean.

105.24: Inmates shall not block the view into or out of any cell by putting anything on the bars of the cell or on any cell door, cell door window or cell window, in a manner that would obstruct the view into or out of the cell.

(7) **Demonstrations**

Grade I:

106.10: Inmates shall not lead, attempt to lead or encourage others to participate in boycotts, work stoppages, or other demonstrations that interrupt the routine of the facility.

106.11: Inmates shall not participate in boycotts, work stoppages, or other demonstrations.

(8) **Destruction of Property**

Grade I:

107.10: An inmate is guilty of the offense of Destruction of Property Grade I when such inmate misuses, defaces, or destroys City property, or private property belonging to another, with a value greater than one hundred dollars ($100.00).

Grade II:

107.11: An inmate is guilty of the offense of Destruction of Property Grade II when such inmate misuses, defaces, or destroys City property, or private property belonging to another, with a value between ten dollars ($10.00) and one hundred dollars ($100.00).

Grade III:

107.12: An inmate is guilty of the offense of Destruction of Property Grade III when such inmate defaces or destroys City property, or private property belonging to another, with a value of ten dollars ($10.00) or less.

(9) **Disorderly Conduct**

Grade III:

108.10: Inmates shall not shout out to, curse, use abusive language, or make obscene gestures towards any person.

108.11: Inmates shall not behave in a loud and noisy manner.

(10) **Disrespect for Staff**

Grade I:

109.10: Inmates shall not physically resist staff members.

109.11: Inmates shall not harass or annoy staff members by touching or rubbing against them.

Grade II:

109.12: Inmates shall not verbally abuse or harass staff members, or make obscene gestures towards any staff members.

(11) **Disrupting Institutional Programs**

Grade II:

110.10: Inmates shall not interfere with or disrupt institutional services, programs, or special activities.

(12) **Escape**

Grade I:

111.10 Inmates shall not escape or aid others to escape, or attempt to escape or aid others to escape. Exiting Department property, a Department facility, or vehicle without permission from Department staff is an escape.

(13) **Extortion**

Grade I:

112.10: Inmates shall not make threats, spoken, in writing or by gesture, against a staff member for the purpose of obtaining any benefit.

Grade II:

112.11: Inmates shall not make any threats, spoken, in writing or by any gesture, against any person other than a staff member for the purpose of obtaining any benefit.

(14) **False Statements**

Grade II:

112.50: Inmates shall not provide to Department officials, or officials from other governmental entities, false oral or written statements for any purpose.

(15) **Gambling**

Grade III:

113.10: Inmates shall not engage in any form of gambling.

(16) **Hostage Taking**

Grade I:

114.10: Inmates shall not take or hold any person hostage.

(17) **Identification Procedures**

Grade III:

115.10: Inmates shall carry and display their Department ID cards clipped onto the outermost garment at all times when outside their cell or sleeping quarters.

115.11: Inmates shall promptly produce their Department ID cards at the direction of any staff member.

115.12: Inmates shall report the loss of their ID cards promptly to appropriate staff members. Inmates shall be charged a fee of $6.00 for a new identification card with or without a clip. There will be no charge for the clip alone.

(18) **Impersonation**

Grade I:

116.10: Inmates shall not impersonate any staff member in any way.

Grade II:

116.11: Inmates shall not impersonate another inmate or any other person in any way.

(19) **Inmate Movement**

Grade II:

117.10: Inmates shall follow facility rules and staff orders relating to movement inside and outside the facility, including, but not limited to, rules and orders dealing with seating, lock-in and lock-out.

Grade III:

117.11: Inmates shall not be out of their assigned area, including being in a cell to which they are not assigned, nor shall inmates leave an assigned area such as a work area or program area, without authorization.

(20) **Purchase, Sale or Exchange of Services or Property**

Grade III:

119.10: Inmates shall not sell, buy or exchange services or personal property with any other inmate without permission.

(21) **Refusal To Obey a Direct Order**

Grade II:

120.10: Inmates shall obey all orders of Department staff promptly and completely. It shall be a Grade II offense to fail to obey the following orders: to stop fighting with or assaulting another person, to be frisked, to have a cell

searched, to be locked-in and/or locked-out, to disperse an unauthorized assembly, to identify oneself, to go to court, and to cooperate in admission procedures. It shall be a Grade II offense to fail to obey any order given to an inmate when the inmate is outside the facility, and when any order is given in any emergency situation.

Grade III:

120.11: It shall be a Grade III offense to refuse to obey any other staff order promptly and completely.

(22) **Rioting**

Grade I:

121.10: Inmates shall not take any action with the intention of taking control over any area of any facility. Inmates in groups must not use or threaten violence against any person or property.

121.12: Inmates shall not encourage or in any way persuade other inmates to take any action in order to take control over any area of the facility, or to use or threaten violence against any person or property.

(23) **Sex Offenses**

Grade I:

122.10: Inmates shall not force or in any way coerce any person to engage in sexual activities.

Grade II:

122.11: Inmates shall not voluntarily engage in sexual activity with any other person. 122.12: Inmates shall not expose the private parts of their bodies in a lewd manner. Grade III:

122.13: Inmates shall not request, solicit or otherwise encourage any person to engage in sexual activity.

(24) **Smuggling**

Grade I:

123.10: Inmates shall be guilty of Grade I smuggling if, by their own actions or acting in concert with others, they smuggle weapons, drugs or drug-related products, alcohol, tobacco or tobacco related products, or escape paraphernalia into or out of the facility.

Grade III:

123.11: Inmates shall be guilty of Grade III smuggling if, by their own actions or acting in concert with others, they smuggle contraband other than that listed in section 123.10 of these rules.

(25) **Stealing; Possession of Stolen Property**

Grade II:

124.10: Inmates shall not steal property belonging to any other person or to the City whether that property is of any or no monetary value.

Grade II:

124.11: Inmates shall not possess property belonging to any other person or to the City whether that property is of

any or no monetary value.

(26) **Tampering With Documents**

Grade II:

125.10: Inmates shall not destroy, tamper with, change, counterfeit, or give other inmates any institutional documents, passes or ID Cards.

125.11: Inmates shall not forge the signature of staff, an inmate, or any other person on any documents, institutional or otherwise.

(27) **Tampering With Security Devices**

Grade I:

126.10: Inmates shall not tamper with, destroy, or sabotage any security related devices or equipment.

(28) **Threats**

Grade I:

127.10 Inmates shall not make any threat whether spoken, in writing, or by gesture, against any staff member.

Grade II:

127.11 Inmates shall not make any threat whether spoken, in writing, or by gesture, against any person other than a staff member.

(29) **Unauthorized Assembly**

Grade I:

128.10: Inmates shall not gather in unauthorized groups anywhere.

(30) **Refusal to Provide Sample for DNA Bank**

Grade 1:

129.10: Inmates shall not refuse to provide a DNA sample if they meet the criteria as set forth in Article 49-B of the New York State Executive Law qualifying a person as a designated offender. A designated offender is a person convicted and sentenced for charges specified in subdivision seven (7) of §995 of Article 49-B of the New York State Executive Law, including, but not limited to Sex Offenses, Drug Offenses, and Dangerous Weapons Offenses.

(31) **Refusal to Provide Sample for Random Drug/Alcohol Testing**

Grade I:

130.10: Inmates shall not refuse to provide a urine, hair, saliva, or other sample, according to the Department's policy and procedures, when they have been notified by the head of the facility or his/her designee that they have been selected for drug/alcohol testing, whether by random selection or based on reasonable suspicion.

(32) **Testing Positive for Alcohol or Illegal Drugs/Substances**

Grade I:

130.11 Inmates shall not test positive for nor be found under the influence of alcohol or illegal drugs/substances.

Grade I:

130.12: Inmates shall not adulterate or tamper with, or attempt to adulterate or tamper with a urine sample or offer as their own a urine sample of another individual.

(33) **Acts of Hate**

Grade I:

131.00: Inmates shall not engage in acts of hate against any person due to a belief or perception regarding such person's race, color, national origin, affiliation with any group, religion, religious practice, age, gender, disability, or sexual orientation.

131.10 Any action that targets a person or group in a negative and or hostile manner is strictly prohibited. Inmates shall not intentionally commit any verbal and or physical offense against staff, inmates, or visitors, in whole or substantial part based on the other person's or persons' race, religion, color, national origin, group affiliation, age, gender or sexual orientation.

HISTORICAL NOTE

Section repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of Chapter]

Former §1-03 Inmate Discipline in original publication July 1, 1991; amended in part City Record July 30, 2001.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of chapter]

Rules of the City of New York

***** Current through December 2009 ****

39 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 39 Department of Correction

CHAPTER 1 INMATE RULE BOOK*1

§1-04 Hearing Procedures.

This section sets forth hearing procedures.

(a) **General procedures.** (1) When you are placed against your will in any of the most restrictive security categories, including punitive segregation, you will be given written notice of:

(i) The reasons for the designation.

(ii) The evidence relied upon. The Department is not required to provide you with the source of confidential information.

(iii) The right to a hearing before an impartial Adjudication Captain appointed from the Adjudication Unit.

(iv) Your rights at the hearing.

(b) **Disciplinary hearing procedures.**

(1) Pre-Hearing Detention (PHD). Where you are placed in Pre-Hearing Detention (PHD) prior to your disciplinary hearing, the infraction hearing will be completed within three (3) business days of your transfer to PHD. If the infraction hearing cannot be completed within three (3) business days, the Adjudication Captain will assess whether it is likely that a hearing will be completed within another three (3) business days. PHD placement may be extended once for a maximum of another three (3) business days. If the hearing is not completed within that time the Chief of Facility Operations or his/her designee shall determine whether you should be placed in Close Custody.

(2) Disciplinary Infraction Hearings. If you are not placed in PHD, the infraction hearing will take place within three (3) business days after you receive written notice, unless any further delay is justified in accordance with Directive 6500R-B III.C.2.

Hearings may be held in absentia (that is, without you present) only under the following circumstances:

(i) You are notified of the hearing and refuse to appear; or

(ii) You appear and are extremely disruptive, causing a situation, which is unduly hazardous to institutional safety, and necessitating your removal from the hearing room thus constituting a constructive refusal to appear.

When either of these situations arises, the justification for holding the hearing in absentia shall be clearly documented in the Adjudication Captain's decision.

(3) If you request a hearing you have the following rights:

(i) To personally appear.

(ii) To make statements.

(iii) To present material, relevant, and non-duplicative evidence.

(iv) To have witnesses testify at the hearing, provided they are reasonably available and attending the infraction hearing will not be unduly hazardous to the institutional safety or correctional goals.

(v) If you are illiterate or if your case is very complicated, you have a right to be helped by a "hearing facilitator" (not a lawyer).

(vi) If you do not understand or are not able to communicate in English well enough to conduct the hearing in English, you have a right to an interpreter.

(vii) You have a right to appeal an adverse decision.

(c) **Close Custody and Close Custody/Protective Custody.**

(1) If you are transferred to close custody (CC), including protective custody (CC/PC), the Department will determine within two (2) business days whether you should continue in such housing. If you do not consent to a decision to continue CC or CC/PC placement, you will be provided with written notice as set forth in §1-04(a)(1).

(2) The hearing will be held no sooner than 24 hours and no later than three (3) business days after you receive the written notice of your Close Custody security designation, unless an adjournment is required or for one of the reasons set forth in Directive 6006R-C III. E. 8.

(3) The Adjudication Captain will recommend whether you should remain in CC or CC/PC to the Chief of Facility Operations in writing within one (1) business day after the hearing. You will receive a copy of the decision of the Chief of Facility Operations or designee.

(4) If you are placed in CC or CC/PC, the Department will review your case every twenty-eight (28) days to see if you should remain in CC or CC/PC. You will be notified in writing of the results of that review.

(5) If you request a hearing you will have the following rights:

(i) To personally appear.

(ii) To be informed of the evidence against you that resulted in the designation.

(iii) The opportunity to make a statement.

(iv) To call witnesses, subject to the Adjudication Captain's discretion.

(v) To present evidence.

(vi) The right to a written determination with reasons.

(d) **Miscellaneous.** (1) If you are illiterate, if your case is very complicated, or a pre-hearing transfer has restricted access to potential witnesses, you have a right to be helped by a "hearing facilitator" (not a lawyer). In hearings other than disciplinary infraction hearings, the Department may in its discretion allow you to have a lawyer present who is willing to represent you.

(2) If you do not understand English an interpreter will be provided.

(3) The proceedings of the hearing are recorded.

HISTORICAL NOTE

Section added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of Chapter]

CASE AND ADMINISTRATIVE NOTES

¶ 1. An inmate's right to present witnesses is limited because of the danger which may result from violence or intimidation directed at other inmates or staff. Thus, an inmate responding to charges at a disciplinary hearing has no unqualified right to present witnesses, and may not confront or cross-examine adverse witnesses. Otero v. New York City Dept. of Corrections, 290 A.D.2d 272, 735 N.Y.S.2d 768 (1st Dept. 2002).

FOOTNOTES

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[Footnote 1]: * Chapter repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of chapter]

Rules of the City of New York

***** Current through December 2009 ****

39 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 39 Department of Correction

CHAPTER 1 INMATE RULE BOOK*1

§1-05 Penalties.

(a) **Introduction.** If you are found guilty of violating a Department rule of conduct, your penalty will depend on the seriousness of your offense. Grade I offenses are the most serious and Grade III offenses are the least serious. The penalty will also depend on the facts and circumstances of your case. If you have a good explanation or justification for your actions-what is known as "mitigating circumstances"-you may receive a less severe penalty.

Any of the penalties set forth below, or a combination of them, may be imposed on you for violating Department rules of conduct.

(b) **Reprimand.** You may lose one or more privileges, temporarily or permanently, except that:

(i) You will not be deprived of the right to receive visitors, although contact visits may be replaced with non-contact visits.

(ii) You will not be deprived of the right to send or receive mail.

(iii) You will not be deprived of the right to contact legal counsel.

(iv) You will not be deprived of the right to have recreation as a sanction for an infraction.

(c) **Loss of Good Time.** If you are sentenced and serving your time in a Department facility, you may lose good time.

(i) You may lose all your good time for a Grade I offense.

(ii) The maximum that you can lose for a Grade II offense is two-thirds of all of your good time.

(iii) The maximum that you can lose for a Grade III offense is one-third of all of your good time.

(d) **Punitive Segregation.**

(i) The maximum period of punitive segregation for a Grade I offense is ninety (90) days for each disciplinary charge.

(ii) The maximum period for a Grade II offense is twenty (20) days for each disciplinary charge.

(iii) The maximum period for a Grade III offense is ten (10) days for each disciplinary charge.

(e) **Restitution.** If you are found guilty of damaging or destroying City property, you may be ordered to pay restitution, which can be as much as the replacement cost of the item or property, plus the labor costs of fixing or replacing the item you damaged or destroyed. If you are found guilty of an assault that causes a need for medical services, you can be ordered to make a restitution payment towards the cost to the City of providing such medical services.

(f) **Repeated offenses.** The third time you are found guilty of a rule of conduct violation for the same offense during the same period of incarceration, you may be sentenced to a penalty that applies to the next higher grade of offenses. For example, the third time you are found guilty of violating a specific Grade III offense during the same period of incarceration, you may be given a Grade II penalty. Similarly, the third time you are found guilty of violating a specific Grade II offense during the same period of incarceration, you may be given a Grade I penalty.

(g) **Surcharge.** A disciplinary surcharge, in the maximum amount allowed by law, may be imposed on you for violating a rule of conduct.

HISTORICAL NOTE

Section added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of Chapter]

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of chapter]

6 of 6 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

39 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 39 Department of Correction

CHAPTER 1 INMATE RULE BOOK*1

§1-06 Appeals.

You have the right to appeal an adverse decision rendered by the Adjudication Captain within two (2) business days of service of the decision. If you have been sentenced to a total of thirty (30) days or more of punitive segregation or loss of all your good time on any one (1) Notice of Disciplinary Disposition (6500D), your appeal shall be forwarded to the General Counsel in the Department's Legal Division. Within five (5) business days of the receipt of your appeal, you will receive a written decision from the General Counsel regarding such appeal, unless further documentation/information is required by the General Counsel to decide your appeal. In those cases, the five (5) business day limit shall be extended and the reasons for the extensions will be noted on the General Counsel's decision to you. If you receive an unfavorable decision from General Counsel within ten (10) business days of the receipt of your appeal, you may file a petition for a writ under Article 78 of the CPLR. If you are sentenced to less than thirty (30) days punitive segregation or loss of less than all of your good time, you may appeal that decision to the Warden of the facility where the infraction occurred.

HISTORICAL NOTE

Section added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of Chapter]

STATEMENTS OF BASIS AND PURPOSE 1. Statement of Basis and Purpose in City Record Sept. 12, 2007: The Commissioner of the New York City Department of Correction is authorized by Sections 389, 623 and 1043 of the City Charter and §9-114 of the Administrative Code to adopt rules relating to the management of Department of Correction facilities and the conduct of inmates in such facilities. **General Description of Changes** The proposed rules would amend Sections 1-01, 1-02 and 1-03 of Title 39 of the Rules of the City of New York. The purpose of the

proposed rules is to further deter inmate misconduct and increase inmate compliance with institutional rules and regulations, thereby maintaining the good order of and increasing safety at the City's correctional institutions. The proposed rules incorporate many of the previously promulgated rules of conduct and also include new prohibitions, including: testing positive for alcohol or illegal drugs/substances; refusing to provide a sample for random drug/alcohol and possessing electronic telecommunication and/or recording devices. In addition, the penalties for violations of certain rules of conduct have been increased. These additional rules and enhanced penalties have been determined to be necessary to further deter the entrance and use of contraband into Department of Correction facilities by inmates or their agents and to further deter misconduct, thereby positively affecting the good order of, and safety at, the City's correctional institutions. Specific Changes Initially Published for Comment The list of areas of prohibited behavior in former §1-01 was omitted as duplicative of the list of rules of conduct fully described in §1-03. Proposed §1-01 introduces the Inmate Rule Book and informs the public that all inmates will be provided separately with additional information on certain subjects of these rules. Former §1-02(a), "Due process-detainees in high security categories", has been updated and renumbered as §1-04, entitled "Hearing Procedures". Significant amendments include the notification that the Department is not required to provide inmates with the source of confidential information (1-03(a)(1)(ii)); a clarification of the requirements to permit inmates to call witnesses at their due process hearings (1-03(a)(2)(iii)) and of the right to cross-examine witnesses (1-03(a)(2)(iv)); and the renaming of the "counsel substitute" as "hearing facilitator". Former §1-02(b), "Homosexual housing", has been deleted from these rules because the Department no longer designates any housing areas as homosexual housing. Former §1-02(c), "Centrally monitored case", has been deleted from these rules because the designation of an inmate as a "centrally monitored case" is an internal administrative categorization that does not itself affect housing, method of restraint, or any other incident of confinement that implicates an inmate's due process rights. Former §1-02(d), "Confiscation of property", has been clarified and replaced with proposed §1-02(a), "Property". Former §1-02(e), "Recreation", has been clarified and replaced with proposed §1-02(b), "Recreation". Former §1-02(f), "Religious services", has been clarified and replaced with proposed §1-02(c), "Religious rights". Former §1-02(g), "Telephone calls", has been clarified and replaced with proposed §1-02(d), "Telephone calls". Former §1-02(h), "Visiting", has been clarified and replaced with proposed §1-02(e), "Visits". Former §1-03, "Inmate Discipline", has been renamed "Rules of Conduct". Former §1-03(a) has been consolidated with former §1-02(a) as a proposed §1-04, "Hearing Procedures", which is described above. Former §1-03(b), "Penalties that can be administered", and 1-03(c), "Normative range of penalties", have been consolidated and renumbered as proposed §1-05, "Penalties". The majority of the changes in these sections are for clarification only. Additionally, the maximum period of punitive segregation for all Grade I offenses will be 90 days for each disciplinary charge (proposed §1-05(d)(1)). Former §1-03(d), "Categories of offenses and consequent penalties", has been reorganized and renumbered as proposed §1-03, "Rules of Conduct". Proposed §1-03(a) introduces the rules and states that the acts of conspiracy, attempt, and accessory will be punishable to the same degree as the actual offense involved. Proposed §1-03(b) would provide definitions for the terms "accessory", "any person", "attempt", "contraband", "conspiracy", "good time", "security risk group", and "unauthorized group". Proposed §1-03(c), "Prohibited conduct", lists the specific actions that are prohibited for inmates in Department custody, with the grade of each offense. This section has been edited for clarity and reorganized to incorporate the rule numbering in effect in the Department. Additionally, the following conduct is now prohibited: The possession, sale, exchange, or distribution of tobacco and tobacco-related products (proposed Rules 103.05 and 103.07) and alcohol (proposed Rule 103.08) The possession of any type of electronic telecommunication and/or recording device or part thereof (proposed Rule 103.12.5) The refusal to provide a DNA sample as required by law for designated offenders (proposed Rule 129.10) The refusal to provide a sample for random drug/alcohol testing (proposed Rule 130.10) Testing positive for alcohol or drugs (proposed Rules 130.11 and 130.12) Acts of hate (proposed Rules 131.00 and 131.10) Changes Made After Receiving Comments The Department received and reviewed comments from the public after publishing the proposed rules in the City Record on March 12, 2007. The following changes to the proposal have been made as a result of some of these comments: §1-02 Rights and Privileges §1-02 (b) Recreation: This subdivision was amended to indicate that an inmate's right to participate in recreation for a security-related reason will be governed by the standards promulgated by the State Commission of Correction (9 NYCRR §7028.6). §1-02(c) Religious rights: This section is clarified by providing that inmates are to receive more information about their religious rights in jail in accordance with standards promulgated by the State Board of Correction (§1-08). §1-02(d) Telephone calls: This subdivision has been amended to conform to

existing local rules. In addition, the right to appeal a Department decision regarding telephone calls is now expressly set forth in this subdivision. §1-02 (e) Visits: The right to appeal a Department decision regarding visits is now expressly set forth in this subdivision. §1-03 Rules of Conduct §104.10 and §104.11 ((5) Count Procedures, Grade II): The term "intentionally" is added to the proscriptions against causing a miscount (§104.10) and delaying the count (§104.11). §109.12 ((10) Disrespect for Staff, Grade II): The term "annoy" has been deleted from the list of actions constituting disrespectful behavior towards staff members. §120.10 ((21) Refusal To Obey a Direct Order, Grade II): The phrase "and without argument" has been deleted from mandate that inmates "promptly and completely" obey all orders of Department staff. §120.11((21) Refusal To Obey a Direct Order, Grade III): The phrase "and without argument" has been deleted from the mandate that inmates "promptly and completely" obey all orders of Department staff. §1-04 Hearing Procedures This section was revised to clarify the process and distinguish between disciplinary infraction, close custody and close custody/protective custody proceedings. §1-05 Penalties (b)(iv): Reprimand With respect to the penalty of "Reprimand", reference is made to the standards of the State Commission of Correction (9 NYCRR §7028.6(a)) with respect to the deprivation of recreation. §1-06 Appeals A new section has been added to describe procedures governing the already existing right to appeal an adverse decision rendered by the Adjudication Captain. This applies to sentences of (1) at least thirty days of punitive segregation or loss of all of one's good time, or (2) less than thirty days of punitive segregation or loss of less than all of one's good time.

FOOTNOTES

1

[Footnote 1]: * Chapter repealed and added City Record Sept. 12, 2007 §1, eff. Oct. 12, 2007. [See Statement 1 at end of chapter]

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-01 Non-discriminatory Treatment.

(a) **Policy.** Prisoners shall not be subject to discriminatory treatment based upon race, religion, nationality, sex, sexual orientation, gender, disability, age or political belief. The term "prisoner" means any person in the custody of the New York City Department of Correction ("the Department"). "Detainee" means any prisoner awaiting disposition of a criminal charge. "Sentenced prisoner" means any prisoner serving a sentence of up to one year in Department custody.

(b) **Equal protection.** (1) Prisoners shall be afforded equal opportunity in all decisions including, but not limited to, work and housing assignments, classification, and discipline.

(2) Prisoners shall be afforded equal protection and equal opportunity in being considered for any available programs including, but not limited to educational, religious, vocational, recreational, or temporary release.

(3) Each facility shall provide programs, cultural activities and foods suitable for those racial and ethnic groups with significant representation in the prisoner population, including Black and Hispanic prisoners.

(4) Nothing contained in this section shall prevent the Department from using rational criteria for a particular program or opportunity.

(c) **Hispanic prisoners and staff.** (1) Each facility shall have a sufficient number of employees and volunteers fluent in the Spanish language to assist Hispanic prisoners in understanding, and participating, in the various facility programs and activities, including use of the law library and parole applications.

(2) Bilingual prisoners in each housing unit should be used to assist Spanish-speaking prisoners in the unit and in the law library.

(3) Communications on any significant matter from correctional personnel to prisoners, including, but not limited to, orientation, legal research, facility programs, medical procedures, minimum standards and disciplinary code shall be in Spanish and English.

(4) Communications on any significant matter from correctional personnel to outside individuals or organizations regularly involved with New York City prisoners shall be in Spanish and English.

(5) Spanish-speaking prisoners shall be afforded opportunities to read publications and newspapers printed in Spanish, and to hear radio and television programs broadcast in Spanish. Facility libraries shall contain Spanish language books and materials.

(d) **Different languages.** (1) Prisoners shall be permitted to communicate with other prisoners and with persons outside the facility by mail, telephone, or in person, in any language, and may read and receive written materials in any language.

(2) Provisions shall be made by the Department to assist in assuring prompt access to translation services for non-English speaking prisoners.

(3) Procedures shall be employed to ensure that non-English speaking prisoners understand all written and oral communications from facility staff members, including but not limited to, orientation procedures, health services procedures, facility rules and disciplinary proceedings.

HISTORICAL NOTE

Section amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

DERIVATION

Former §1-01 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-02 Classification of Prisoners.

(a) **Policy.** Consistent with the requirements of this section the Department shall employ a classification system for prisoners.

(b) **Categories.** (1) Prisoners serving sentence shall be housed separate and apart from prisoners awaiting trial or examination, except when housed in:

(i) punitive segregation;

(ii) medical housing areas;

(iii) mental health centers and mental observation cell housing areas;

(iv) close custody housing areas; and

(v) nursery.

(2) Within the categories set forth in paragraph (1), the following groupings shall be housed separate and apart:

(i) male adults, ages 19 and over;

(ii) male minors, ages 16 to 18 inclusive;

(iii) female adults, ages 19 and over;

(iv) female minors, ages 16 to 18 inclusive.

(c) **Civil prisoners.** (1) Prisoners who are not directly involved in the criminal process as detainees or serving sentence and are confined for other reasons including civil process, civil contempt or material witness, shall be housed separate and apart from other prisoners and, if possible, located in a different structure or wing. They must be afforded at least as many of the rights, privileges and opportunities available to other prisoners.

(2) Within this category, the following groupings shall be housed separate and apart:

(i) male adults, ages 19 and over;

(ii) male minors, ages 16 to 18 inclusive;

(iii) female adults, ages 19 and over;

(iv) female minors, ages 16 to 18 inclusive.

(d) **Limited commingling.** Nothing contained in this section shall prevent prisoners in different categories or groupings from being in the same area for a specific purpose, including, but not limited to, entertainment, classes, contact visits or medical necessity.

(e) **Security classification.** (1) The Department shall use a system of classification to group prisoners according to the minimum degree of surveillance and security required.

(2) The system of classification shall meet the following requirements:

(i) It shall be in writing and shall specify the basic objectives, the classification categories, the variables and criteria used, the procedures used and the specific consequences to the prisoner of placement in each category.

(ii) It shall include at least two classification categories.

(iii) It shall provide for an initial classification upon entrance into the corrections system. Such classification shall take into account only relevant factual information about the prisoner, capable of verification.

(iv) It shall provide for involvement of the prisoner at every stage with adequate due process.

(v) Prisoners placed in the most restrictive security status shall only be denied those rights, privileges and opportunities that are directly related to their status and which cannot be provided to them at a different time or place than provided to other prisoners.

(vi) It shall provide mechanisms for review of prisoners placed in the most restrictive security status at intervals not to exceed four weeks for detainees and eight weeks for sentenced prisoners.

HISTORICAL NOTE

Section amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

DERIVATION

Former §1-02 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-03 Personal Hygiene.

(a) **Policy.** Each facility shall provide for and maintain reasonable standards of prisoner personal hygiene.

(b) **Showers.** (1) Showers with hot and cold water shall be made available to all prisoners daily. The hot water temperature norms of the American Public Health Association shall be followed. Consistent with facility health requirements, prisoners may be required to shower periodically. The shower area shall be cleaned at least once each week.

(2) Notwithstanding paragraph (1) of this subdivision, prisoners confined in punitive segregation may be denied daily access to showers for infraction convictions for misconduct on the way to, from or during a shower, as follows: for a first offense, access to showers may be reduced to five days per week for two consecutive weeks; for subsequent convictions during the same punitive segregation confinement, as follows: for a second conviction, access to showers may be reduced to three days per week for up to three consecutive weeks; for a third conviction, to three days per week for up to four consecutive weeks; and for a fourth conviction, to three days per week for the duration of the current punitive segregation confinement. The provisions of this paragraph (2) shall not apply to prisoners making court appearances, during times of hot weather when access to cool showers protects prisoners' health, and to female prisoners who are menstruating,

(c) **Shaving.** (1) All prisoners shall be permitted to shave daily. Hot water sufficient to enable prisoners to shave with care and comfort shall be provided. Upon request, necessary shaving items shall be provided at Department expense and shall be maintained in a safe and sanitary condition.

(2) Notwithstanding paragraph (1) of this subdivision, prisoners confined in punitive segregation may be denied access to daily shaves, except for court appearances, for infraction convictions for misconduct on the way to, from or during a shower, in accordance with the schedule in paragraph (b)(2) of this section.

(d) **Haircuts.** (1) Hair shall be cut by persons capable of using barber tools. Such persons include, but are not limited to:

(i) licensed barbers;

(ii) facility staff members; and

(iii) prisoners.

(2) Barber tools shall be maintained in a safe, sanitary condition.

(e) **Hair styles.** (1) Consistent with the requirements of this subdivision, prisoners shall be permitted to adopt hair styles, including facial hair styles, of any length.

(i) Prisoners assigned to work in areas where food is stored, prepared, served or otherwise handled may be required to wear a hair net or other head covering.

(ii) The Department may determine that certain work assignments constitute a safety hazard to those prisoners with long hair or beards. Prisoners unwilling or unable to conform to the safety requirements of such work assignment shall be assigned elsewhere.

(iii) Should examination of a prisoner's hair reveal the presence of vermin, medical treatment should be initiated immediately. The cutting of a prisoner's hair is permissible under these circumstances pursuant to a physician's written order and under the direct supervision of the physician.

(2) When the growth or removal of a prisoner's hair, including facial hair, creates an identification problem, a new photograph may be taken of that prisoner.

(f) **Personal health care items.** (1) Upon admission to a facility, all prisoners shall be provided at Department expense with an issue of personal health care items, including but not limited to:

(i) soap;

(ii) toothbrush;

(iii) toothpaste or tooth powder;

(iv) drinking cup;

(v) toilet paper;

(vi) towel; and

(vii) aluminum or plastic mirror, unless this is permanently available in the housing area.

(2) In addition to the items listed in paragraph (1) of this subdivision, all women prisoners shall be provided at Department expense with necessary hygiene items.

(3) Towels shall be exchanged at least once per week at Department expense. All other personal health care items issued pursuant to paragraphs (1) and (2) of this subdivision shall be replenished or replaced as needed at Department

expense.

(g) **Clothing.** (1) Prisoners shall be entitled to wear clothing provided by the Department as needed. Such clothing shall be laundered and repaired at Department expense and shall include, but is not limited to:

(i) one shirt;

(ii) one pair of pants;

(iii) two sets of undergarments;

(iv) two pairs of socks;

(v) one pair of suitable footwear; and

(vi) one sweater or sweatshirt to be issued during cold weather.

(2) The Department may require sentenced prisoners to wear facility clothing. Upon establishment and operation of clothing services described in paragraph (h)(2) of this section, the Department may require all prisoners to wear seasonally appropriate facility clothing, except that for trial appearances, prisoners may wear clothing items described in paragraph (3) of this subdivision. The facility clothing that is provided for detainees shall be readily distinguishable from that provided for sentenced prisoners. Facility clothing shall be provided, laundered and repaired at Department expense.

(3) Until the Department establishes and operates clothing services described in paragraph (h)(2) of this section, detainees shall be permitted to wear non-facility clothing. Such clothing may include items:

(i) worn by the prisoner upon admission to the facility; and

(ii) received after admission from any source. This clothing, including shoes, may be new or used.

(iii) Detainees shall be permitted to wear all items of clothing that are generally acceptable in public and that do not constitute a threat to the safety of a facility.

(4) Prisoners engaged in work assignment or outdoor recreation requiring special clothing shall be provided with such clothing at Department expense.

(5) Upon establishment and operation of clothing services described in paragraph (h)(2) of this section and requiring all prisoners to wear facility clothing, the Department shall provide to all prisoners upon admission at least the following:

(i) two shirts;

(ii) one pair of pants;

(iii) four sets of undergarments;

(iv) four pairs of socks;

(v) one pair of suitable footwear; and

(vi) one sweater or sweatshirt to be issued during cold weather.

(6) Upon requiring all prisoners to wear facility clothing, the Department shall provide prisoners with a clean

exchange of such clothing every four days.

(h) **Clothing services.** (1) Laundry service sufficient to provide prisoners with a clean change of personal or facility clothing at least twice per week shall be provided at Department expense.

(2) Prior to requiring detainees to wear facility clothing, the Department shall establish and operate:

(i) laundry service sufficient to fulfill the requirements of paragraphs (g)(5) and (6) of this section at Department expense, and

(ii) secure storage facilities from which prisoners' personal clothing can be retrieved promptly and cleaned for trial court appearances, and retrieved promptly upon prisoners' discharge from custody.

(i) **Bedding.** (1) Upon admission to a facility, all prisoners shall be provided at Department expense with an issue of bedding, including but not limited to:

(i) two sheets;

(ii) one pillow;

(iii) one pillow case;

(iv) one mattress;

(v) one mattress cover; and

(vi) sufficient blankets to provide comfort and warmth.

(2) Prior to being issued, all bedding items shall be checked for damage and repaired or cleaned, if necessary.

(3) Pillowcases and sheets shall be cleaned at least once each week. Blankets shall be cleaned at least once every three months. Mattresses shall be cleaned at least once every six months.

(4) Mattresses must be constructed of fire retardant materials. Mattress covers must be constructed of materials both water resistant and easily sanitized.

(5) All items of clothing and bedding stored within the facility shall be maintained in a safe and sanitary manner.

(j) **Housing areas.** (1) Prisoners shall be provided at Department expense with a supply of brooms, mops, soap powder, disinfectant, and other materials sufficient to properly clean and maintain housing areas, except when contraindicated by medical staff. Under such circumstance, the Department shall make other arrangements for cleaning these areas.

(2) The Department shall provide for regular cleaning of all housing areas, including cells, tiers, dayrooms, and windows, and for the extermination of rodents and vermin in all housing areas.

(3) All housing areas shall contain at least the following fixtures in sufficient supply to meet reasonable standards of prisoner personal hygiene:

(i) sink with hot and cold water;

(ii) flush toilet; and

(iii) shower with hot and cold water.

HISTORICAL NOTE

Section renumbered and amended (former §1-04) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

Former §1-04 in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-04 Overcrowding.

(a) **Policy.** Prisoners shall not be housed in cells, rooms or dormitories unless adequate space and furnishings are provided.

(b) **Single occupancy.** (1) A cell or room designed or rated for single occupancy shall house only one prisoner.

(2) Each single cell shall contain a flush toilet, a wash basin with drinking water, a single bed and a closeable storage container for personal property.

(3) A single-cell housing area shall contain table or desk space for each occupant that is available for use at least 12 hours per day.

(c) **Multiple occupancy.** (1) A multiple-occupancy area shall contain for each occupant a single bed, a closeable storage container for personal property and a table or desk space that is available for use at least 12 hours per day.

(2) Multiple-occupancy areas shall provide a minimum of 60 square feet of floor space per person in the sleeping area.

(3) A multiple-occupancy area shall provide a minimum of one operable toilet and shower for every 8 prisoners and one operable sink for every 10 prisoners. Toilets shall be accessible for use without staff assistance 24 hours per day.

(4) A multiple-occupancy area shall provide a dayroom space that is physically and acoustically separate from but

immediately adjacent and accessible to the sleeping area, except for cells designed or rated for two or more occupants, opened on or prior to January 1, 2000.

(5) A multiple occupancy area shall house no more than:

(i) 50 Detainees

(ii) 60 Sentenced Prisoners. This subparagraph shall be applicable to all multi-occupancy areas opened after July 1, 1985.

HISTORICAL NOTE

Section renumbered and amended (former §1-05) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-05 Lock-in.

(a) **Policy.** The time spent by prisoners confined to their cells should be kept to a minimum and required only when necessary for the safety and security of the facility. The provisions of this section are inapplicable to prisoners confined in punitive segregation or prisoners confined for medical reasons in the contagious disease units.

(b) **Involuntary lock-in.** No prisoner shall be required to remain confined to his or her cell except for the following purposes:

(1) At night for count or sleep, not to exceed eight hours in any 24-hour period;

(2) During the day for count or required facility business that can only be carried out while prisoners are locked in, not to exceed two hours in any 24-hour period. This time may be extended if necessary to complete an off count.

(c) **Optional lock-in.** (1) Prisoners shall have the option of being locked in their cells during lock-out periods. Prisoners choosing to lock in at the beginning of a lock-out period of two hours or more shall be locked out upon request after one-half of the period. At this time, prisoners who have been locked out shall be locked in upon request.

(2) The Department may deny optional lock-in to a prisoner in mental observation status if a psychiatrist or psychologist determines in writing that optional lock-in poses a serious threat to the safety of that prisoner. A decision to deny optional lock-in must be reviewed every ten days, including a written statement of findings, by a psychiatrist or psychologist. Decisions made by a psychiatrist or psychologist pursuant to this subdivision must be based on personal consultation with the prisoner.

(d) **Schedule.** Each facility shall maintain and distribute to all prisoners or post in each housing area its lock-out schedule, including the time during each lock-out period when prisoners may exercise the options provided by paragraph (c)(1) of this subdivision.

HISTORICAL NOTE

Section renumbered and amended (former §1-06) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-06 Recreation.

(a) **Policy.** Recreation is essential to good health and contributes to reducing tensions within a facility. Prisoners shall be provided with adequate indoor and outdoor recreational opportunities.

(b) **Recreation areas.** Indoor and outdoor recreation areas of sufficient size to meet the requirements of this section shall be established and maintained by each facility. An outdoor recreation area must allow for direct access to sunlight and air.

(c) **Recreation schedule.** Recreation periods shall be at least one hour; only time spent at the recreation area shall count toward the hour. Recreation shall be available seven days per week in the outdoor recreation area, except in inclement weather when the indoor recreation area shall be used.

(d) **Recreation equipment.** (1) The Department shall make available to prisoners an adequate amount of equipment during the recreation period.

(2) Upon request each facility shall provide prisoners with appropriate outer garments in satisfactory condition, including coat, hat, and gloves, when they participate in outdoor recreation during cold or wet weather conditions.

(e) **Recreation within housing area.** (1) Prisoners shall be permitted to engage in recreation activities within cell corridors and tiers, dayrooms and individual housing units. Such recreation may include but is not limited to:

(i) table games;

(ii) exercise programs; and

(iii) arts and crafts activities.

(2) Recreation taking place within cell corridors and tiers, dayrooms and individual housing units shall supplement, but not fulfill, the requirements of subdivision (c) of this section.

(f) **Recreation for prisoners in the contagious disease units.** The Department shall not be required to provide an indoor recreation area for use during inclement weather by prisoners confined for medical reasons in the contagious disease units.

(g) **Recreation for prisoners in segregation.** Prisoners confined in close custody or punitive segregation shall be permitted recreation in accordance with the provisions of subdivision (c) of this section.

(h) **Limitation on access to recreation.** A prisoner's access to recreation may be denied for up to five days only upon conviction of an infraction for misconduct on the way to, from or during recreation.

HISTORICAL NOTE

Section renumbered and amended (former §1-07) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

40 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-07 Religion.

(a) **Policy.** Prisoners have an unrestricted right to hold any religious belief, and to be a member of any religious group or organization, as well as to refrain from the exercise of any religious beliefs. A prisoner may change his or her religious affiliation.

(b) **Exercise of religious beliefs.** (1) Prisoners are entitled to exercise their religious beliefs in any manner that does not constitute a clear and present danger to the safety or security of a facility.

(2) No employee or agent of the Department or of any voluntary program shall be permitted to proselytize or seek to convert any prisoner, nor shall any prisoner be compelled to exercise or be dissuaded from exercising any religious belief.

(3) Equal status and protection shall be afforded all prisoners in the exercise of their religious beliefs except when such exercise is unduly disruptive of facility routine.

(c) **Congregate religious activities.** (1) Consistent with the requirements of subdivision (a) of this section, all prisoners shall be permitted to congregate for the purpose of religious worship and other religious activities, except for prisoners confined for medical reasons in the contagious disease units.

(2) Each facility shall provide all prisoners access to an appropriate area for congregate religious worship and other religious activities. Consistent with the requirements of paragraph (b)(1) of this section, this area shall be made available to prisoners in accordance with the practice of their religion.

(d) **Religious advisors.** (1) As used in this section, the term "religious advisor" means a person who has received endorsement from the relevant religious authority.

(2) Religious advisors shall be permitted to conduct congregate religious activities permitted pursuant to subdivision (c) of this section. When no religious advisor is available, a member of a prisoner religious group may be permitted to conduct congregate religious activities.

(3) Consistent with the requirements of paragraph (b)(1) of this section, prisoners shall be permitted confidential consultation with their religious advisors during lock-out periods.

(e) **Celebration of religious holidays or festivals.** Consistent with the requirements of paragraph (b)(1) of this section, prisoners shall be permitted to celebrate religious holidays or festivals on an individual or congregate basis.

(f) **Religious dietary laws.** Prisoners are entitled to the reasonable observance of dietary laws or fasts established by their religion. Each facility shall provide prisoners with food items sufficient to meet such religious dietary laws.

(g) **Religious articles.** Consistent with the requirements of paragraph (b)(1) of this section, prisoners shall be entitled to wear and to possess religious medals or other religious articles, including clothing and hats.

(h) **Exercise of religious beliefs by prisoners in segregation.** (1) Prisoners confined in administrative or punitive segregation shall not be prohibited from exercising their religious beliefs, including the opportunities provided by subdivisions (d) through (g) of this section.

(2) Congregate religious activities by prisoners in close custody or punitive segregation shall be provided for by permitting such prisoners to attend congregate religious activities with appropriate security either with each other or with other prisoners.

(i) **Recognition of a religious group or organization.** (1) A list shall be maintained of all religious groups and organizations recognized by the Department. This list shall be in Spanish and English, and shall be distributed to all incoming prisoners or posted in each housing area.

(2) Each facility shall maintain a list of the religious advisor, if any, for each religious group and organization, and the time and place for the congregate service of each religion. This list shall be in Spanish and English, and shall be distributed to all incoming prisoners or posted in each housing area.

(3) Prisoner requests to exercise the beliefs of a religious group or organization not previously recognized shall be made to the Department.

(4) In determining requests made pursuant to paragraph (3) of this subdivision, the following factors among others shall be considered as indicating a religious foundation for the belief:

(i) whether there is substantial literature supporting the belief as related to religious principle;

(ii) whether there is formal, organized worship by a recognizable and cohesive group sharing the belief;

(iii) whether there is an informal association of persons who share common ethical, moral, or intellectual views supporting the belief; or

(iv) whether the belief is deeply and sincerely held by the prisoner.

(5) In determining requests made pursuant to paragraph (3) of this subdivision, the following factors shall not be considered as indicating a lack of religious foundation for the belief:

(i) the belief is held by a small number of individuals;

(ii) the belief is of recent origin;

(iii) the belief is not based on the concept of a Supreme Being or its equivalent; or

(iv) the belief is unpopular or controversial.

(6) In determining requests made pursuant to paragraph (3) of this subdivision, prisoners shall be permitted to present evidence indicating a religious foundation for the belief.

(7) The procedure outlined in paragraphs (1) and (3) of this subdivision shall apply when a prisoner request made pursuant to paragraph (i)(3) of this subdivision is denied.

(j) **Limitations on the exercise of religious beliefs.** (1) Any determination to limit the exercise of the religious beliefs of any prisoner shall be made in writing, and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(2) This determination must be based on specific acts committed by the prisoner during the exercise of his or her religion that demonstrate a serious and immediate threat to the safety and security of the facility. Prior to any determination, the prisoner must be provided with written notification of the specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond.

(3) Any person affected by a determination made pursuant to this subdivision may appeal such determination to the Board.

(i) The person affected by the determination shall give notice in writing to the Board and the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) The Board or its designee shall issue a written decision upon the appeal within 14 business days after receiving notice of the requested review.

HISTORICAL NOTE

Section renumbered and amended (former §1-08) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-08 Access to Courts and Legal Services.

(a) **Policy.** Prisoners are entitled to access to courts, attorneys, legal assistants and legal materials.

(b) **Judicial and administrative proceedings.** (1) Prisoners shall not be restricted in their communications with courts or administrative agencies pertaining to either criminal or civil proceedings except pursuant to a court order.

(2) Timely transportation shall be provided to prisoners scheduled to appear before courts or administrative agencies. Vehicles used to transport prisoners must meet all applicable safety and inspection requirements and provide adequate ventilation, lighting and comfort.

(c) **Access to counsel.** (1) Prisoners shall not be restricted in their communication with attorneys. The fact that a prisoner is represented by one attorney shall not be grounds for preventing him or her from communicating with other attorneys. Any properly identified attorney may visit any prisoner with the prisoner's consent.

(i) An attorney may be required to present identification to a designated official at the central office of the Department in order to obtain a facility pass. This pass shall permit the attorney to visit any prisoner in the custody of the Department.

(ii) The Department only may require such identification as is normally possessed by an attorney.

(2) The Department may limit visits to any attorney of record, or an attorney with a court notice for prisoners undergoing examination for competency pursuant to court order.

(3) Visits between prisoners and attorneys shall be kept confidential and protected, in accordance with provisions of §1-09. Legal visits shall be permitted at least eight hours per day between 8 a.m. and 8 p.m. During business days, four of those hours shall be 8 a.m. to 10 a.m., and 6 p.m. to 8 p.m. The Department shall maintain and post the schedule of legal visiting hours at each facility.

(4) Mail between prisoners and attorneys shall not be delayed, read, or interfered with in any manner, except as provided in §1-11.

(5) Telephone communications between prisoners and attorneys shall be kept confidential and protected, in accordance with the provisions of §1-10.

(d) **Access to co-defendants.** Upon reasonable request, regular visits shall be permitted between a detainee and all of his or her co-defendants who consent to such visits. If any of the co-defendants are incarcerated, the Department may require that an attorney of record be present and teleconferencing shall be used, if available.

(e) **Attorney assistants.** (1) Law students, legal paraprofessionals, and other attorney assistants working under the supervision of an attorney representing a prisoner shall be permitted to communicate with prisoners by mail, telephone and personal visits, to the same extent and under the same conditions that the attorney may do so for the purpose of representing the prisoner. Law students, legal paraprofessionals and other attorney assistants working under the supervision of an attorney contacted by a prisoner shall be permitted to communicate with that prisoner by mail, telephone, or personal visits to the same extent and under the same conditions that the attorney may do so.

(2) An attorney assistant may be required to present a letter of identification from the attorney to a designated official at the central office of the Department in order to obtain a facility pass. A pass shall not be denied based upon any of the reasons listed in §1-09(h)(1).

(3) The pass shall permit the assistant to perform the functions listed in subdivision (e) of this section. It may be revoked if specific acts committed by the legal assistant demonstrate his or her threat to the safety and security of a facility. This determination must be made pursuant to the procedural requirements of paragraphs (2), (4) and (5) of subdivision (h) of §1-09.

(f) **Law libraries.** Each facility shall maintain a properly equipped and staffed law library.

(1) The law library shall be located in a separate area sufficiently free of noise and activity and with sufficient space and lighting to permit sustained research.

(2) Each law library shall be open for a minimum of five days per week including at least one weekend day. On each day a law library is open:

(i) in facilities with more than 600 prisoners, each law library shall be operated for a minimum of ten hours, of which at least eight shall be during lock-out hours;

(ii) in facilities with 600 or fewer prisoners, each law library shall be operated for a minimum of eight and a half hours, of which at least six and a half shall be during lock-out hours;

(iii) in all facilities, the law library shall be operated for at least three hours between 6 p.m. and 10 p.m.; and

(iv) the law library will be kept open for prisoners' use on all holidays which fall on regular law library days except New Year's Day, July 4th, Thanksgiving, and Christmas. The law library may be closed on holidays other than those specified provided that law library services are provided on either of the two days of the same week the law library is usually closed. On holidays on which the law library is kept open, it shall operate for a minimum of eight hours. No changes to law library schedules shall be made without written notice to the Board of Correction, and shall be received

at least five business days before the planned change(s) is to be implemented.

(3) The law library schedule shall be arranged to provide access to prisoners during times of the day when other activities such as recreation, commissary, meals, school, sick call, etc., are not scheduled. Where such considerations cannot be made, prisoners shall be afforded another opportunity to attend the law library at a later time during the day.

(4) Each prisoner shall be granted access to the law library for a period of at least two hours per day on each day the law library is open. Upon request, extra time may be provided as needed, space and time permitting. In providing extra time, prisoners who have an immediate need for additional time, such as prisoners on trial and those with an impending court deadline shall be granted preference.

(5) Notwithstanding the provisions of paragraph (f)(4), prisoners housed for medical reasons in the contagious disease units may be denied access to the law library. An alternative method of access to legal materials shall be instituted to permit effective legal research.

(6) The law library hours for prisoners in punitive segregation may be reduced or eliminated, provided that an alternative method of access to legal materials is instituted to permit effective legal research.

(7) Legal research classes for general population prisoners shall be conducted at each facility on at least a quarterly basis. Legal research training materials shall be made available upon request to prisoners in special housing.

(8) The Department shall report annually to the Board detailing the resources available at the law library at each facility, including a list of titles and dates of all law books and periodicals and the number, qualifications and hours of English and Spanish-speaking legal assistants.

(g) **Legal documents and supplies.** (1) Each law library shall contain necessary research and reference materials which shall be kept properly updated and supplemented, and shall be replaced without undue delay when materials are missing or damaged.

(2) Prisoners shall have reasonable access to typewriters, dedicated word processors, and photocopiers for the purpose of preparing legal documents. A sufficient number of operable typewriters, dedicated word processors, and photocopy machines will be provided for prisoner use.

(3) Legal clerical supplies, including pens, legal paper and pads shall be made available for purchase by prisoners. Such legal clerical supplies shall be provided to indigent prisoners at Department expense.

(4) Unmarked legal forms which are commonly used by prisoners shall be made available. Each prisoner shall be permitted to use or make copies of such forms for his or her own use.

(h) **Law library staffing.** (1) During all hours of operation, each law library shall be staffed with trained civilian legal coordinator(s) to assist prisoners with the preparation of legal materials. Legal coordinator coverage shall be provided during extended absences of the regularly assigned legal coordinator(s).

(2) Each law library shall be staffed with an adequate number of permanently assigned correction officers knowledgeable of law library procedures.

(3) Spanish-speaking prisoners shall be provided assistance in use of the law library by employees fluent in the Spanish language on an as needed basis.

(i) **Number of legal documents and research materials.** (1) Prisoners shall be permitted to purchase and receive law books and other legal research materials from any source.

(2) Reasonable regulations governing the keeping of materials in cells and the searching of cells may be adopted,

but under no circumstances may prisoners' legal documents, books, and papers be read or confiscated by correctional personnel without a lawful warrant. Where the space in a cell is limited, an alternative method of safely storing legal materials elsewhere in the facility is required, provided that a prisoner shall have regular access to these materials.

(j) **Limitation of access to law library.** (1) A prisoner may be removed from the law library if he or she disrupts the orderly functioning of the law library or does not use the law library for its intended purposes. A prisoner may be excluded from the law library for more than the remainder of one law library period only for a disciplinary infraction occurring within a law library.

(2) Any determination to limit a prisoner's right of access to the law library shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(3) An alternative method of access to legal materials shall be instituted to permit effective legal research for any prisoner excluded from the law library. A legal coordinator shall visit any excluded prisoner to determine his or her law library needs upon request.

(4) Any person affected by a determination made pursuant to this subdivision (j) may appeal such determination to the Board.

(i) The person affected by a determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) The Board or its designee shall issue a written decision upon the appeal within five business days after receiving notice of the requested review.

HISTORICAL NOTE

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[See T40 §1-15 Note 1]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-09 Visiting.

(a) **Policy.** Prisoners are entitled to receive personal visits of sufficient length and number.

(b) **Visiting and waiting areas.** (1) A visiting area of sufficient size to meet the requirements of this section shall be established and maintained in each facility.

(2) The visiting area shall be designed so as to allow physical contact between prisoners and their visitors as required by subdivision (f) of this section.

(3) The Department shall make every effort to minimize the waiting time prior to a visit. Visitors shall not be required to wait outside a facility unless adequate shelter is provided and the requirements of paragraph (b)(4) of this section are met.

(4) All waiting and visiting areas shall provide for at least minimal comforts for visitors, including but not limited to:

(i) sufficient seats for all visitors;

(ii) access to bathroom facilities and drinking water throughout the waiting and visiting periods;

(iii) access to vending machines for beverages and foodstuffs at some point during the waiting or visiting period; and

(iv) access to a Spanish-speaking employee or volunteer at some point during the waiting or visiting period. All visiting rules, regulations and hours shall be clearly posted in English and Spanish in the waiting and visiting areas at each facility.

(5) The Department shall make every effort to utilize outdoor areas for visits during the warm weather months.

(c) **Visiting schedule.** (1) Visiting hours may be varied to fit the schedules of individual facilities but must meet the following minimum requirements for detainees:

(i) Monday through Friday. Visiting shall be permitted on at least three days for at least three consecutive hours between 9 a.m. and 5 p.m. Visiting shall be permitted on at least two evenings for at least three consecutive hours between 6 p.m. and 10 p.m.

(ii) Saturday and Sunday. Visiting shall be permitted on both days for at least five consecutive hours between 9 a.m. and 8 p.m.

(2) Visiting hours may be varied to fit the schedules of individual facilities but must meet the following minimum requirements for sentenced prisoners:

(i) Monday through Friday. Visiting shall be permitted on at least one evening for at least three consecutive hours between 6 p.m. and 10 p.m.

(ii) Saturday and Sunday. Visiting shall be permitted on both days for at least five consecutive hours between 9 a.m. and 8 p.m.

(3) The visiting schedule of each facility shall be available by contacting either the central office of the Department or the facility.

(4) Visits shall last at least one hour. This time period shall not begin until the prisoner and visitor meet in the visiting room.

(5) Sentenced prisoners are entitled to at least two visits per week with at least one on an evening or the weekend, as the sentenced prisoner wishes. Detainees are entitled to at least three visits per week with at least one on an evening or the weekend, as the detainee wishes. Visits by properly identified persons providing services or assistance, including lawyers, doctors, religious advisors, public officials, therapists, counselors and media representatives, shall not count against this number.

(6) There shall be no limit to the number of visits by a particular visitor or category of visitors.

(7) In addition to the minimum number of visits required by paragraphs (1), (2) and (5) of this subdivision, additional visitation shall be provided in cases involving special necessity, including but not limited to, emergency situations and situations involving lengthy travel time.

(8) Prisoners shall be permitted to visit with at least three visitors at the same time, with the maximum number to be determined by the facility.

(9) Visitors shall be permitted to visit with at least two prisoners at the same time, with the maximum number to be determined by the facility.

(10) If necessitated by lack of space, a facility may limit the total number of persons in any group of visitors and prisoners to four. Such a limitation shall be waived in cases involving special necessity, including but not limited to, emergency situations and situations involving lengthy travel time.

(d) **Initial visit.** (1) Each detainee shall be entitled to receive a non-contact visit within 24 hours of his or her admission to the facility.

(2) If a visiting period scheduled pursuant to paragraph (c)(1) of this section is not available within 24 hours after a detainee's admission, arrangements shall be made to ensure that the initial visit required by this subdivision is made available.

(e) **Visitor identification and registration.** (1) Consistent with the requirements of this subdivision, any properly identified person shall, with the prisoner's consent, be permitted to visit the prisoner.

(i) Prior to a visit, a prisoner shall be informed of the identity of the prospective visitor.

(ii) A refusal by a prisoner to meet with a particular visitor shall not affect the prisoner's right to meet with any other visitor during that period, nor the prisoner's right to meet with the refused visitor during subsequent periods.

(2) Each visitor shall be required to enter in the facility visitors log:

(i) his or her name;

(ii) his or her address;

(iii) the date;

(iv) the time of entry;

(v) the name of the prisoner or prisoners to be visited; and

(vi) the time of exit.

(3) Any prospective visitor who is under 16 years of age shall be required to enter, or have entered for him or her, in the facility visitors log:

(i) the information required by paragraph (2) of this subdivision;

(ii) his or her age; and

(iii) the name, address, and telephone number of his or her parent or legal guardian.

(4) The visitors log shall be confidential, and information contained therein shall not be read by or revealed to non-Department staff except as provided by the City Charter or pursuant to a specific request by an official law enforcement agency. The Department shall maintain a record of all such requests with detailed and complete descriptions.

(5) Prior to visiting a prisoner, a prospective visitor under 16 years of age may be required to be accompanied by a person 18 years of age or older, and to produce oral or written permission from a parent or legal guardian approving such visit.

(6) The Department may adopt alternative procedures for visiting by persons under 16 years of age. Such procedures must be consistent with the policy of paragraph (e) (5) of this subdivision, and shall be submitted to the Board for approval.

(f) **Contact visits.** Physical contact shall be permitted between every prisoner and all of his or her visitors throughout the visiting period, including holding hands, holding young children, and kissing. The provisions of this subdivision are inapplicable to prisoners housed for medical reasons in the contagious disease units.

(g) **Visiting security and supervision.** (1) All prisoners, prior and subsequent to each visit, may be searched solely to ensure that they possess no contraband.

(2) All prospective visitors may be searched prior to a visit solely to ensure that they possess no contraband.

(3) Any body search of a prospective visitor made pursuant to paragraph (2) of this subdivision shall be conducted only through the use of electronic detection devices. Nothing contained herein shall affect any authority possessed by correctional personnel pursuant to statute.

(4) Objects possessed by a prospective visitor, including but not limited to, handbags or packages, may be searched or checked. Personal effects, including wedding rings and religious medals and clothing, may be worn by visitors during a visit. The Department may require a prospective visitor to secure in a lockable locker his or her personal property, including but not limited to bags, outerwear and electronic devices. A visit may not be delayed or denied because an operable, lockable locker is not available.

(5) Supervision shall be provided during visits solely to ensure that the safety or security of the facility is maintained.

(6) Visits shall not be listened to or monitored unless a lawful warrant is obtained, although visual supervision should be maintained.

(h) **Limitation on visiting rights.** (1) Visiting rights shall not be denied, revoked, limited or interfered with based upon a prisoner's or prospective visitor's:

(i) sex;

(ii) sexual orientation;

(iii) race;

(iv) age, except as otherwise provided in this section;

(v) nationality;

(vi) political beliefs;

(vii) religion;

(viii) criminal record;

(ix) pending criminal or civil case;

(x) lack of family relationship;

(xi) gender; or

(xii) disability.

(2) The visiting rights of a prisoner with a particular visitor may be denied, revoked or limited only when it is determined that the exercise of those rights constitutes a serious threat to the safety or security of a facility, provided that visiting rights with a particular visitor may be denied only if revoking the right to contact visits would not suffice to reduce the serious threat.

This determination must be based on specific acts committed by the visitor during a prior visit to a facility that

demonstrate his or her threat to the safety and security of a facility, or on specific information received and verified that the visitor plans to engage in acts during the next visit that will be a threat to the safety or security of the facility. Prior to any determination, the visitor must be provided with written notification of the specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond. The name of an informant may be withheld if necessary to protect his or her safety.

(3) A prisoner's right to contact visits as provided in subdivision (f) of this section may be denied, revoked, or limited only when it is determined that such visits constitute a serious threat to the safety or security of a facility. Should a determination be made to deny, revoke or limit a prisoner's right to contact visits in the usual manner, alternative arrangements for affording the prisoner the requisite number of visits shall be made, including, but not limited to, non-contact visits.

This determination must be based on specific acts committed by the prisoner while in custody under the present charge or sentence that demonstrate his or her threat to the safety and security of a facility, or on specific information received and verified that the prisoner plans to engage in acts during the next visit that will be a threat to the safety or security of the facility. Prior to any determination, the prisoner must be provided with written notification of the specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond. The name of an informant may be withheld if necessary to protect his or her safety.

(4) Any determination to deny, revoke or limit a prisoner's visiting rights pursuant to paragraphs (2) and (3) of this subdivision shall be in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(5) Any person affected by a determination made pursuant to paragraphs (2) and (3) of this subdivision may appeal such determination to the Board.

(i) The person affected by the determination shall give notice in writing to the Board and the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written deter- mination.

(iii) The Board or its designee shall issue a written decision upon the appeal within five business days after receiving notice of the requested review.

HISTORICAL NOTE

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[See T40 §1-15 Note 1]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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40 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-10 Telephone Calls.

(a) **Policy.** Prisoners are entitled to make periodic telephone calls. A sufficient number of telephones to meet the requirements of this section shall be installed in the housing areas of each facility.

(b) **Initial telephone call.** Upon admission to a facility, each detainee shall be permitted to make one completed local telephone call at Department expense. Requests to make additional telephone calls upon admission shall be decided by the facility. Long distance telephone calls shall be made collect, although arrangements may be made to permit the prisoner to bear the cost of such calls.

(c) **Detainee telephone calls.** Detainees shall be permitted to make a minimum of one telephone call each day. Three calls each week shall be provided to indigent detainees at Department expense if made within New York City. Long distance telephone calls shall be made collect or at the expense of the detainee.

(d) **Sentenced prisoner telephone calls.** Sentenced prisoners shall be permitted to make a minimum of two telephone calls each week. These calls shall be provided to indigent sentenced prisoners at Department expense if made within New York City. Long distance telephone calls shall be made collect or at the expense of the sentenced prisoner.

(e) **Duration of telephone calls.** The Department shall allow telephone calls of at least six minutes in duration.

(f) **Scheduling of telephone calls.** In meeting the requirements of subdivisions (c) and (d) of this section, telephone calls shall be permitted during all lock-out periods. Telephone calls of an emergency nature shall be made at any reasonable time.

(g) **Incoming telephone calls.** (1) A prisoner shall be permitted to receive incoming telephone calls of an emergency nature, or a message shall be taken and the prisoner permitted to return the call as soon as possible.

(2) A prisoner shall be permitted to receive incoming telephone calls from his or her attorney of record in a pending civil or criminal proceeding, or a message shall be taken and the prisoner permitted to return the call as soon as possible. Such calls must pertain to the pending proceeding.

(h) **Supervision of telephone calls.** Upon implementation of appropriate procedures, prisoner telephone calls may be listened to or monitored only when legally sufficient notice has been given to the prisoners. Telephone calls to the Board of Correction, Inspector General and other monitoring bodies, as well as to treating physicians and clinicians, attorneys and clergy shall not be listened to or monitored.

(i) **Limitation on telephone rights.** (1) The telephone rights of any prisoner may be limited only when it is determined that the exercise of those rights constitutes a threat to the safety or security of the facility or an abuse of written telephone regulations previously known to the prisoner.

(i) This determination must be based on specific acts committed by the prisoner during the exercise of telephone rights that demonstrate such a threat or abuse. Prior to any determination, the prisoner must be provided with written notification of specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond. The name of an informant may be withheld if necessary to protect his or her safety.

(ii) Any determination to limit a prisoner's telephone rights shall be made in writing and state specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(2) The telephone rights provided in subdivisions (c) and (d) of this section may be limited for prisoners in punitive segregation, provided that such persons shall be permitted to make a minimum of one telephone call each week.

(j) **Appeal.** Any person affected by a determination made pursuant to this subdivision may appeal such determination to the Board.

(1) The person affected by the determination shall give notice in writing to the Board and the Department of his or her intent to appeal the determination.

(2) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(3) The Board or its designee shall issue a written decision upon the appeal within five business days after receiving notice of the requested review.

HISTORICAL NOTE

Section renumbered and amended (former §1-11) City Record May 16, 2008 §1, eff. June 15, 2008.

[See T40 §1-15 Note 1]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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40 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-11 Correspondence.

(a) **Policy.** Prisoners are entitled to correspond with any person, except when there is a reasonable belief that limitation is necessary to protect public safety or maintain facility order and security. The Department shall establish appropriate procedures to implement this policy. Correspondence shall not be deemed to constitute a threat to safety and security of a facility solely because it criticizes a facility, its staff, or the correctional system, or espouses unpopular ideas, including ideas that facility staff deem not conducive to rehabilitation or correctional treatment. The Department shall provide notice of this policy to all prisoners.

(b) **Number and language.** (1) There shall be no restriction upon incoming or outgoing prisoner correspondence based upon either the amount of correspondence sent or received, or the language in which correspondence is written.

(2) If a prisoner is unable to read or write, he or she may receive assistance with correspondence from other persons, including but not limited to, facility employees and prisoners.

(c) **Outgoing correspondence.** (1) Each facility shall make available to indigent prisoners at Department expense stationery and postage for all letters to attorneys, courts and public officials, as well as two other letters each week.

(2) Each facility shall make available for purchase by prisoners both stationery and postage.

(3) Outgoing prisoner correspondence shall bear the sender's name and either the facility post office box or street address or the sender's home address in the upper left hand corner of the envelope.

(4) Outgoing prisoner correspondence shall be sealed by the prisoner and deposited in locked mail receptacles.

(5) All outgoing prisoner correspondence shall be forwarded to the United States Postal Service at least once each business day.

(6) Outgoing prisoner non-privileged correspondence shall not be opened or read except pursuant to a lawful search warrant or the warden's written order articulating a reasonable basis to believe that the correspondence threatens the safety or security of the facility, another person, or the public.

(i) The warden's written order shall state the specific facts and reasons supporting the determination.

(ii) The affected prisoner shall be given written notification of the determination and the specific facts and reasons supporting it. The warden may delay notifying the prisoner only for so long as such notification would endanger the safety and security of the facility, after which the warden immediately shall notify the prisoner.

(iii) A written record of correspondence read pursuant to this paragraph shall be maintained and shall include: the name of the prisoner, the name of the intended recipient, the name of the reader, the date that the correspondence was read, and the date that the prisoner received notification.

(iv) Any action taken pursuant to this paragraph shall be completed within five business days of receipt of the correspondence by the Department.

(7) Outgoing prisoner privileged correspondence shall not be opened or read except pursuant to a lawful search warrant.

(d) **Incoming correspondence.** (1) Incoming correspondence shall be delivered to the intended prisoner within 48 hours of receipt by the Department unless the prisoner is no longer in custody of the Department.

(2) A list of items that may be received in correspondence shall be established by the Department. Upon admission to a facility, prisoners shall be provided a copy of this list or it shall be posted in each housing area.

(e) **Inspection of incoming correspondence.** (1) Incoming prisoner non-privileged correspondence

(a) shall not be opened except in the presence of the intended prisoner or pursuant to a lawful search warrant or the warden's written order articulating a reasonable basis to believe that the correspondence threatens the safety or security of the facility, another person, or the public.

(i) The warden's written order shall state the specific facts and reasons supporting the determination.

(ii) The affected prisoner and sender shall be given written notification of the warden's determination and the specific facts and reasons supporting it. The warden may delay notifying the prisoner and the sender only for so long as such notification would endanger the safety or security of the facility, after which the warden immediately shall notify the prisoner and sender.

(iii) A written record of correspondence read pursuant to this subdivision shall be maintained and shall include: the name of the sender, the name of the intended prisoner recipient, the name of the reader, the date that the correspondence was received and was read, and the date that the prisoner and sender received notification.

(iv) Any action taken pursuant to this subdivision shall be completed within five business days of receipt of the correspondence by the Department.

(b) shall not be read except pursuant to a lawful search warrant or the warden's written order articulating a reasonable basis to believe that the correspondence threatens the safety or security of the facility, another person, or the

public. Procedures for the warden's written order pursuant to this subdivision are set forth in paragraph (1) of this subdivision.

(2) Incoming correspondence may be manipulated or inspected without opening, and subjected to any non-intrusive devices. A letter may be held for an extra 24 hours pending resolution of a search warrant application.

(3) Incoming privileged correspondence shall not be opened except in the presence of the recipient prisoner or pursuant to a lawful search warrant. Incoming privileged correspondence shall not be read except pursuant to a lawful search warrant.

(f) **Prohibited items in incoming correspondence.** (1) When an item found in incoming correspondence involves a criminal offense, it may be forwarded to the appropriate authority for possible criminal prosecution. In such situations, the notice required by paragraph (3) of this subdivision may be delayed if necessary to prevent interference with an ongoing criminal investigation.

(2) A prohibited item found in incoming prisoner correspondence that does not involve a criminal offense shall be returned to the sender, donated or destroyed, as the prisoner wishes.

(3) Within 24 hours of the removal of an item, the Board and the intended prisoner shall be sent written notification of this action. This written notice shall include:

(i) the name and address of the sender;

(ii) the item removed;

(iii) the reasons for removal;

(iv) the choice provided by paragraph (2) of this subdivision; and

(v) the appeal procedure.

(4) After removal of an item, the incoming correspondence shall be forwarded to the intended prisoner.

(g) **Appeal.** Any person affected by the determination to remove an item from prisoner correspondence may appeal such determination to the Board.

(1) The person affected by the determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(2) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(3) The Board or its designee shall issue a written decision upon the appeal within 14 business days after receiving notice of the requested review.

HISTORICAL NOTE

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[See T40 §1-15 Note 1]

DERIVATION

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-12 Packages.

(a) **Policy.** Prisoners shall be permitted to receive packages from, and send packages to, any person, except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security.

(b) **Number.** The Department may impose reasonable restrictions on the number of packages sent or received.

(c) **Outgoing packages.** The costs incurred in sending outgoing packages shall be borne by the prisoner.

(d) **Incoming packages.** (1) Incoming packages shall be delivered within 48 hours of receipt by the Department, unless the intended prisoner is no longer in custody of the Department.

(2) Packages may be personally delivered to a facility during visiting hours.

(3) Upon admission to a facility, prisoners shall be provided with a copy of a list of items that may be received in packages or this list shall be posted in each housing area.

(e) **Inspection of incoming packages.** (1) Incoming packages may be opened and inspected.

(2) Correspondence enclosed in incoming packages may not be opened or read except pursuant to the procedures set forth in subdivision (e) of §1-11.

(f) **Prohibited items in incoming packages.** (1) When an item found in an incoming package involves a criminal offense, it may be forwarded to the appropriate authority for possible criminal prosecution. In such situations, the notice

required by paragraph (3) of this subdivision may be delayed if necessary to prevent interference with an ongoing criminal investigation.

(2) A prohibited item found in an incoming package that does not involve a criminal offense shall be returned to the sender, donated or destroyed, as the prisoner wishes.

(3) Within 24 hours of the removal of an item, the Board and the intended prisoner shall be sent written notification of this action. This written notice shall include:

(i) the name and address of the sender;

(ii) the item removed;

(iii) the reasons for removal;

(iv) the choice provided by paragraph (2) of this subdivision; and

(v) the appeal procedure.

(4) After removal of an item, all other items in the package shall be forwarded to the intended prisoner.

(g) **Appeal.** Any person affected by the determination to remove an item from an incoming package may appeal such determination to the Board.

(1) The person affected by the determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(2) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(3) The Board or its designee shall issue a written decision upon the appeal within 14 business days after receiving notice of the requested review.

HISTORICAL NOTE

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FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-13 Publications.

(a) **Policy.** Prisoners are entitled to receive new or used publications from any source, including family, friends and publishers, except when there is substantial belief that limitation is necessary to protect public safety or maintain facility order and security. "Publications" are printed materials including soft and hardcover books, articles, magazines and newspapers.

(b) **Number and language.** There shall be no restriction upon the receipt of publications based upon the number of publications previously received by the prisoner, or the language of the publication.

(c) **Incoming publications.** (1) Incoming publications shall be delivered to the intended prisoner within 48 hours of receipt by the Department unless the prisoner is no longer in custody of the Department.

(2) Incoming publications may be opened and inspected pursuant to the procedures applicable to incoming packages.

(3) Incoming publications shall not be censored or delayed unless they contain specific instructions on the manufacture or use of dangerous weapons or explosives, plans for escape, or other material that may compromise the safety and security of the facility.

(4) Incoming publications shall only be read to ascertain if they contain material prohibited by paragraph (3) of this subdivision.

(5) Within 24 hours of a decision to censor or delay all or part of an incoming publication, the Board and the intended prisoner shall be sent written notification of such action. This notice shall include the specific facts and reasons underlying the determination and the appeal procedure.

(d) **Appeal.** Any person affected by a determination made pursuant to paragraph (c)(3) of this section may appeal such determination to the Board.

(1) The person affected by the determination shall give notice in writing to the Board and the Department of his or her intent to appeal the determination.

(2) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written deter- mination.

(3) The Board or its designee shall issue a written decision upon the appeal within five business days after receiving notice of the requested review.

HISTORICAL NOTE

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[See T40 §1-15 Note 1]

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FOOTNOTES

1

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RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-14 Access to Media.

(a) **Policy.** Prisoners are entitled to access to the media. "Media" means any printed or electronic means of conveying information to any portion of the public and shall include, but is not limited to newspapers, magazines, books or other publications, and licensed radio and television stations.

(b) **Media interviews.** (1) Properly identified media representatives shall be entitled to interview any prisoner who consents to such an interview. "Properly identified media representative" means any person who presents proof of his or her affiliation with the media.

(2) The prisoner's consent must be in writing on a form that includes the following information in Spanish and English:

(i) the name and organization of the media representative;

(ii) notification to the prisoner that statements made to the media representative may be detrimental to the prisoner in future administrative or judicial proceedings;

(iii) notification to the prisoner that he or she is not obligated to speak to the media representative; and

(iv) notification to the prisoner that he or she may postpone the media interview in order to consult with an attorney or any other person.

(3) The Department may require the consent of an attorney of record prior to scheduling a media interview with a

detainee undergoing examination for competency pursuant to court order.

(4) The Department may require the consent of an attorney of record or a parent or legal guardian prior to scheduling a media interview with a prisoner under 18 years of age.

(5) The name of the Department's media contact shall be published. Media representatives shall direct requests for interviews to this person.

(6) Interviews shall be scheduled promptly by the Department but not later than 24 hours from a request made between 8 a.m. and 4 p.m. The 24-hour period may be extended if necessitated by the prisoner's absence from the facility.

(c) **Limitation of media interviews.** (1) The Department may deny, revoke or limit a media interview with a media representative or a prisoner only if it is determined that such interview constitutes a threat to the safety or security of the facility.

(2) This determination must be based on specific acts committed by the media representative or by the prisoner during a prior visit that demonstrate his or her threat to the safety and security of the facility. Prior to any determination, the media representative or the prisoner must be provided with written notification of the specific charges and the names and statements of the charging parties, and be afforded an opportunity to respond.

(3) Any determination made pursuant to paragraph (1) of this subdivision shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within 24 hours of the determination.

(4) Any person affected by a determination made pursuant to this subdivision may appeal such determination to the Board.

(i) The person affected by the determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written deter- mination.

(iii) The Board or its designee shall issue a written decision upon the appeal within five business days after it has received notice of the requested review.

HISTORICAL NOTE

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[See T40 §1-15 Note 1]

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FOOTNOTES

1

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RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 1 CORRECTIONAL FACILITIES*1

§1-15 Variances.

(a) **Policy.** The Department may apply for a variance from a specific subdivision or section of these minimum standards when compliance cannot be achieved or continued. A "limited variance" is an exemption granted by the Board from full compliance with a particular subdivision or section for a specified period of time. A "continuing variance" is an exemption granted by the Board from full compliance with a particular subdivision or section for an indefinite period of time. An "emergency variance" as defined in paragraph (b)(3) of this section is an exemption granted by the Board from full compliance with a particular subdivision or section for no more than 30 days.

(b) **Limited, continuing and emergency variances.** (1) The Department may apply to the Board for a variance when:

(i) despite its best efforts, and the best efforts of other New York City officials and agencies, full compliance with the subdivision or section cannot be achieved, or

(ii) compliance is to be achieved for a limited period in a manner other than specified in the subdivision or section.

(2) The Department may apply to the Board for a continuing variance when despite its best efforts and the best efforts of other New York City officials and agencies compliance cannot be achieved in the foreseeable future because:

(i) full compliance with a specific subdivision or section would create extreme practical difficulties as a result of circumstances unique to a particular facility, and lack of full compliance would not create a danger or undue hardship to staff or prisoners; or

(ii) compliance is to be achieved in an alternative manner sufficient to meet the intent of the subdivision or section.

(3) The Department may apply to the Board for an emergency variance when an emergency situation prevents continued compliance with the subdivision or section. An emergency variance for a period of less than 24 hours may be declared by the Department when an emergency situation prevents continued compliance with a particular subdivision or section. The Board or its designee shall be immediately notified of the emergency situation and the variance declaration.

(c) **Variance application.** (1) An application for a variance must be made in writing to the Board by the Commissioner of the Department as soon as a determination is made that continued compliance will not be possible and shall state:

(i) the type of variance requested;

(ii) the particular subdivision or section at issue;

(iii) the requested commencement date of the variance;

(iv) the efforts undertaken by the Department to achieve compliance by the effective date;

(v) the specific facts or reasons making full compliance impossible, and when those facts and reasons became apparent;

(vi) the specific plans, projections and timetables for achieving full compliance;

(vii) the specific plans for serving the purpose of the subdivision or section for the period that strict compliance is not possible; and

(viii) if the application is for a limited variance, the time period for which the variance is requested, provided that this shall be no more than six months.

(2) In addition to the provisions of paragraph (1) of this subdivision, an application for a continuing variance shall state:

(i) the specific facts and reasons underlying the impracticability or impossibility of compliance within the foreseeable future, and when those facts and reasons become apparent, and

(ii) the degree of compliance achieved, and the Department's efforts to mitigate any possible danger or hardships attributable to the lack of full compliance; or

(iii) a description of the specific plans for achieving compliance in an alternative manner sufficient to meet the intent of the subdivision or section.

(3) In addition to the requirements of paragraph (1) of this subdivision, an application for an emergency variance for a period of 24 hours or more, (or for renewal of an emergency variance) shall state:

(i) the particular subdivision or section at issue;

(ii) the specific facts or reasons making continued compliance impossible, and when those facts and reasons became apparent;

(iii) the specific plans, projections and timetables for achieving full compliance; and

(iv) the time period for which the variance is requested, provided that this shall be no more than thirty days.

(d) **Variance procedure for limited and continuing variance.** (1) Prior to a decision on an application for a limited or continuing variance, the Board shall consider the position of all interested parties, including correctional employees, prisoners and their representatives, other public officials and legal, religious and community organizations.

(2) Whenever practicable, the Board shall hold a public meeting or hearing on the variance application, and hear testimony from all interested parties.

(3) The Board's decision on a variance application shall be in writing.

(4) Interested parties shall be notified of the Board's decision as soon as practicable, and no later than 5 business days after the decision is made.

(e) **Granting of variance.** (1) The Board shall grant a variance only if it is presented with convincing evidence that the variance is necessary and justified.

(2) Upon granting a variance, the Board shall state:

(i) the type of variance

(ii) the date on which the variance will commence

(iii) the time period of the variance, if any, and

(iv) any requirements imposed as conditions on the variance.

(f) **Renewal and review of variance.** (1) An application for a renewal of a limited or emergency variance shall be treated in the same manner as an original application as provided in subdivisions (b), (c), (d) and (e) of this section. The Board shall not grant renewal of a variance unless it finds that, in addition to the requirements for approving an original application, a good faith effort has been made to comply with the subdivision or section within the previously prescribed time limitation, and that the requirements set by the Board as conditions on the original variance have been met.

(2) A petition for review of a continuing variance may be made upon the Board's own motion or by the Department, correctional employees, prisoners or their representatives. Upon receipt of a petition, the Board shall review and re-evaluate the continuing necessity and justification for the continuing variance. Such review shall be conducted in the same manner as the original application as provided in subdivisions (b), (c), (d) and (e) of this section. The Board will review all the facts and consider the positions of all interested parties. The Board will discontinue the variance, if after such review and consideration, it determines that:

(i) full compliance with the standard now can be achieved; or

(ii) requirements imposed as conditions upon which the continuing variance was granted have not been fulfilled or maintained; or

(iii) there is no longer compliance with the intent of the subdivision or section in an alternative manner as required by subparagraph (b)(2)(ii) of this section.

(3) The Board shall specify in writing and publicize the facts and reasons for its decision on an application for renewal or review of a variance. The Board's decision must comply with the requirements of subdivision (e) of this section, and, in the case of limited and continuing variances, paragraphs (d)(3) and (4) of this section. Where appropriate, the Board shall set an effective date for discontinuance of a continuing variance after consultation with all interested parties.

(4) The Board shall not grant more than two consecutive renewals of emergency variances.

HISTORICAL NOTE

Section renumbered and amended City Record May 16, 2008 §1, eff. June 15, 2008. [See Note 1]

DERIVATION

Former §1-16 in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record May 16, 2008:

The Board adopted the original Minimum Standards for New York City Correctional Facilities in 1978. The original sixteen standards represented the Board's view of the basic elements necessary to promote safe, secure and humane jail environments. The Minimum Standards provisions sought to ensure non-discriminatory treatment of prisoners, and regulated classification, personal hygiene, overcrowding, lock-in, access to recreation, practice of religion, access to courts, visiting, telephone calls, correspondence, packages, publications, and access to media. The original Minimum Standards remained substantially unchanged until 1985, when the Board promulgated three important amendments to the Standards provisions regulating overcrowding, law libraries, and the variance process.

The attached amendments are the result of a review of all sixteen sections of the Minimum Standards, the first such comprehensive reexamination since they became effective in 1978. In developing the amendments, the Board considered developments in case law and correctional practices in jurisdictions throughout the United States. Throughout the Minimum Standards set forth herein, the Board has deleted original implementation language that long has been obsolete (e.g., "By September 1, 1978 . . ."). The Board has also adopted as amendments to the Minimum Standards longstanding variances that have facilitated the medical isolation of prisoners in contagious disease housing units.

Set forth below is a section-by-section description of the adopted amendments.

. . . . . .

Section 1-01 ("Non Discriminatory Treatment") The Board voted at its meeting of November 8, 2007 to amend subdivision (a) ("Policy") by adding the terms "gender" and "disability" to the list of factors that cannot be the bases for discriminatory treatment of prisoners. The purpose of this amendment to subdivision (a) is to be clear that the non-discriminatory treatment policy that has historically applied with respect to race, religion, nationality, sex, sexual orientation, age or political belief should also be applicable to treatment based on gender or disability. With regard to gender, the amendment signifies that transgender prisoners should not be searched more frequently than or differently from other prisoners. It was not the Board's intention, in amending this section, to require the Department of Correction to change its present inmate classification policy, which is based on genital anatomy, nor to require the Department to change its practices of applying such classification for purposes including but not limited to housing, search procedures and permissible clothing and other items. The Board rejected a proposal to add language to include "gender identity appropriate clothing" to the new provisions of the standards that authorize DOC to require all prisoners to wear facility clothing. See paragraph (g)(2) of §1-03 ("Personal Hygiene") below. Rather, the Board's sole intention is to ensure that interactions between staff and transgender prisoners should be the same as those with non-transgender prisoners. During the Board's November 8th meeting, the Executive Director, for the limited purpose of illustrating the meaning of the term "gender", read into the record the definition of that term set forth in the New York City Human Rights Law ("HRL"). The General Counsel of the New York City Human Rights Commission has advised the Board that the HRL is not applicable with regard to the treatment of prisoners housed in DOC facilities, specifically with regard to the DOC policies and classifications discussed herein. The Board did not discuss or consider the issue of whether the provisions

of the HRL should be applied through its Minimum Standards. Consistent with its views about non-discriminatory treatment, the Board also voted to include "gender" as one of the categories that cannot be used as a basis to deny, revoke, limit or interfere with visits, specifically referring to both visitors and prisoners. A corresponding revision has been made to paragraph (h)(1) of Section 1-09 ("Visiting"). The Board rejected a proposal to repeal paragraph (c)(1), which remains intact. The Board also voted to add a new paragraph (d)(3), which will require that "(p)rocedures must be employed to ensure that non-English speaking prisoners understand all written and oral communications from facility staff members . . ." Section 1-02 ("Classification") The Board voted to amend paragraph (b)(1) to authorize the housing of sentenced and detention prisoners together in punitive segregation, medical housing areas, mental health centers and mental observation cell housing areas, close custody housing areas, and nursery, thereby converting longstanding variances into amendments to the Minimum Standards, and allowing DOC to continue to operate these housing areas more efficiently. Thus, for example, DOC would not be required to operate separate nurseries for detainees and sentenced prisoners. The Board voted to amend paragraphs (b)(2) and (3) to reflect a change in New York State Correction Law, which defines adolescent prisoners as ages 16 through 18 years old. Adolescent prisoners must continue to be housed separately from adults, ages 19 years and over. Repeal of Section 1-03 ("Overtime for Correction Officers") The repeal of §1-03 reflects the longstanding opinion of the Law Department that the Board's efforts to regulate involuntary overtime for correctional officers exceeded the Board's jurisdiction as an intrusion upon the labor relations prerogatives of the City and employee unions. Subsequent sections have been renumbered to reflect this repeal. Section 1-03 ("Personal Hygiene") The Board voted to amend paragraph (b)(1) to require that hot water for showers be provided at temperatures recommended by the American Public Health Association. To enable DOC to hold prisoners confined in punitive segregation responsible for misconduct, the Board voted to add a paragraph (b)(2), authorizing DOC to provide less frequent than daily access to showers to prisoners in punitive segregation who engage in misconduct on the way to, from, or at the shower area, and would convert longstanding variances into permanent amendments. The Board approved three exceptions for: (1) court appearances, (2) hot weather "when access to cool showers protects prisoners' health", and (3) menstruating female prisoners. The Board also voted to add a paragraph (c)(2) to apply identical restrictions to access to daily shaves. The Board voted to amend subdivisions (g) and (h), thereby authorizing DOC to require all prisoners, including detainees, to wear seasonally-appropriate facility clothing, except for trial court appearances. Facility clothing for detainees must be readily distinguishable from facility clothing for sentenced prisoners. DOC may not require detainees to wear facility clothing until DOC first establishes and operates adequate laundry and clothing storage facilities. Section 1-04 ("Overcrowding") The Board voted to reject three related proposed amendments that would have enabled DOC to increase the number of detainees it confines in dormitories. The Board left intact paragraph (c)(2), deciding to retain the dormitory density requirement of 60 square feet per prisoner in sleeping areas. The Board voted to reject a proposal to amend subparagraph (c)(5)(i), deciding to retain the dormitory capacity limit of 50 detainees. The Board also voted to reject a proposal to increase in dormitories the mandated ratio of sinks to prisoners, deciding to retain the current ratio of one sink for every 10 prisoners (§1-04(c)(3)). Section 1-05 ("Lock-In") The Board voted to amend subdivision (a) to exclude from the optional lock-out provisions prisoners who are confined for medical reasons in contagious disease units (CDUs), and prisoners confined in punitive segregation. Pursuant to a longstanding variance, medical prisoners in the CDUs have been excluded from optional lock-out because they must be isolated from other prisoners. The amendment acknowledges that prisoners in punitive segregation are confined to their cells most of the time (except for some programs and services, including recreation, visits, and medical and mental health care). The Board rejected a proposal to further amend subdivision (a) to exclude from the optional lock-out provisions prisoners who are confined in close custody. Section 1-06 ("Recreation") The Board voted to amend subdivision (d) by requiring DOC to provide prisoners participating in outdoor recreation during cold or wet weather with "appropriate outer garments in satisfactory condition, including coat, hat, and gloves." The Board voted to add a new subdivision (h), entitled "Limitation on Access to Recreation", authorizing DOC to deny recreation for up to five days for prisoners who are found guilty of infractions for misconduct on the way to, from, or at recreation. This amendment makes permanent a longstanding variance. It should be noted that although the original Minimum Standards provide that prisoner misconduct at the law library, while using telephones, and during visits, may result in limitations on access, no such limitation had been incorporated into the Minimum Standards for recreation-related misbehavior. This subdivision (h) has also been amended to correct an inadvertent omission in the version published for comment, by inserting the phrase "upon conviction of an infraction" with respect

to the denial of access to recreation. Section 1-07 ("Religion") The Board voted to amend paragraph (c)(1), making permanent a longstanding variance authorizing DOC to exclude from congregate religious services prisoners who are confined for medical reasons in CDUs. The Board rejected proposals to amend paragraphs (d)(1) and (j)(3), which would have identified DOC's (1) Executive Director of Ministerial Services as the official to approve religious advisors who conduct services and provide religious counseling in DOC facilities, and (2) Deputy Commissioner for Programs as the official to decide on prisoner requests to exercise the beliefs of a religious group or organization not previously recognized by DOC, respectively. Section 1-08 ("Access to Courts and Legal Services") The Board approved a proposal to amend paragraph (f)(2), authorizing DOC to operate law libraries for two hours when general population prisoners are locked in their housing areas, and to count those hours as part of the total number of hours that the law libraries must be open. DOC must operate libraries in large jails for 10 hours (of which 8 hours must be during "lock-out hours"), and for eight hours in small jails (of which six hours must be during "lock-out hours)." The Board believes that authorizing DOC to operate law libraries during two hours when prisoners are locked-in is likely to increase access to law libraries for prisoners from special housing areas, because these prisoners can be escorted to the law library more safely when there are no other prisoners in the corridors. The Board voted to revise paragraph (f)(8) to require DOC to report annually, rather than periodically, on each facility's law library resources. The Board also voted to revise paragraph (g)(2) to require DOC to provide dedicated word processors for prisoner use in the law libraries. Section 1-09 ("Visiting") The Board voted to amend paragraph (d)(1), authorizing DOC to provide a non-contact visit to detainees within 24 hours after admission, rather than a contact visit. This amendment affects only initial visits that occur within 24 hours of admission. All other visits continue to be contact visits. In voting this amendment, the Board noted that during the first 24 hours of custody, DOC must determine a prisoner's security risk and classification, and health providers must evaluate a prisoner's health status, including whether a prisoner may have a contagious disease. Noting that the amendment will affect a small number of prisoners, the Board concluded that providing a non-contact visit during the first 24 hours would help to ensure the safety of the prisoner, the visitor and the facility. A typographical error in paragraph 4 of subdivision (g) ("Visiting security and supervision") is corrected by deleting the brackets that had appeared in the first sentence when initially published for comment. The Board voted to add language to ensure that visits would not be delayed or denied because the Department lacked sufficient functioning lockers. The Board voted to amend paragraph (h)(1), prohibiting DOC from denying, revoking, limiting, or interfering with a visit based upon the visitor's or prisoner's gender or disability. Section 1-10 ("Telephone Calls") The Board voted to amend subdivision (h), authorizing the Department, upon implementation of appropriate procedures and legally sufficient notice to prisoners, to listen to and monitor prisoner telephone calls, except for telephone calls to the Board of Correction, Inspector General, other monitoring and investigative bodies, treating physicians and clinicians, attorneys and clergy. Section 1-11 ("Correspondence") The Board voted to amend Section 1-11 in three important respects. First, it amended subdivision (a) to allow prisoners to correspond with anyone "except when there is a reasonable belief that limitation is necessary to protect public safety or maintain facility order and security." The Board voted to require the Department to establish appropriate implementation procedures, and to provide notice of this revised policy to prisoners. The Board believes that heightened security concerns justify the proposed amendment. Second, the Board amended paragraphs (c)(6) and (e)(1), authorizing DOC to read prisoner non-privileged correspondence pursuant to a court order or warden's written order articulating a reasonable belief that the correspondence threatens the safety or security of the facility, another person, or the public. Moreover, in paragraph (c)(7), the reference to "outgoing prisoner privilege correspondence" was inadvertently omitted from the published proposal, and appears in this final version. During its deliberations, the Board noted that several New York jails (Nassau, Suffolk, Westchester, and Rockland) read non-privileged mail. The Philadelphia, Dallas, and Houston jails also read non-privileged mail. The Board concluded that relying on obtaining court orders could cause undue delays, and interfere with DOC's ability to act quickly and decisively when dealing with imminent security threats. Third, the Board amended paragraph (d)(1), increasing from 24 to 48 hours the time by which incoming correspondence must be delivered to prisoners. The Board noted that an additional 24 hours would enable DOC to conduct more thorough physical inspections of incoming correspondence. Finally, paragraph (e)(3) is amended to reflect the Board's view that the reading of privileged mail may occur only pursuant to court order, in which case there is no reason for the prisoner to be present. Section 1-12 ("Packages") The Board voted to amend subdivision (a), allowing prisoners to receive packages from, or send packages to, anyone "except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security." The Board believes that

heightened security concerns justify this amendment. The Board also amended paragraph (e)(2), consistent with the amendments to §1-11(e) noted above, authorizing DOC to read prisoner non-privileged correspondence enclosed in incoming packages pursuant to a court order or warden's written order articulating a reasonable belief that the correspondence threatens the safety or security of the facility, another person, or the public. Section 1-13 ("Publications") The Board voted to amend subdivision (a), allowing prisoners to receive publications from any source "except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security." The Board believes that heightened security concerns justify this amendment. The Board also voted to amend paragraph (c)(3), authorizing DOC to censor or delay delivery of a publication if it contains "material that may compromise the safety and security of the facility." The Board believes that heightened security concerns justify the proposed amendment. Section 1-15 ("Variances") The Board rejected proposals to amend §1-15, which would have simplified the process by which DOC could seek variances for non-compliance with provisions of the Standards. The Board also rejected a proposal that would have authorized the Board to grant a variance allowing DOC to implement, on a trial basis for a specified period of time, a procedure or program that does not comply with a Standard but which is identified as a correctional "best practice" - one that the Board determines may be particularly appropriate for implementation in City jails. Therefore §1-15 is to remain unchanged as to proposed substantive provisions. A correction has been made to the language in paragraph (d)(1) to restore the original text that was inadvertently misprinted in 1991 when the compilation of New York City Rules was published.

FOOTNOTES

1

[Footnote 1]: * Chapter amended City Record May 16, 2008 §1, eff. June 15, 2008. [See T40 §1-15 Note 1]

16 of 43 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-01 Service Calls.

Services for the detection, diagnosis and treatment of mental illness shall be provided to those persons in the care and custody of the New York City Department of Correction. The New York City Department of Health or a contracted service provider,*1 and the Department of Correction, with the approval of the Department of Mental Health, Mental Retardation and Alcoholism Services shall design and implement a mental health program to provide:

(a) crisis intervention and the management of acute psychiatric episodes;

(b) suicide prevention;

(c) stabilization of mental illness and the alleviation of psychological deterioration in the prison setting; and

(d) elective therapy services and preventive treatment where resources permit.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Hereinafter called the Department of Health.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-02 Identification and Detection.

(a) **Policy.** Procedures shall be developed and implemented which promote the timely identification of inmates requiring mental health evaluation.

(b) **Receiving screening.**

(1) Screening for mental and emotional disorders is to be performed on all inmates before they are placed in general population. This initial screening shall take place within twenty-four hours after an inmate's arrival at the correctional facility.

(2) Screening shall be performed by mental health services personnel or by appropriately trained medical personnel. Screening may be incorporated within the medical intake procedure.

(3) The Department of Health, with the approval of the Department of Mental Health, Mental Retardation and Alcoholism Services shall develop written procedures setting the topics to be reviewed in receiving screening. The review shall include, but need not be limited to: psychiatric history, including neuropsychiatric hospitalizations, contacts with mental health professionals, suicidal and violent behavior, history or presence of delusions or hallucinations, and an assessment based on behavioral observations of mood, orientation, impaired consciousness, indications of gross mental retardation and significant presenting complaints.

(4) The professionals conducting intake screening shall record their findings in a standard, written mental health intake form which the Department of Health shall develop with the approval of the Department of Mental Health,

Mental Retardation and Alcoholism Services for use in all facilities.

(5) Receiving screening shall include a description of available mental health services and the procedures for access to those services:

(i) inmates shall receive a written communication in English and Spanish describing available mental health services, the confidentiality of those services and the procedures for gaining access to them;

(ii) the Department of Correction shall make provisions to assist in assuring that the procedures for gaining access to mental health services are verbally explained to illiterate inmates, and that inmates whose native language is other than English or Spanish are given prompt access to translation services for the explanation of these procedures.

(c) **Training of staff.**

(1) All correction officers and medical services personnel are to receive training and continuing education in programs approved by the Departments of Correction, Health and Mental Health, Mental Retardation and Alcoholism Services regarding the recognition of mental and emotional disorders. This training shall incorporate, but need not be limited to, the following areas:

(i) the recognition of signs and symptoms of mental and emotional disorders most frequently found in the inmate population;

(ii) the recognition of signs of chemical dependence and the symptoms of narcotic and alcohol withdrawal;

(iii) the recognition of adverse reactions to psychotropic medication;

(iv) the recognition of signs of developmental disability, particularly mental retardation;

(v) types of potential mental health emergencies, and how to approach inmates to intervene in these crises;

(vi) identification and referral of medical problems of mental health inmates;

(vii) suicide prevention; and

(viii) the appropriate channels for the immediate referral of an inmate to mental health services for further evaluation, and the procedures governing such referrals.

(2) No later than nine months from the effective date of these standards, there shall be at least one officer in every housing area on every tour trained in the application of basic first aid, including life support cardio-pulmonary resuscitation.

(3) Mental health services staff shall receive explicit orientation as well as continuing education and training appropriate to their activities:

(i) there shall be a written plan developed by the Department of Health and approved by the Department of Mental Health, Mental Retardation and Alcoholism Services for the orientation, continuing education and training of all mental health services staff;

(ii) in-service training shall include regular individual supervision of not less than one hour per week and not less than one hour per week of continuing education to be prorated for part-time staff.

(d) **Observation aides.**

(1) There is to be an organized program of observation aides trained to monitor those inmates identified as

potential suicide risks as well as to recognize in those inmates not previously identified the warning signals of suicidal behavior. Inmates, including those housed in mental observation areas, may be employed as observation aides and shall be paid for their services.

(2) Written procedures shall be developed by the Department of Correction and Health, to be approved by the Department of Mental Health, Mental Retardation and Alcoholism Services, defining the selection criteria for observation aides, the training they shall receive, the procedures they shall follow and the criteria for the evaluation of their performance as well as for terminating their employment where necessary:

(i) in developing a program of observation aides the Department of Correction shall consult with the Department of Health in order to provide for coordination of effort between the two agencies;

(ii) observation aides shall be trained to promptly inform correction or mental health services staff when they believe an inmate poses a suicide risk, presents an immediate danger of suicide or is engaging in bizarre behavior. This information shall be recorded in a systematic manner.

(3) Observation aides shall operate in all correctional facilities in the following housing areas: mental observation, punitive segregation, administrative segregation and new admission. They shall be employed in other areas as required.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-03 Diagnosis and Referral.

(a) **Policy.** The Departments of Correction and Health, with the approval of the Department of Mental Health, Mental Retardation and Alcoholism Services, shall develop procedures to provide for the prompt evaluation and appropriate referral of inmates whose behavior suggests that they are suffering from a mental or emotional disorder, as well as the immediate evaluation and treatment of those in need of emergency psychiatric care.

(b) **Access.**

(1) There is to be non-emergency access to mental health services. Inmates may refer themselves for preliminary evaluation, and they shall be seen by a member of mental health services staff as soon as possible but in no instance later than three working days after receipt of referral by mental health services staff. The Department of Correction shall ensure that notice of the request is received by mental health services staff within twenty-four hours.

(2) Inmates shall have twenty-four hour access to mental health services personnel for emergency psychiatric care and the management of acute psychiatric episodes:

(i) all inmates who report having been sexually assaulted shall be referred for emergency assessment;

(ii) inmates awaiting emergency evaluation are to be housed in a specially designated area with close staff supervision and sufficient security to protect inmates and staff;

(iii) the Departments of Correction and Health shall develop a written form for emergency evaluation referrals.

(3) Correction staff and medical services personnel are required to refer to mental health services those inmates in the general population who exhibit signs of mental or emotional disorders. A standard written procedure to include a description of the behavior upon which the referral is based shall be developed by the Departments of Health and Correction.

(4) The Department of Correction shall provide sufficient escort officers to ensure delivery of service in a manner that promotes the maximum efficiency of mental health services staff. The Department of Correction shall develop and implement procedures to provide that inmates requested for evaluation or follow-up be escorted to mental health services staff, or accounted for, the same day. In all cases where the inmate is still in custody, he or she shall be brought to mental health services staff within twenty-four hours.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-04 Treatment.

(a) **Policy.** Adequate mental health care is to be provided to inmates in an environment which facilitates care and treatment, provides for maximum observation, reduces the risk of suicide, and is minimally stressful. Inmates under the care of mental health services, if in all other respects qualified and eligible shall be entitled to the same rights and privileges as every other inmate.

(b) **Criteria of adequacy.**

(1) The Department of Health shall develop written criteria to be approved by the Department of Mental Health, Mental Retardation and Alcoholism Services defining in accordance with current professional standards the mental health staff, supplies and equipment necessary to provide adequate mental health care.

(2) The Departments of Health and Correction shall develop written criteria to be approved by the Department of Mental Health, Mental Retardation and Alcoholism Services defining in accordance with current professional standards the space necessary to provide adequate and appropriate housing and treatment of inmates under the care of mental health services.

(3) No later than ninety days from the effective date of these standards, the written criteria shall be submitted to the Board of Correction for promulgation as an amendment to these standards.

(c) **Programs.**

(1) Special housing shall be provided to those inmates in need of close supervision due to mental or emotional disorders, and to those inmates in the process of being evaluated for such disorders:

(i) twenty-four hour observation aides shall be assigned to special housing areas;

(ii) correction officers who have received not less than thirty-five hours of special training within the first year of their assignment shall be assigned to steady posts within these areas. These officers shall receive annual training enhancement. The Departments of Health and Correction shall develop a written curriculum to be approved by the Department of Mental Health, Mental Retardation and Alcoholism Services specifying the components and hours of the training programs;

(iii) inmates placed in special housing areas shall be seen and interviewed by mental health services staff at least once per week;

(iv) an individual member of mental health services staff shall be directly responsible for mental health services in each special housing area;

(v) the Department of Correction shall make provision for the allocation of dormitory space as special housing for the observation of potentially suicidal inmates.

(2) The Departments of Correction and Health shall develop specific written criteria and procedures for the admission to and the discharge from special housing areas for mental observation:

(i) it shall be the prerogative of mental health services to admit and discharge inmates from special housing areas for mental observation;

(ii) the placement of an inmate in special housing shall be reviewed by mental health services at least once per week.

(3) An individualized written treatment plan based upon the evaluation of the treatment team shall be developed for each inmate placed in special housing for mental observation and for all inmates to whom medication for mental or emotional disorders is prescribed:

(i) the treatment team must include a psychiatrist who shall personally examine each inmate evaluated by the treatment team;

(ii) those members of the treatment team who are providing care to an inmate shall prepare a treatment plan, which shall be signed by the psychiatrist;

(iii) the Chief of Service or his or her designee shall approve all treatment plans;

(iv) the Department of Health shall develop written criteria to be approved by the Department of Mental Health, Mental Retardation and Alcoholism Services defining the nature and the specificity of the treatment plan;

(v) there shall be documented evidence of initial treatment planning within three days of the inmate being placed in special housing, and a treatment plan shall be prepared no later than one week after placement;

(vi) treatment plans shall be reviewed and assessed for effectiveness by professional mental health services staff at least every two weeks. Both the review and the inmate's progress shall be recorded in the medical chart;

(vii) a range of treatment modalities other than the provision of medication shall be made available.

(4) There shall be facilities appropriate for the observation, evaluation and treatment of acute psychiatric episodes.

(5) Where required, an inmate shall be transferred to a municipal hospital prison ward in accordance with New York State Correction Law §§402 and 508.

(6) Inmates identified as developmentally disabled shall be evaluated within seventy-two hours and mental health services staff shall make a recommendation to the Department of Correction as to whether such developmental disability makes it necessary for the inmate to be placed in special housing or otherwise separated from the general inmate population:

(i) inmates who suffer from developmental disabilities shall be housed in areas sufficient to ensure their safety;

(ii) if it is determined by mental health services that an inmate's developmental disability makes it clinically contraindicated that the inmate be housed in a correctional facility, then the Department of Correction shall immediately notify the court and a written notice shall be filed in the inmate's court papers.

(7) The Departments of Health and Correction shall use mechanisms approved by the Department of Mental Health, Mental Retardation and Alcoholism Services to identify inmates who are suffering from drug addiction or the disease of alcoholism. Inmates so identified shall be referred to available programs approved by the Departments of Correction and Health. Detoxification shall take place in a setting appropriate to the level of care required.

(d) **Informed consent.** Except as otherwise provided herein, mental health treatment may be administered only upon the informed consent of the inmate after a disclosure of the risks and benefits of the proposed treatment in accordance with good clinical practice. The Departments of Health and Mental Health, Mental Retardation and Alcoholism Services shall develop procedures for the implementation of this section, which shall include the use of a written form to document the informed consent of the inmate.

(e) **Right to refuse treatment.** The city may not require treatment of an inmate without the inmate's consent unless, in an emergency, that person, by reason of mental disability or mental illness, poses a clear and present danger of serious physical injury to self or others. Then and only then may an inmate be examined, treated or medicated against the inmate's will, subject to the following conditions:

(1) the attending physician shall use only those measures which in his or her best professional judgment are deemed appropriate in response to the emergency;

(2) these measures may be used only with a written medical order;

(3) these measures may be used only with adequate explanation in the inmate's chart by the physician responsible detailing the length of the period of observation, the inmate's condition, the threat the inmate poses and the specific reasons for the specific intervention proposed;

(4) no order to treat an inmate against the inmate's will shall be valid for longer than twenty-four hours, without review and renewal and appropriate notation in the inmate's medical records;

(5) the Departments of Correction and Health shall develop procedures to be approved by the Department of Mental Health, Mental Retardation and Alcoholism Services for the implementation of this subdivision including the use of a written form to document an inmate's refusal to consent to a particular examination, procedure or medication.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

40 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-05 Medication.

(a) **Policy.** Medication shall not be used solely as a method of restraint or means of control, but only as one facet of a treatment plan (as defined in §2-04(c)(3)).

(b) **Procedures.**

(1) The Department of Health, with the approval of the Department of Mental Health, Mental Retardation and Alcoholism Services shall develop and implement procedures governing the prescription, dispensing, administration and review of medication:

(i) medication for mental and emotional disorders is to be prescribed only by a psychiatrist, except in an emergency when a physician other than a psychiatrist may prescribe medication for mental and emotional disorders. Such a prescription must be reviewed by a psychiatrist within twenty-four hours;

(ii) except in an emergency, medication for mental and emotional disorders may not be prescribed to an inmate unless that inmate has had a physical examination including a detailed clinical history within the previous six months; in all cases the prescribing physician must first review the medical chart and all other medicine the inmate is receiving;

(iii) medication is to be administered only by appropriately trained medical or health services personnel.

(2) Psychotropic medication shall be dispensed only when clinically indicated, consistent with the treatment plan:

(i) all prescriptions for psychotropic medication must include a stop order; no prescription for psychotropic

medication shall be valid for longer than two weeks;

(ii) every inmate receiving psychotropic medication shall be seen and evaluated by the prescribing psychiatrist, or, in cases of emergency when a physician other than a psychiatrist prescribes medication under §2-05(b)(1)(i) by the reviewing psychiatrist, at least once a week until stabilized and thereafter at least every two weeks by medical personnel;

(iii) female inmates who are prescribed psychotropic medication shall be informed of the potential risk of taking such drugs while pregnant and shall be given the opportunity to be tested for pregnancy.

(c) **Pharmacy.**

(1) When stock medications are maintained within a correctional facility, the agency providing medical services shall develop and maintain a formulary of medications stored in that facility.

(2) The Departments of Health and Correction shall develop and implement a written policy to provide for the maximum security storage and weekly inventory of all controlled substances, syringes, needles and surgical instruments:

(i) "controlled substances" are defined as those so listed by the Drug Enforcement Administration of the United States Department of Justice;

(ii) written notice of this policy shall be given to all staff with potential access to any controlled substances or items under maximum security storage.

(d) **Research.** Biomedical or behavioral research involving any inmate in the custody of the New York City Department of Correction is prohibited, except insofar as it meets the requirements for approval of research which is subject to the Department of Health and Human Services' regulations, and in addition, has the approval of the Department of Mental Health, Mental Retardation and Alcoholism Services.

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CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-06 Restraints and Seclusion.

(a) **Policy.** The Departments of Correction and Health shall develop and implement procedures subject to the review of the Department of Mental Health, Mental Retardation and Alcoholism Services governing the physical restraint and seclusion of inmates being observed or treated for mental or emotional disorders. Consistent with the New York State Mental Hygiene Law restraints or seclusion shall not be used as punishment, for the convenience of staff, or as a substitute for treatment programs.

(b) **Definitions.**

Physical restraint. "Physical restraint" is the deliberate use of a device to interfere with the free movement of an inmate's arms and/or legs, or which totally immobilizes the inmate, and which the inmate is unable to remove without assistance:

(i) the Departments of Health and Mental Health, Mental Retardation and Alcoholism Services shall develop procedures defining permissible forms of physical restraints;

(ii) in no instance shall metal handcuffs be used to restrain an inmate; however, this proscription shall not preclude the application of appropriate security precautions during the transportation of inmates;

(iii) in an emergency, when an inmate presents a clear and present danger to himself or others, the inmate may be restrained, including with metal handcuffs, pending the arrival of a psychiatrist. Correction personnel shall immediately notify the mental health staff for response. The psychiatrist shall respond immediately, but in no event more than one

hour after notification. When there is no institutional psychiatrist on duty, correction personnel shall immediately transport the inmate to a facility where a psychiatrist is present.

Seclusion. "Seclusion" is the placing of inmates in their cells, or a seclusion room from which they cannot leave at will, during a normal lock-out period when other inmates in the housing area are given the option to lock out of their cells:

(i) seclusion shall be used only if the cells or seclusion rooms available allow adequate observation of the inmate by staff;

(ii) nothing in this Section shall restrict the ability of the Department of Correction to limit the lock-out rights of inmates for disciplinary purposes (punitive segregation).

(c) **Procedures.**

(1) The use of physical restraint or seclusion of inmates being observed or treated for mental or emotional disorders shall be permitted only where there is on-duty psychiatric coverage.

(2) Physical restraint or seclusion may be used only upon the direct written order of a psychiatrist which includes the reasons for taking such action.

(3) Physical restraint or seclusion shall be used only when the psychiatrist has examined the inmate and determined in light of all available mental health data that:

(i) the inmate presents an immediate danger of injury to self or others;

(ii) this potential for violence is the result of a mental health disorder for which the inmate is receiving treatment;

(iii) these measures are absolutely necessary to avert the danger and will be therapeutically beneficial; and

(iv) all other available alternatives are ineffective in preventing injury.

(4) An inmate put in restraints or seclusion shall be kept under constant observation and the need for continued restrictive measures shall be assessed by nursing or mental health staff:

(i) use of restraints shall be assessed every fifteen minutes and seclusion shall be reviewed every thirty minutes;

(ii) written findings of such reviews shall be noted on the inmate's medical chart;

(iii) vital signs (temperature, pulse, blood pressure and respiration)

shall be recorded every hour.

(5) An inmate subjected to restraints or seclusion shall be released every two hours and given the opportunity to go to the toilet.

(6) A psychiatrist shall evaluate an inmate in restraints or seclusion at least once every two hours to determine whether continued restrictive measures are warranted.

(7) No order to place an inmate in restraints or seclusion shall be valid longer than two hours, and such an order shall be renewable only once, by a psychiatrist after evaluation of the inmate's condition.

(8) After four hours, if an inmate remains too agitated to be released, the inmate shall be moved to a municipal hospital prison ward.

HISTORICAL NOTE

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40 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-07 Confidentiality.

(a) **Policy.** The principle of confidentiality of information obtained in the Health, with the approval of the Department of Mental Health, Mental Retardation and Alcoholism Services shall develop and implement a written policy governing the dissemination of information.

(b) **Sharing of information.**

(1) Mental health services shall promptly inform correction personnel when an inmate is identified as:

(i) suicidal;

(ii) homicidal;

(iii) posing a clear danger or injury to self or to others;

(iv) presenting a clear and immediate risk of escape or riot;

(v) receiving psychotropic medication; or

(vi) requiring transfer for mental health reasons.

(2) The Departments of Correction and Health shall develop and implement an explicit written procedure specifying which correction personnel are to be notified of information as described in §2-07(b)(1) above, and the

method of notification.

(c) **Records.**

(1) Mental health records are to be maintained separately from the confinement record and kept in a secure file. Each significant inmate contact shall be reflected by a substantive progress note on the chart.

(2) Mental health records are to be transferred with an inmate when the inmate is transferred from one facility to another within the New York City Department of Correction. A record summary shall accompany each inmate transferred to a municipal hospital prison ward. When a request is received to transfer mental health records outside the jurisdiction of the Department of Correction, written authorization of the inmate is required unless otherwise provided by law.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-08 Coordination.

(a) **Policy.** The Departments of Correction and Health shall consult and coordinate their activities on a regular basis in order to provide for the continued delivery of quality mental health care.

(b) **Discipline.**

(1) The Departments of Health and Correction shall develop written procedures to provide for mental health services to be informed whenever an inmate in a special housing area for mental observation is charged with an infraction, and to be permitted to participate in the infraction hearing and to review any punitive measures to be taken.

(2) Any inmate to be placed in punitive segregation who has a history of mental or emotional disorders shall be seen by mental health services staff before being moved to punitive segregation. All inmates in punitive segregation shall be seen at least once each day by medical staff who shall make referrals to mental health services where appropriate.

(c) **Meetings.** Monthly meetings including the facility administrator, the chief representative of mental health services to that facility and representatives of the medical and nursing staff shall be held to discuss the delivery of mental health services. Meetings shall include a written agenda as well as the taking and distribution of minutes.

(d) **Evaluation.** The Department of Mental Health, Mental Retardation and Alcoholism Services shall annually conduct a formal evaluation of the quality, effectiveness and level of performance of mental health services provided to inmates in New York City correctional facilities.

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RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 2 MENTAL HEALTH MINIMUM STANDARDS

§2-09 Variances.

(a) **Policy.** Any Department affected by these minimum standards may apply for a variance from a specific subdivision or Section of these standards when compliance cannot be achieved or continued. A "variance" is an exemption granted by the Board from full compliance with a particular subdivision or Section for a specified period of time.

(b) **Variance prior to implementation date.** A Department may apply to the Board for a variance prior to the implementation date of a particular subdivision or Section when:

(1) despite its best efforts and the best efforts of other New York City officials and agencies, full compliance with the subdivision or Section cannot be achieved by the implementation date; or

(2) compliance is to be achieved in a manner other than specified in the subdivision or Section.

(c) **Variance application.** An application for a variance must be made in writing to the Board by the Commissioner of the Department at least forty-five days prior to the implementation date and shall state:

(1) the particular subdivision or Section at issue;

(2) the efforts undertaken by the Department to achieve compliance by the implementation date;

(3) the specific facts or reasons making full compliance by the implementation date impossible;

(4) the specific plans, projections and timetables for achieving full compliance;

(5) the specific plans for serving the purpose of the subdivision or Section for the period that strict compliance is not possible; and

(6) the time period for which the variance is requested, provided that this shall be no more than six months.

(d) **Variance procedure.**

(1) Prior to a decision on a variance application, the Board shall consider the positions of all interested parties.

(2) In order to receive this input the Board shall publicize the variance application in its entirety in a manner reasonably calculated to reach all interested parties, including direct mail. This shall occur at least thirty days prior to the implementation date of the subdivision or Section.

(3) The Board shall hold a public meeting or hearing on the variance application and hear testimony from all interested parties at least twenty-one days prior to the implementation date.

(4) The Board's decision on a variance application shall be in writing and shall include the specific facts and reasons underlying the decision.

(5) The Board's decision shall be publicized in the manner provided by §2-09(d)(2) at least ten days prior to the implementation date.

(e) **Granting of variance.**

(1) The Board shall grant a variance only if it is convinced that the variance is necessary and justified.

(2) Upon granting a variance, the Board shall state:

(i) the time period of the variance; and

(ii) any requirements imposed as conditions on the variance.

(f) **Renewal of variance.** An application for a renewal of a variance shall be treated in the same manner as an original application as provided in §§2-09(b), 2-09(c), 2-09(d) and 2-09(e). The Board shall not grant renewal of a variance unless it finds that, in addition to the requirements for approving an original application, a good faith effort has been made to comply with the subdivision or Section within the previously prescribed time limitation.

(g) **Emergency variance after implementation date.** A Department may apply to the Board for a variance after the implementation date of a particular subdivision or Section when an emergency prevents continued compliance with the subdivision or Section.

(h) **Emergency variance application.** (1) A variance for a period of less than twenty-four hours may be declared by the Department or a designee when an emergency prevents continued compliance with a particular subdivision or Section. The Board or a designate shall be immediately notified of the emergency and the variance.

(2) An application for an emergency variance for a period of twenty-four hours or more, or for a renewal of an emergency variance, must be made by the Commissioner of the Department or a designee to the Board and shall state:

(i) the particular subdivision or Section at issue;

(ii) the specific facts or reasons making continued compliance impossible;

(iii) the specific plans, projections and timetables for achieving full compliance; and

(iv) the time period for which the variance is requested, provided that this shall be no more than five days.

(i) **Granting of emergency variance.**

(1) The Board shall grant an emergency variance only if it is convinced that the variance is necessary and justified.

(2) A renewal of an emergency variance previously granted by the Board may be granted only if the requirements of

§§2-09(g), 2-09(h)(2) and 2-09(i)(1) have been met.

(3) The Board shall not grant more than two consecutive renewals of an emergency variance.

HISTORICAL NOTE

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40 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-01 Service Goals and Purpose.

(a) **Purpose.**

(1) The following minimum health care standards are intended to insure that the quality of health care services provided to inmates in New York City correctional facilities is maintained at a level consistent with legal requirements, accepted professional standards and sound professional judgment and practice.

(2) These standards shall apply to health services for all inmates in the care and custody of the New York City Department of Correction (DOC), whether in City Correction facilities or at other health care facilities.

(b) **Service goals.** Services for the detection, diagnosis and treatment of medical and dental disorders shall be provided to all inmates in the care and custody of the New York City Department of Correction. The Department of Correction and the Health Authorities in consultation with the Department of Health (DOH) and the Health and Hospitals Corporation (HHC) shall design and implement a health care program to provide the following:

(1) Medical and dental diagnosis, treatment and appropriate follow-up care consistent with professional standards and sound professional judgment and professional practice;

(2) Management and administration of emergency medical and dental care;

(3) Regular training and development of health care personnel and correctional staff as appropriate to their respective roles in the health care delivery system; and

(4) Review and assessment of the quality of health service delivery on an ongoing basis.

(c) **Definitions.**

Chief Correctional Officer. "Chief Correctional Officer" refers to the highest ranking correctional official assigned to a facility (usually a warden).

Chronic Care. "Chronic care" is service rendered to an inmate over a long period of time. Treatment for diabetes, hypertension, asthma, and epilepsy are examples thereof.

Convalescent Care. "Convalescent care" refers to services rendered to an inmate to assist in the recovery from illness or injury.

Emergency. "Emergency" medical or dental care refers to care for an acute illness or an unexpected health need that cannot be deferred until the next scheduled sick call or clinic without jeopardy to the inmate's health or causing undue suffering.

Facility. "Facility" refers to any jail which operates as its own command or to any jail annex which is not within walking distance of the parent facility.

Flow Sheet. "Flow sheet" refers to a document which contains all clinical and laboratory variables on a problem in which data and time relationships are complex (e.g., sequential fasting blood sugars in the diabetic inmate).

Health Authority. "Health Authority" shall refer to any health care body designated by New York City as the agency or agencies responsible for health services for inmates in the care and custody of the New York City Department of Correction. When the responsibility is contractually shared with an outside provider this term shall also apply.

Health Care Personnel. "Health care personnel" refers to professionals who meet qualifications stipulated by their profession and who possess all credentials and licenses required by New York State law. Medical personnel refers to physicians, physician assistants and nurse practitioners.

Health Record. "Health record" refers to a single medical record that contains all available information pertaining to an inmate's medical, mental health and dental care. Unless otherwise specified this record refers to a jail-based health record, not the hospital record, which is separate.

Sick-Call. "Sick-call" refers to an encounter between an inmate and health care personnel for the purpose of assessing and/or treating an inmate's medical complaint.

Special Needs. "Special needs" refers to inmates requiring chronic care (see definition 6), convalescent care (definition 7) or skilled nursing care.

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40 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-02 Access to Health Care Services.

(a) **Policy.** The Department of Correction and the Health Authority shall be responsible for the design and implementation of written policies and procedures which ensure that all inmates have prompt and adequate access to all health care services. Services must be available, consistent with §1-01 of the Minimum Standards for New York City Correctional Facilities.

(b) **Access to Care.**

(1) Every facility must inform all inmates of their right to health care and the procedures for obtaining medical attention, as described in §3-04(b)(6).

(2) No inmate may be punished for requesting medical care or for refusing it.

(3) Under no circumstances shall an inmate's access to any health care service, including but not limited to those services described in these standards, be denied or postponed as punishment.

(4) Correctional personnel shall never prohibit, delay, or cause to prohibit or delay an inmate's access to care or appropriate treatment. All decisions regarding need for medical attention shall be made by health care personnel.

(5) Inmates shall not be discriminated against, with regard to treatment, on the basis of their medical diagnoses.

(6) Any correctional personnel who knows or has reason to believe that an inmate may be in need of health services shall promptly notify the medical staff and a uniformed supervisor.

(7) Staffing levels in the jail clinics, jail infirmaries and prison hospital wards shall be adequate in numbers and types to insure that all standards described here are met. Staffing levels refers to both clinical and correctional personnel.

(8) The Health Authority shall develop policies and procedures to insure that inmates have access to second medical opinions regarding clinical recommendations.

(c) **Sick-Call.**

(1) Sick-call shall be available at each facility to all inmates at a minimum of five days per week within 24 hours of a request or at the next regularly scheduled sick-call. Sick-call need not be held on City holidays or weekends. Facilities with capacities of over 100 people, must provide sick-call services on-site in medical treatment areas. (As defined in §3-06(b)).

(2) Sick-call is to be conducted by a physician or under the supervision of a physician.

(i) Correctional personnel shall not prevent or delay or cause to prevent or delay an inmate's access to medical or dental services.

(ii) Correctional personnel will not diagnose any illness or injury, prescribe treatment, administer medication other than that described in §3-05(b)(2)(iii), or screen sick-call requests.

(3) Requests for access to health services shall not be denied based on any prior requests.

(4) The Department of Correction shall provide sufficient security for inmate movement to and from health service areas.

(5) Adequate records shall be maintained daily which are distinguishable by housing area on a form developed by the Department of Correction. These records shall be maintained for at least three (3) years. The form shall include the following:

(i) the names and number of inmates requesting sick call;

(ii) the names and numbers of inmates arriving in the clinic; and

(iii) the names and number of inmates seen by health care personnel.

(6) The use of a sick-call sign up sheet shall not preclude the use of sick-call by inmates who are not on the list.

(d) **Emergency Services.**

(1) All inmate requests for emergency medical or dental attention shall be responded to promptly by medical personnel. This shall include a face to face encounter between the inmate requesting attention and appropriate health care personnel. All health care and correctional personnel must be familiar with the procedures for obtaining emergency medical or dental care, with the names and telephone numbers of people to be notified and/or contacted readily accessible.

(2) Correctional personnel who know or have reason to believe that an inmate is in need of emergency health services shall make the appropriate notifications pursuant to §3-02(d)(5).

(3) The Department of Correction, with the advice and agreement of the Health Authority, shall prepare and implement written policies and defined procedures which shall be posted in every facility and include arrangements for, at least, the following:

(i) emergency evacuation of an inmate from the facility when required;

(ii) use of an appropriate emergency medical vehicle;

(iii) use of a designated hospital emergency unit;

(iv) security procedures for the immediate transfer of inmates when necessary; and

(v) procedures for providing for transfer of inmates within time guidelines established by the Health Authority.

(4) Any correctional facility with a rated capacity of less than 100 inmates must have an agreement with one or more health care providers to provide emergency medical services and must have at least one correctional personnel on each housing unit certified in Cardio-pulmonary resuscitation (CPR).

(5) All uniformed correctional personnel shall be informed of and familiar with all written procedures pertaining to emergency health services.

(6) In each facility, the telephone numbers of the control room and the medical clinic shall be posted prominently at each correctional officer station.

(7) Medical personnel, with current CPR certification, trained in the provision of emergency health care shall be present at all times in each facility that has a rated capacity of 100 or more inmates. Whenever possible, health care personnel should be trained and certified in CPR.

(8) In the case of serious illness or injury to an inmate, all reasonable attempts shall be made by the Department of Correction to notify the next of kin or legal guardian of the inmate within the time frames established for reporting unusual incidents.

(9) The Health Authority shall determine the types and quantities of emergency equipment and supplies required to be available within each correctional facility in order to provide adequate emergency services and shall have written protocols regarding emergency care. An inventory shall be submitted to the Board of Correction within 90 days of implementation of the standards and updated annually or more frequently as determined by the Health Authority.

(i) all emergency health equipment and supplies shall be inventoried and inspected by health services personnel at least twice each year, or more frequently as determined necessary by the Health Authority to ensure that such equipment and supplies are in good working order.

(ii) all emergency equipment and supplies shall be easily accessible to appropriate personnel.

(10) A uniform logbook shall be designed and used by the Department of Correction to document all requests for emergency health care. This logbook shall be maintained in the clinic and shall contain, but not be limited to the following information:

(i) name, commitment number/book and case number, housing location of the inmate, and the location of the incident;

(ii) the date and time of referral and the referring officer;

(iii) the time of inmate arrival in clinic or in the event that medical personnel respond to an area outside of the clinic, the time medical personnel leave the clinic; and

(iv) the time the inmate is examined by health care personnel.

(e) **Infirmaries.** (1) Infirmaries, with discrete nursing stations and treatment area(s), shall be utilized to provide overnight accommodations and health care services of limited duration to inmates in need of close observation or treatment of health conditions which do not require hospitalization. Housing areas shall not be used for a combination of general population and infirmary housing at any one time.

(2) At designated facilities, The Health Authority and Department of Correction shall develop and implement written policies and procedures for the management of infirmaries that are consistent with professional standards and legal requirements. Such procedures shall incorporate at least the following;

(i) allocation of space and beds to meet the needs of the inmates in DOC custody as determined by the Health Authority and other applicable regulatory agencies;

(ii) accommodations for providing appropriate emergency services and the timely transfer of inmates to hospital and specialty services as consistent with §3-02(d)(3) and §3-02(f)(1) and §3-02(f)(2); and

(iii) provision of §3-02 adequate space and physical plant to operate infirmary related services (such as communicable disease isolation where applicable).

(3) The Health Authority shall develop and implement written policies that incorporate the following:

(i) maintenance and inventory of sufficient supplies, material, and equipment to provide proper and timely services to inmates;

(ii) clinical criteria for determining the eligibility of inmates for infirmary housing;

(iii) appropriate methods for a daily evaluation of the medical condition of each inmate;

(iv) supervision of the infirmary 7 days per week, 24 hours per day by nurses, and other health care personnel as sufficient to meet the established needs of the inmates; and

(v) availability of an adequate number of medical personnel 7 days per week, 24 hours per day to provide appropriate coverage, including daily rounds on infirmary patients.

(4) Only health care personnel shall determine, after an examination of the inmate, if an inmate's condition necessitates admission to the infirmary.

(i) inmates shall be discharged from the infirmary only upon the written authorization of medical personnel.

(ii) correctional personnel shall not interfere with an inmate's access to infirmary services or the duration of confinement in the infirmary and shall transfer inmates to and from infirmaries promptly when so requested by health care personnel.

(5) Infirmaries shall be designed and staffed so that inmates confined therein are within the sight or sound of health care personnel at all times.

(6) Adequate records for each infirmary admission, evaluation, and discharge shall be maintained as part of each inmate's health record as consistent with applicable requirements of §3-07(b) and §3-07(c).

(7) Sufficient security measures shall be provided continuously in the infirmary to assure the health and safety of all inmates and health care personnel who provide services to such inmates.

(f) **Outpatient Specialty Clinics.** (1) Outpatient specialist services shall be provided to inmates in time frames specified by the referring medical personnel upon the written determination of a physician or dentist that the treatment

appropriate to the inmate's health care need is not available in the correctional facility or cannot adequately be provided at such facility. In the event that the inmate has previously been treated by the specialty clinic physician, the specialty clinic physician shall determine the medically appropriate time for the return visit(s).

(i) In instances where the specialty clinic physician determines the time period or date for a follow-up appointment, the jail-based physician may alter that time provided that the change in time is not medically inappropriate and shall inform the inmate of the proposed change. If the change is not medically required, the new appointment date shall be scheduled for the next available clinic, or in the alternative, shall not be scheduled for a time period greater than the original time period (for example, if the original appointment was scheduled for within one week, the rescheduled appointment cannot be more than one week from the original appointment).

(ii) The reasons for any change in the original plan must be indicated in the inmate's medical record with clear reasons for the change.

(2) The Health Authority and the Department of Correction shall devise a written plan for the timely delivery of inmates to specialty clinics. This plan shall include, but not be limited to the following procedures:

(i) maintenance of a current list of community clinics, approved by the Health Authority which can adequately provide specialist care and treatment;

(ii) the scheduling requirements for specialist services and the hours of operation;

(iii) the use of an appropriate vehicle for the timely transfer of inmates to and from specialty clinics;

(iv) security procedures and escort requirements appropriate for transferring the inmate to and from the outpatient health clinic, including shackling procedures which are medically appropriate; and

(v) the transfer of appropriate health records and/or other pertinent information to assure proper follow-up care for the inmate, and to avoid unnecessary duplication of tests and examinations, pursuant to §3-08(b)(4).

(3) The variety of outpatient services available to inmates shall be no different than those available to civilian patients.

(4) Correctional or health care personnel shall not deny or unreasonably delay, or cause to deny or unreasonably delay an inmate's access to specialty services at any outpatient clinic.

(i) sufficient Escort Officers shall be provided within the clinic or hospital to ensure that an inmate's access to specialty clinics and related diagnostic units is not denied or unreasonably delayed.

(g) **Medical Isolation.** (1) Inmates in medical isolation will receive the same rights, privileges and services set forth in these standards for inmates not in isolation, provided that the exercise of such rights, privileges and services does not pose a threat to the health, safety, or well being of any other inmate, correctional staff or health care personnel. Access to rights, privileges and services of and procedures regarding inmates in segregation for mental health observation is governed by the Board of Correction Mental Health Minimum Standards for New York City Correctional Facilities.

(2) Medical personnel shall assess the condition of each inmate so segregated at least once each 24 hour period. At least once each week rounds on all segregation inmates must be made by a physician.

(3) Health care personnel must maintain a daily log that includes the name of medical personnel who made rounds on inmates in isolation and lists those inmates who required further attention in the clinic. These logs are the property of the Health Authority and subject to the confidentiality provisions described in §3-08(c). Medical services provided to individual inmates must be noted in the inmates' health records.

(4) Upon request of the medical staff, inmates requiring further medical evaluation outside of the housing area shall be escorted to the clinic promptly for medical attention.

(5) The Health Authority shall develop written policies and procedures regarding the care of inmates in medical isolation. These procedures shall include that an inmate may be placed in medical isolation only upon the determination of medical personnel that isolation of an inmate is the only means to protect other people from a serious health threat, subsequent to the examination of such inmate and pursuant to §3-06(1)(2). This disposition by the medical personnel shall be in writing in the health care record and shall state:

(i) the name of the inmate; and

(ii) the facts and medical reasons for the isolation;

(iii) the date and time of isolation;

(iv) the duration of isolation, if known; and

(v) any other special precautions or treatment deemed necessary by the medical personnel.

Upon determination by a physician that an inmate in medical isolation no longer presents a serious threat to the health of any person that inmate shall be released from such special housing after the appropriate correctional personnel are advised.

(h) **Special Needs.** (1) The Health Authority in consultation with other agencies as required will develop written policies and defined procedures insuring appropriate care of inmates with special needs requiring close medical supervision, including chronic care and convalescent care or skilled nursing care.

(2) A written treatment plan, developed by the health care provider, supervised by medical personnel, must exist for each special needs inmate. The plan, to be included in the health record, may include but need not be limited to instructions about diet, exercise, medication, the type and frequency of laboratory and diagnostic testing, and the frequency of follow-up for medical evaluation and adjustment of treatment modality.

(3) When clinically appropriate, the treatment plan shall prescribe inmates access to the range of supportive and rehabilitative services (such as physical therapy and rehabilitation therapy), that the treating medical personnel deems appropriate.

(4) Rehabilitation services shall be available at in-jail clinics or through the outpatient clinics at off-site facilities, as appropriate.

(i) **Hospital Care.** (1) Hospital based care shall be provided for inmates in need of hospital care consistent with applicable sections of the State Health Code. The Health Authority in conjunction with the Department of Health, Health and Hospitals Corporation, and other relevant providers, shall have a written plan defining admission and discharge procedures for appropriate levels of care. These procedures shall insure that inmates are not transferred to and from health care settings unnecessarily.

(2) Services provided to inmates in acute care, chronic care or other non-jail health facilities must meet all applicable subdivisions of these standards.

(j) **Punitive Segregation.** (1) The Health Authority shall develop policies and procedures governing the medical attention for inmates in punitive segregation. These policies shall include the requirements of §3-02(g)(2-4). In addition, upon determination by a physician that the health of an inmate in punitive segregation will be adversely affected by such housing, the inmate shall be released from punitive segregation housing after the appropriate correctional personnel is advised.

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40 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-03 Training and Continuing Education.

(a) **Policy.** There shall be a written program for the orientation, training and continuing education of correctional and health care personnel to ensure the employment or assignment of qualified personnel and the continuous delivery of quality health care.

(b) **Health Care Personnel.** (1) The Health Authority shall be responsible for the following:

(i) ensuring that all health service professionals are appropriately credentialed;

(ii) monitoring verification of continued maintenance of licensure and/or certification of professional health care personnel, including participation in continuing education programs as required by their professions.

(2) Written job descriptions approved by the Health Authority shall define the specific duties and responsibilities of health care personnel who provide health care in the facilities. Such job descriptions shall be reviewed on a periodic basis as determined by the Health Authority, but never to exceed one year.

(3) The following shall only be performed by health care personnel and shall not be performed by correctional personnel or inmates, except as provided under §3-05(b)(2)(iii):

(i) providing direct patient care services;

(ii) scheduling health care appointments;

(iii) determining access of (other) inmates to health care services;

(iv) handling of unsealed health records except in medical emergency situations and only upon the request of health care personnel;

(v) handling or having access to surgical instruments, syringes, needles, medications; or

(vi) operating medical equipment.

(c) **Training.** (1) A written plan developed by the Health Authority shall require all health care personnel to participate in orientation and training appropriate to their specific health care delivery activities and job descriptions, and required by their respective disciplines and licensing bodies. This shall include training in mental health screening as described in the Mental Health Minimum Standards. The plan shall define the frequency of ongoing training for all health care personnel.

(2) Written policy and a training program for correctional staff shall be established and approved jointly by the Health Authority and the Department of Correction determining the type of training for new staff and the type and frequency of training and continuing education for all correctional staff regarding, but not limited to, instruction in the following:

(i) how to recognize medical emergencies;

(ii) administration of first aid and certification in cardiopulmonary resuscitation (CPR) for sufficient staff to meet the standard described in the Mental Health Minimum Standards;

(iii) how to obtain medical care for inmates in emergency and non-emergency situations.

(iv) rules and regulations regarding health services and the layout of each facility in which they work.

(3) The Department of Correction will ensure that the correctional staff are trained in those areas described in §3-03(c)(2).

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

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40 RCNY 3-04

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CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-04 Screening.

(a) **Policy.** Screening procedures shall be developed and implemented which promote timely identification of immediate needs of the inmate and of public health concerns for the institution. The initial screening shall also establish a medical baseline for ongoing care.

(b) **Intake screening.** (1) Screening for health purposes is to be performed on all inmates upon their arrival at the initial receiving correctional facility. Screening shall be conducted by medical personnel prior to housing.

(2) The Health Authority shall develop written policies and procedures determining the topics to be reviewed during intake screening. Such review shall include but not be limited to the following:

(i) a history of present illnesses and past medical history including dental, vision, mental health and hearing problems, an immunization history, as well as communicable diseases such as venereal disease and tuberculosis;

(ii) a drug history inquiring into the use of alcohol and other addictive substances including types of drugs used, mode of use, amounts used, date of last use and a history of problems which may have occurred after ceasing use, such as convulsions;

(iii) inquiry into and, where appropriate verification of medication taken and special treatment requirements and planned procedures for inmates with significant health problems;

(iv) recording of height, weight, pulse, blood pressure, temperature;

(v) physical examinations and administering of tests held to be appropriate by the screening medical personnel, including but not necessarily limited to:

(A) tuberculin skin test, if no history of prior positive reaction, if positive to be followed by chest x-ray.

(B) urinalysis dipstick test for glucose, ketones, blood, protein, and bilirubin;

(C) serologic test for syphilis;

(D) gonorrhea culture for men if clinically appropriate, and gonorrhea and chlamydia screening for all women;

(E) rectal exams for all inmates over 40 years old.

(vi) observation of behavior which includes alertness, orientation, mood, affect, apparent signs of drug/alcohol withdrawal, and suicidal and homicidal ideation;

(vii) observation of body deformities and ease of movement;

(viii) observation of condition of skin, including trauma, major and/or unusual markings, bruises, lesions, jaundice, rashes and infestations, and needle marks or other indications of drug abuse;

(ix) observation of other health problems as designated by the screening physician or Health Authority.

(x) obstetrical and gynecological histories, pap smears and pregnancy tests for women.

(3) The results of each inmate's screening examination shall be reviewed by health care personnel and mental health staff when appropriate and one of the following actions shall be taken:

(i) referral to an appropriate health care service on an emergency basis; or

(ii) clearance for housing with follow-up scheduled later with the appropriate health care service, if required; or

(iii) placement in specialized housing such as infirmary or mental observation. A referral to mental observation housing shall be reviewed by mental health staff on the next tour that mental health staff are on-site.

(4) Intake screening for transfers may be limited to a review of the previous screening results by health care personnel, but must be completed prior to housing. A full screening need not be conducted except where any of the following apply:

(i) a copy of the previous intake screening form does not accompany the transferee's arrival or is lost, or illegible;

(ii) the accompanying form is not in compliance with standard format or procedures as determined by the Health Authority pursuant to §3-07(b); or

(iii) medical personnel reviewing the chart determines an inmate must be seen.

(5) Initial intake screening results shall be recorded on a standard printed form approved by the Health Authority.

(6) At the time of intake, all inmates shall receive written communication to be approved by the Health Authority, and written and distributed by DOC in English and Spanish describing available medical and dental services, the confidentiality of those services and the procedures for gaining access to them.

(i) the Department of Correction shall make provisions to assure that procedures for gaining access to medical and dental services are verbally explained to illiterate inmates and that inmates whose native language is other than English

or Spanish are given prompt access to translators for the explanation of these procedures.

(7) The new admission intake screening must be completed within 24 hours of admission to DOC custody. A designated person at the Health Authority and at the Department of Correction shall be notified in writing whenever a newly admitted inmate does not receive intake screening within 24 hours of admission to DOC.

HISTORICAL NOTE

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CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-05 Pharmaceutical Services.

(a) **Policy.** Written policies and procedures pertaining to pharmaceutical services, that are consistent with professional practices and in accordance with all applicable federal, state and local laws, shall be established and implemented.

(b) **Management.** (1) All written policies and procedures for the proper management of pharmaceuticals shall be established by the Health Authority in accordance with all applicable law. This plan shall include, but not be limited to the following:

(i) a formulary specifically developed for both prescribed and non-prescribed medications stocked by the facility;

(ii) procedures which account for receipt, dispensation, distribution, administration, and disposal of medication;

(iii) periodic inventory of controlled substances as defined by the Drug Enforcement Administration of the United States Department of Justice;

(iv) periodic inventory of all other medication retained in a facility on a schedule established by the Health Authority to insure that medications do not expire;

(v) appropriate security and storage of all medications and medical supplies including needles and syringes; and

(vi) maintenance of adequate supply of all regularly used drugs.

(2) Access to prescription medication shall be limited to only those persons with written authority of the Health Authority or those designated by them. Prescription medication for inmates shall be prescribed, dispensed and administered only by physicians, physician's assistants, nurse practitioners, nurses, pharmacists or other health care personnel properly trained and in compliance with State and Federal law.

(i) Prescription medication may be prescribed, dispensed and administered only when clinically indicated and consistent with a treatment plan.

(ii) Controlled substances or drugs whose toxic dose is close to the therapeutic dose shall be administered in liquid or powdered form whenever possible and when clinically appropriate.

(iii) Non-prescription analgesic medication may be distributed by Correction Officers in the housing areas in accordance with written guidelines approved by the Health Authority, and the Department of Correction.

(3) All administered medication shall be documented and maintained on records satisfactory to the Health Authority and shall consist of the following:

(i) the name of the inmate;

(ii) the name of the dispenser;

(iii) the name of the prescriber;

(iv) the name of the drug;

(v) the time of day and date the medication is dispensed;

(vi) the date the prescription expires;

(vii) directions for administering the medication; and

(viii) other information deemed necessary by the Health Authority to facilitate proper use.

(4) All medication prescribed and dispensed to inmates shall be administered in accordance with the prescriber's written directions and only up to the expiration date of the specific item. The Health Authority shall write policies and procedures that insure the prompt availability of non-formulary drugs and continuity of medication between health service sites.

(5) No inmate may be prescribed a controlled substance for more than two weeks unless determined to be necessary by a physician or authorized health care personnel after a thorough re-evaluation of the inmate's condition. There shall be exceptions for 21 day methadone and 30 day phenobarbital protocols.

(6) Written policies and procedures will be developed by the Department of Correction and the Health Authority to insure that inmates on medications can receive them if they are scheduled to be in court or at another facility at the time that medications are administered.

(7) Policies and procedures, developed by the Health Authority shall be implemented to insure that inmates who refuse significant medications are counseled on the medical consequences of refusal. Inmates must be offered subsequent administration if re-prescribed by medical personnel.

HISTORICAL NOTE

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RULES OF THE CITY OF NEW YORK

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CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-06 Treatment.

(a) **Policy.** Adequate health care, including follow-up care, shall be provided to inmates in an environment which facilitates care and treatment. Such care and treatment shall be provided by health care personnel in a timely fashion and shall be consistent with accepted professional standards and legal requirements.

(b) **Treatment Area.** (1) Each correctional facility with a capacity of over one hundred shall establish and maintain a discrete medical treatment area (clinic) which is in accordance with all State, Federal, and local laws and all other applicable legal requirements, except where §3-06(b)(5) applies.

(2) The Health Authority shall establish written criteria defining the following:

(i) the equipment, supplies and materials necessary in each clinic to provide quality health treatment and appropriate specialty care, where applicable; and

(ii) the number of health care personnel required to provide effectively for the needs of the inmate population within appropriate time frames.

(3) At a minimum, the medical treatment areas in each clinic shall be equipped with the following:

(i) hot and cold running water in each exam room;

(ii) adequate lighting in each exam room;

(iii) an examination table;

(iv) an appropriate receptacle for infectious waste in accordance with local laws;

(v) sterilization equipment as needed;

(vi) adequate space to provide privacy for all encounters between health care personnel and inmates;

(vii) acceptable heating, air-conditioning and ventilation;

(viii) soap and paper towels, and

(ix) all other equipment, supplies and materials deemed appropriate by the Health Authority pursuant to §3-06(b)(2).

(4) Health care equipment, supplies, and materials shall be placed in an area which is easily accessible to health care personnel. Equipment used for treating inmates shall function properly and safely at all times.

(5) Medical treatments or physical examinations shall not occur outside of appropriate treatment areas described by §3-06(b)(2) and §3-06(b)(3), except as needed in the event of an acute medical emergency.

(c) **Dental Services.** (1) Quality dental care necessary to maintain an adequate level of dental health shall be available to each inmate under the direction and supervision of a dentist licensed in New York State.

(i) emergency dental care shall be provided as described in §3-02(d).

(ii) a dental examination shall be offered within three weeks for each inmate who so requests or upon referral by other health care personnel unless the inmate refuses the scheduled exam. There shall be a follow-up plan developed to insure that necessary services are provided in a timely fashion. In-clinic refusals or no-shows shall be documented in the inmate's health record.

(iii) the Department of Correction shall be responsible for ensuring that requests for access to non-emergency dental services are communicated to dental health care personnel within two working days of receipt by Department of Correction. In the event that dental personnel are not on duty, an inmate's request will be communicated to health care personnel, who in turn will be responsible for conveying the request to dental personnel on their next work day.

(2) A dental examination shall include, but not be limited to, the following:

(i) an examination of the internal and external structure of the mouth to detect abnormal functioning, diseases of the mucous membranes and jaws, and diseases of the teeth and supporting structures;

(ii) diagnostic X-rays when deemed necessary by the dentist;

(iii) testing of the pulp and other tissues;

(iv) caries susceptibility;

(v) cancer smears, as indicated;

(vi) taking or reviewing a dental history and noting decayed, missing, and filled teeth; and

(vii) education in proper dental hygiene.

(3) Dental treatment, not limited to extractions, shall be provided when the health or comfort of the inmate would

otherwise be adversely affected for an unreasonable length of time as determined by the dentist after reviewing the results of a dental examination. Treatment may include, but not be limited to, the following:

(i) relief of pain and treatment of acute infections;

(ii) removal of irritating conditions which may lead to malignancies;

(iii) treatment of related bone and soft tissue diseases;

(iv) repair of injured or carious teeth;

(v) replacement of lost teeth and restoration of function;

(vi) oral prophylaxis;

(vii) endodontics;

(viii) oral surgery; and

(ix) periodontics.

(4) Dental treatment shall be conducted within a reasonable time as determined by the results of the dental examination.

(5) A full health record must be available to the treating dentist at the time of treatment if requested by the dentist or deemed necessary by health care personnel.

(6) Adequate dental records of each inmate's visit shall be maintained in the health record, including the following:

(i) date of the visit;

(ii) results of the dental examination;

(iii) treatment planned or provided where appropriate;

(iv) follow up plans if any; and

(v) name and signature of the dentist.

(7) Only a dentist or a dental hygienist licensed to practice in New York State may conduct dental examinations. Only a dentist so licensed may provide dental treatment.

(i) correctional personnel will not screen requests for dental services.

(ii) no person shall deny or in any way delay an inmate's request for access to dental services.

(8) A daily record or log shall be maintained by the Health Authority which lists the following:

(i) the names and number of inmate requests for dental services;

(ii) the names and number of inmates brought to the dental clinic; and

(iii) the names and number of inmates seen by dental personnel.

(d) **Vision and Eye Care Services.** (1) The Health Authority shall establish written policies and procedures to

provide vision and eye care services to inmates in need of such services.

(i) All inmates who in the opinion of medical personnel require vision and eye care services beyond that which is provided during the intake screening, shall be so referred and provided.

(ii) Inmates whose eyeglasses are broken, lost, or otherwise unavailable shall be entitled to a vision examination.

(2) If determined after an eye examination that an inmate is in need of eyeware, the Health Authority shall be responsible for providing the inmate with such eyeware.

(3) All incoming inmates who are in possession of corrective eyeware shall be allowed to retain such unless otherwise determined by health care personnel.

(4) Records shall be maintained in the inmate's medical chart of all ophthalmologic, optometric, and vision services. Such records will include at least the following:

(i) results of vision examinations conducted in addition to initial screening;

(ii) treatment or medication prescribed and follow-up plans; and

(iii) the name of the treating ophthalmologist/ optometrist.

(5) A daily log shall be maintained by the Health Authority to document the following:

(i) the names and number of inmates referred to or requesting vision and eye care services; and

(ii) the names and number of referrals and requests honored.

(6) Eye and vision examinations and treatment shall be conducted only by an ophthalmologist or an optometrist licensed in New York State.

(e) **Pregnancy and Child Care.** (1) All pregnant inmates shall receive comprehensive counseling, assistance, and medical care consistent with professional standards and legal requirements.

(2) A pregnant inmate shall be provided with appropriate and timely prenatal and postnatal care including but not limited to the following:

(i) gynecological and obstetrical care;

(ii) medical diets for prenatal nutrition;

(iii) all laboratory tests as deemed necessary by medical personnel; and

(iv) special housing as deemed necessary by medical personnel.

(3) Upon request, and in accordance with all applicable laws, female inmates shall be entitled to receive abortions in an appropriately equipped and licensed medical facility within a reasonable time-frame. The following conditions shall apply to abortion services at a hospital:

(i) subsequent to consultation with a licensed physician, the voluntary informed consent of the inmate shall be obtained as pursuant to §3-06(j) prior to the procedure; and

(ii) the procedure shall not be performed in the correctional institution.

(4) The Health Authority shall make all reasonable arrangements to ensure that child births take place in a safe and appropriately equipped medical facility outside of the correctional facility.

(5) If an inmate decides to keep her child, necessary child care will be provided as consistent with applicable section(s) of the New York Correction Law and all other legal requirements and consistent with Department of Correction policies governing the nursery program.

(6) Upon request, pregnant inmates shall be provided access to adoption or foster care services through the Department of Correction's Social Service Unit. Under no circumstances will correctional or health care personnel delay or deny an inmate access to such services or force an inmate to utilize either service against her will.

(i) if the inmate decides on adoption or foster care for the new born child, referral services with the New York City Department of Social Services will be promptly provided for planning and placement of the infant.

(7) The Health Authority and the Department of Correction shall insure that nursing mothers admitted to the Department of Correction are screened for eligibility for the nursery program with appropriate speed. There shall be written policies and procedures defining the program and criteria for admission to and discharge, including grounds for removal from the program.

(f) **Diagnostic Services.** (1) Written policies and procedures pertaining to diagnostic services, including radiology, pathology, and other medical laboratory services shall be developed and implemented by the Health Authority within the correctional facilities in accordance with legal requirements, accepted professional standards and sound professional judgment and practice.

(2) Pathology and medical laboratory procedures and policy shall include but not be limited to the following:

(i) conducting laboratory tests appropriate to the inmate's needs;

(ii) performing tests in a timely and accurate manner;

(iii) prompt distribution and review of test results and maintaining copies of results in the laboratory and in the inmate's health record;

(iv) calibration of equipment on a periodic basis;

(v) validation of test results through use of standardized control specimens or laboratories;

(vi) receipt, storage, identification and transportation of specimens;

(vii) maintenance of complete descriptions of all test procedures performed in the laboratory including sources of reagents, standards, and calibration procedures; and

(viii) space, equipment and supplies sufficient for performing the volume of work with optimal accuracy, precision, efficiency, and safety.

(3) Policies and procedures for the delivery of radiology services within the correctional facilities shall be established by the Health Authority and shall include but not be limited to the following:

(i) appropriate radiographic or fluoroscope diagnostic and treatment services;

(ii) interpreting x-ray films and other radiographs, and supplying reports in a timely manner;

(iii) maintaining duplicate reports for services and retaining film in the radiology department for a period of time

that is in accordance with all applicable laws;

(iv) maintaining an adequate record of all examinations performed on each inmate in a separate log and as part of the inmate's health record; and

(v) when appropriate, prompt referral to necessary off-site radiology services.

(4) Safety issues regarding all radiology services shall be explained to all appropriate health personnel. Policies and procedures addressing these aspects shall include, but not be limited to, the following:

(i) performing radiology services only upon the written order of medical personnel or a dentist which contains the reason for the procedure;

(ii) limiting the use of any radioactive materials to qualified health care personnel;

(iii) regulating the use, removal, handling, and storage of any radioactive material;

(iv) precautions against electrical, mechanical, and radiation hazards;

(v) instruction to health care and correctional personnel in safety precautions and in the handling of emergency radiation hazards;

(vi) proper shielding where radiation sources are used, acceptable monitoring devices for all personnel who might be exposed to radiation to be worn in any area with a radiation hazard, and the maintenance of records on personnel exposed to radiation; and

(vii) ongoing recorded evaluation of radiation sources and of all safety measures followed, in accordance with all federal, state, and local laws and regulations.

(5) Pathology and radiology services shall be directed by qualified physicians licensed by New York State.

(6) Inmates will be notified promptly of all clinically significant findings and appropriate follow-up evaluation and care will be provided. This section applies to diagnostic service provided in all settings.

(g) **Surgical and Anesthesia Services.** (1) Inmates shall be provided with access to adequate surgical and anesthesia services as defined in written policies and procedures developed by the Health Authority in accordance with legal requirements, accepted professional standards and sound professional judgement and practices.

(2) Minor surgical and oral surgical procedures can be performed only by medical personnel or dentists with appropriate training and appropriate levels of back up services available.

(3) The informed consent of the inmate must be obtained before an operation is performed, pursuant to §3-06.

(4) The Health Authority shall provide observation and care for inmates during pre-operative preparation and post-operative recovery periods, and establish written instructions for inmates in follow-up care after surgery.

(5) Surgical rooms, supplies, and equipment shall be properly cleaned and sterilized before and after each use.

(6) Adequate surgical and anesthesia equipment and space will be available.

(i) all equipment shall be calibrated, adjusted and tested regularly and so recorded to ensure proper functioning at all times.

(h) **Medical Diets.** (1) Written policies and defined procedures shall be developed by the Health Authority and the

Department of Correction and shall provide for special medical and dental diets which are prepared and served to inmates according to the written orders of the medical or dental personnel.

(2) When determined by medical or dental personnel that an inmate's health condition necessitates a special therapeutic diet, the Department of Correction shall be responsible for providing such diets promptly. Written records shall be maintained that identify the names of inmates receiving special diets, the date they are initiated, the duration and the specification of the diets.

(3) Requests for special diets or modifications of previous requests will be in writing, signed by medical or dental personnel and completely and specifically list the following: (i) levels of applicable nutrients or calories desired;

(ii) types of and quantities of food groups allowed;

(iii) special preparation restrictions or requirements if any; and

(iv) duration of the diet.

(4) Orders for special diets shall be recorded in the inmate's medical or dental record including:

(i) the purpose for such diet;

(ii) a description of the diet including duration; and

(iii) the signature of the dentist or physician ordering such diet.

(5) Inmates who are in need of long-term therapeutic diets shall be given written dietary instructions specific to their diet modification by the Health Authority.

(6) A Department of Correction registered dietician trained in the preparation of therapeutic diets shall be available for consultation to all facilities where food is prepared for inmates. This registered dietician shall oversee the staff dieticians who will be available in sufficient numbers to insure that all relevant sections of these standards are met.

(7) Special diets shall be available to inmates in general population and special housing. Special housing shall not be required in order to receive special diets.

(i) **Prosthetic Devices.** (1) Medical and/or dental prostheses shall be provided promptly by the Health Authority when it has been determined by the responsible physician and/or dentist that they are necessary, unless there is a reasonable basis to assume that the inmate will not be incarcerated for sufficient time to receive the prosthesis.

(i) prostheses shall include any artificial device to replace missing body parts or compensate for defective bodily functions;

(ii) the cost for prosthetic equipment and services shall be borne by the Health Authority.

(j) **Informed Consent.** (1) Informed consent will always be sought by health care per- sonnel.

(2) When an invasive procedure is indicated and except as otherwise provided in §3-06(j)(4) an inmate shall be given complete information, in a language he/she understands, pertaining to the following:

(i) the inmate's diagnosis and the nature and purpose of the proposed medical or dental treatment;

(ii) the risks and benefits of the proposed treatment;

(iii) alternative methods of treatment, if any; and

(iv) the consequences of forgoing the proposed treatment.

(3) Medical personnel or dentists shall not withhold any facts necessary for an inmate to make an informed, knowing decision regarding treatment, or minimize the risks of known dangers of a procedure in order to induce the inmate's consent.

(4) The Health Authority shall develop and implement written policies and procedures pertaining to informed consent which will be submitted for approval to the Board of Correction within 90 days and must be consistent with all applicable laws. The policies and procedures must include, but need not be limited to the following:

(i) obtaining informed consent for inmates who are minors or others who are or may be legally incapable of providing informed consent;

(ii) use of a written form to document the informed consent of inmates for special procedures beyond routine treatment; and

(iii) maintenance of detailed documentation when special procedures or surgery are performed on inmates in emergency situations pursuant to §3-06.

(5) Informed consent forms shall be maintained as part of the inmate's health record in accordance with all applicable laws.

(6) Informed consent policies shall be consistent with the informed consent policies described in The Board of Correction Mental Health Minimum Standards for New York City Correctional Facilities.

(k) **Drug and Alcohol Treatment.** (1) All inmates who give empirical evidence of addiction to alcohol, drugs or both, must be observed and offered treatment to prevent complications resulting from intoxication, withdrawal and associated conditions, as appropriate and according to written protocols approved by the Health Authority.

(2) Education and referral services should be available to inmates with alcohol or drug addiction(s) who request assistance.

(l) **Right to Refuse Treatment.** (1) An inmate may refuse a medical examination or any medical treatment except when medical personnel or a dentist has determined that immediate medical, surgical or dental treatment is required to treat a condition or injury that may cause death, serious bodily harm, or disfigurement to such inmate and at least one of the following applies:

(i) the inmate has been determined in accordance with all applicable laws to be incompetent to consent to the specific procedure at the time it is offered;

(ii) consistent with the provision of applicable law the inmate is a minor; or

(iii) it is demonstrated that the parent or legal guardian of incompetent inmates or minors cannot be reached.

(2) When an inmate refuses treatment for a health condition that is infectious, contagious, or otherwise poses a threat to the health, safety, or well-being of others, such inmate may, in accordance with determination made by health care personnel either:

(i) be placed in medical isolation in compliance with §3-02(g); or

(ii) be transferred to an infirmary setting.

(3) When an inmate is treated against his or her will pursuant to §3-06(l)(2):

(i) the medical personnel will use only those measures which in his or her best professional judgment are deemed appropriate in response to the emergency; and

(ii) adequate health records shall be maintained to detail the inmate's condition, the threat the inmate poses to himself and others, and the specific reasons for the inter- vention.

(4) An inmate who voluntarily refuses any health service deemed essential upon review by health care personnel shall do so after consultation with a Health Authority and shall sign a waiver form developed by the Health Authority.

(i) if the inmate refuses to sign a waiver, non-treating health care personnel shall sign the waiver as a witness, and note that the inmate has verbally refused such health services and refused to sign any waiver.

(ii) completed waiver forms shall be maintained as part of each inmate's health file in accordance with all applicable laws regarding duration of retention.

(iii) the waiver shall be specific to the procedure or care being refused and must be accompanied by a detailed and documented discussion of the procedure/treatment being refused and medical consequences of refusal and cannot be used to deny or fail to offer the inmate subsequent treatment.

(iv) Whenever required by medical personnel and practicable, all refusals for specialty clinics should be signed in the presence of medical personnel before the inmate is scheduled for transfer to the specialty clinic.

(5) Inmates refusing treatment need not remain in a medical area unless their condition, without treatment, cannot be managed in a less intensive setting.

(6) The policies developed regarding the right to refuse treatment shall be consistent with the Mental Health Minimum Standards.

(7) Care rendered under §3-06(l)(1) or §3-06(l)(3) or care refused as described in §3-06(l)(4) shall be recorded in a log specifically maintained for this purpose. The log which shall be maintained by the Health Authority in each clinic shall have sequentially numbered pages, and must at a minimum indicate the name and number of the inmate refusing care or being treated against his/her will, the name(s) of the health care personnel involved and a description of the event. This log shall be reviewed by medical personnel designated by the Health Authority on a daily basis. Nothing in this subdivision shall alter the requirements for appropriate documentation in the health care record.

(m) **Acquired Immune Deficiency Syndrome.** (1) The Department of Correction and the Health Authority shall develop policies and procedures to insure that inmates with HIV disease are treated in a non-discriminatory manner. These policies shall state that discrimination against any inmate based on his/her diagnosis or unauthorized disclosure of HIV-related information will result in disciplinary action by the relevant agency.

(2) The Health Authority shall develop protocols for the prevention and treatment of HIV related illnesses that are consistent with accepted professional standards and sound professional judgement and practice. All practices affecting the treatment or care of people with HIV infection shall be in compliance with federal, state and local laws and with all other parts of these standards.

(3) **Confidentiality.** All services for HIV-related disease shall be provided in a manner that insures confidentiality, consistent with these standards and New York State law. Segregation based solely upon this diagnosis shall be prohibited.

(4) **Testing.** Testing for HIV infection will be voluntary and performed only with specific informed consent and appropriate pre- and post-test counseling.

(5) **Education.** There shall be comprehensive AIDS education for all inmates and personnel who work in

Department of Correction facilities and on the prison hospital wards. The curriculum shall be reviewed by the Health Authority, and revised as new information and treatments become available. Education services shall be provided by the Department of Health, the Department of Correction, Health and Hospitals Corporation or their designees. The Health Authority and the Department of Correction shall maintain a schedule of training sessions which includes the number of people in each session which shall be available for review by the Board of Correction.

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RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-07 Records.

(a) **Policy.** (1) The Health Authority shall design and implement written policies and procedures for the maintenance of medical and dental records for use in correctional facilities which are:

(i) documented accurately, legibly, and in a timely manner; and

(ii) readily accessible to health care personnel.

(2) Records for inmates who are treated at the hospital shall comply with the legal requirements of the hospitals' accrediting agent(s).

(b) **Format and Contents.** (1) The Health Authority shall approve uniform medical and dental forms for the recording of health information at all Department of Correction facilities.

(2) A health record shall be established and maintained for each inmate. At a minimum, the health record file shall contain, but not be limited to, the following:

(i) the completed intake screening form, as described in §3-04(b);

(ii) a problem list;

(iii) place, date, time, and the type of health service provided at each clinical encounter;

(iv) all findings, diagnoses, treatments, dispositions, recommendations, and summary of instructions to inmates;

(v) prescribed medications, their administration, and the duration;

(vi) original or copies of original laboratory, x-ray, and other diagnostic studies;

(vii) signature and title of each health care provider shall accompany each chart note; (viii) completed consent and refusal forms;

(ix) release of information forms signed by the inmate;

(x) special diets and other specialized treatment plans;

(xi) clinical and discharge summaries when an inmate is treated outside of Department of Correction facilities;

(xii) health service reports of medical and dental treatments, examinations, and all consultations pertaining to such services; and

(xiii) flow sheets for all infirmary or chronic patients.

(3) The health record shall accompany each inmate whenever he or she is transferred to another New York City Department of Correction institution. The health record, or a copy of the record, or pertinent sections of the record shall accompany each inmate whenever he or she is treated in a specialty clinic within a Department of Correction facility upon request of the specialty clinic physician.

(4) When an inmate is treated at a specialty clinic in a municipal hospital or other off-site health care facility, a detailed consultation request containing significant data, lab results and all relevant medical history shall accompany each inmate. When specialists at any off-site facility require the complete medical record, there shall be a written procedure in place to allow for the confidential transfer and return of this record or a copy of the record.

(c) **Retention of Institutional Records.** (1) At a minimum the Health Authority shall be responsible for the following:

(i) safeguarding all health records from loss, tampering, alteration, or destruction;

(ii) maintaining the confidentiality and security of health records;

(iii) maintaining the unique identification of each inmate's health record;

(iv) supervising the collection, processing, maintenance, storage, timely retrieval, distribution, and release of health records;

(v) maintaining a predetermined, organized health record format; and

(vi) retention of active health records and retirement of inactive health records.

(2) Active and inactive health record files shall be retained according to all applicable laws.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

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40 RCNY 3-08

RULES OF THE CITY OF NEW YORK

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CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-08 Privacy and Confidentiality.

(a) **Policy.** The Health Authority shall establish and implement written policies and procedures which recognize the rights of inmates to private and confidential treatment and consultations consistent with legal requirements, professional standards and sound professional judgment and practice.

(b) **Privacy.** (1) All consultations and examinations between inmates and health care personnel will be confidential and private.

(i) correctional personnel may be present during the delivery of health services when health care and correctional personnel determine that such action is necessary for the safety and/or security of any person.

(ii) correctional personnel shall remain sufficiently distant from the place of health care encounters so that quiet conversations between inmates and health care personnel cannot be overheard. Every effort shall be made to maintain aural and, where possible, visual privacy during encounters between health care personnel and inmates.

(2) Facility health care personnel shall not conduct body cavity searches or strip searches.

(c) **Confidentiality.** (1) Information obtained by health care personnel from inmates in the course of treatment or consultations shall be confidential except as provided in §3-08(c)(3) and §3-03(b)(3)(iv).

(i) all professional standards and legal requirements pertaining to the physician-patient privilege apply.

(2) Active health records shall be maintained by health care personnel separately from the confinement record and

shall be kept in a secure location.

(i) access to health records shall be controlled by the Health Authority.

(ii) health records shall not be released, communicated or otherwise made available to any person, except treatment personnel or as pursuant to a lawful court order, without the written authorization of the inmate, except in emergency situations described in §3-03(b)(3)(iv).

(3) Health care personnel may report an inmate's health information to the chief correctional officer without the written consent of the inmate only when such information is necessary, to provide appropriate health services for the inmate or to protect the health and safety of the inmate or others. Such information shall not include the specific diagnosis or the entire health record, but where necessary may include the following:

(i) the inmate's dietary restrictions and modifications, if any;

(ii) known allergies and/or communicable diseases of the inmate, if any; and

(iii) health information concerning an inmate's ability to work, placement in punitive segregation isolation, or hospitalization needs.

(4) If an inmate has a communicable disease, the correctional authorities shall be instructed by health care personnel on proper precautions needed to protect correctional personnel and other inmates without being told disease-specific diagnoses for individual inmates.

(5) The chief correctional officer shall keep confidential any inmate health-related information or records forwarded to him by health care personnel.

(6) When an inmate communicates health-related information to correctional personnel in order to obtain access to health services or treatment of a health condition, then such information shall be kept confidential by correctional personnel. An inmate need not disclose his specific medical complaint to correction personnel in order to obtain medical assistance.

(7) In order to assure continuity of care and to avoid unnecessary duplication of tests and examinations, an inmate's health information shall be made available to health care personnel when that inmate is transferred to another correctional or health care facility.

(i) When an inmate is transferred from one correctional facility to another within the New York City Department of Correction, the inmate's complete health record shall be transferred simultaneously.

(ii) When an inmate is transferred to or from a municipal hospital ward, a pertinent summary of the inmate's health record shall accompany the transfer.

(iii) When an inmate is transferred to another correctional system, a record summary defined by the receiving and sending systems shall accompany the inmate.

(iv) Complete health record information shall be transferred to specific and designated physicians outside the jurisdiction of the Department of Correction upon the request and written authorization of the inmate for the release of such information. The release form must specify the information to be transferred.

(d) **Experimentation.** (1) Biomedical, behavioral, pharmaceutical, and cosmetic research involving the use of any inmate in the custody of the New York City Department of Correction shall be prohibited except where:

(i) the inmate has voluntarily given his/her informed consent pursuant to §3-06(j); and

(ii) all ethical, medical and legal requirements regarding human research are satisfied; and

(iii) the research satisfies all standards of design, control and safety; and

(iv) the proposed research has been approved in writing from the Health Authority.

(2) The use of a new medical protocol for individual treatment of an inmate by his/her physician will not be prohibited, provided that such treatment is conducted subsequent to a full explanation to the inmate of the positive and negative features of the treatment and all requirements of §3-06(j) regarding informed consent are satisfied and that the protocol/treatment has been reviewed by the appropriate local and institutional review boards as required by all applicable Federal, State and local laws. As an example, the protocol must be reviewed by an established human research review committee with representation of inmate advocates.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

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40 RCNY 3-09

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-09 Quality Assurance.

(a) **Policy.** (1) The Health Authority shall establish and implement written policies and procedures for a Quality Assurance Program which ensures the delivery of quality health care. This program shall be systematic and include objective criteria for evaluating care and shall include procedures for the following:

(i) monitoring and evaluation of the quality, appropriateness, and effectiveness of health care services; and

(ii) prompt identification and resolution of problems.

(2) Hospital Prison Wards shall meet accepted community standards for accreditation. Each hospital that is designated to provide health services for inmates shall have a single physician of attending status responsible for all treatment provided to inmates in that hospital.

(b) **Quality Assurance Program.** (1) The monitoring and evaluation activities of the Quality Assurance Program shall reflect the following:

(i) the ongoing collection and/or screening and evaluation of information about health care services to identify opportunities for improving care and to identify problems that have an impact on health care provision and clinical performance;

(ii) the use of objective criteria that reflect current knowledge and clinical experience;

(iii) the identification of problems and improvement of the quality of health care through appropriate actions by

administrative and health personnel; and

(iv) documentation and reporting of the findings, conclusions, recommendations, actions taken and the results of such actions.

(2) The administration and coordination of the overall Quality Assurance Program will be designed to assure the following:

(i) all monitoring and evaluation activities are performed appropriately and effectively;

(ii) necessary information is communicated within and between the Health Authority and the Department of Correction when problems or opportunities to improve health care involve more than one department or service. Communication with the Department of Correction must be consistent with State law and §3-08(c) of these standards regarding confidentiality.

(iii) the status of identified problems shall be tracked to assure prompt improvement or timely resolution;

(iv) all documented information and recordings will be statistically analyzed to detect trends, patterns of performance or potential problems;

(v) a quarterly statistical report outlining the types of health care rendered and their frequency shall be prepared by the Health Authority; and

(vi) the objectives, scope, organization, and effectiveness of the quality assurance program shall be evaluated at least annually and revised as necessary.

(3) There shall be monthly meetings attended by the facility correctional administrator, the chief representative of Health Services at the facility and representatives of the medical, dental, and nursing staff.

(i) each meeting will include a written agenda as well as the taking and distribution of minutes.

(4) All Hospital Prison Wards shall be inspected as part of the accreditation process by the Joint Commission on Accreditation of Hospitals (JCAH), and shall be in compliance with JCAH and State Department of Health standards. In addition, each hospital that is designated to care for inmates will submit as part of their quarterly written reports to the Health Authority, a section that reflects quality assurance activities concerning care provided to inmates.

(5) The Health Authority shall annually conduct itself or contract for a formal evaluation of the quality, effectiveness, and appropriateness of health services provided to inmates in each New York City correctional facility. If the review is conducted by the Health Authority, it must be done by personnel other than those who provide care directly to inmates.

(i) At a minimum the evaluation will consist of the items outlined in §3-09(c).

(ii) The findings, conclusions, and recommendations of the Health Authority's evaluation shall be documented and distributed to the appropriate authorities, including the Board of Correction.

(c) **Monitoring and Evaluation.** (1) The quality of care shall be evaluated and monitored to ensure that medical judgments are soundly made and documented and that medical procedures are appropriately performed and evaluated. Monitoring and evaluation shall assess the appropriateness of diagnostic and treatment procedures, the use of adequate and complete diagnostic procedures including laboratory and radiology studies when indicated. Other subjects which should be reviewed include but need not be limited to: inservice training for medical personnel; the provision of chronic care services; adherence to protocols as evidenced by chart review; whether protocols are updated to reflect current medical knowledge; and whether staff education is successfully conducted to ensure compliance with current protocols.

(2) The quality, content and completeness of medical and dental records and entries will be evaluated and shall at a minimum include verification of:

(i) timely and adequate transfer of appropriate health care documents and information when inmates are transferred to or from other correctional facilities.

(ii) confidentiality and security of records.

(3) The quality, completeness and efficiency of receiving screening services shall be evaluated, including at least a review of any cases where an inmate with a serious health problem, which went undetected at screening, was placed in the general population and of cases where there are substantial delays in conducting the screening.

(4) An evaluation of the quality and appropriateness of surgical and anesthesia services shall be conducted and include at least the following:

(i) a regular and systematic evaluation of inmates who require hospitalization following surgery;

(ii) a regular review to ensure that procedures are done in appropriate time frames after they are ordered;

(iii) review of the inspection and testing of anesthetic apparatus before use; and

(iv) review of the documentation of surgical and anesthesia procedures, annual review and revision as necessary.

(5) The quality and appropriateness of emergency services will be evaluated and include at least a review of the following:

(i) correctional and health personnel response times to emergencies; and

(ii) sufficiency of supplies, equipment, materials and emergency health care per- sonnel.

(6) An evaluation of quality control in radiology, pathology, and other laboratory services will be performed and include a review of at least the following:

(i) the documentation, accuracy, and completeness of procedures; and

(ii) all safety aspects of the radiology service.

(7) Procedures for medication prescription, administration, and dispensing will be reviewed to ensure compliance with all applicable Federal, State, and local laws.

(8) Procedures for inventory control and documentation to account for the use of materials, supplies, equipment and medication shall be evaluated.

(9) Staffing needs shall be evaluated regularly to assure the maintenance of an adequate number of qualified health care personnel as consistent with the needs of the correctional facility.

(i) Written job descriptions shall be reviewed to maximize the functional responsibility, authority, and utilization of available health care personnel and to make changes or additions where necessary;

(ii) All health care personnel will receive periodic job performance appraisals by their supervisors which will include licensure or certification renewal; and

(iii) Inservice training shall be reviewed at least annually by the Health Authority to ensure that the quality, scope and effectiveness of training is adequate.

(10) All powered emergency, radiology, pathology, surgical, and dental equipment shall be tested at intervals deemed necessary to assure their proper functioning, but in no case shall such intervals exceed six months.

(11) Procedures for the management of hazardous materials and wastes in accordance with Federal, State, and local laws and regulations shall be reviewed.

(12) Documents and records will be made available to the Board of Correction by the Health Authority, Health and Hospitals Corporation and the Department of Correction in a timely fashion to allow the Board to monitor compliance with all parts of these standards. These records do not include individual medical records for living inmates, which must be obtained using standard procedures of informed consent and release.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

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40 RCNY 3-10

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-10 Inmate Death.

(a) **Policy.** The Department of Correction shall establish policies and procedures to insure that in the case of an inmate's death, prompt notification is made to family and appropriate officials and with the Health Authority shall insure that a thorough and timely review of the death is conducted.

(b) **Notification.** In the event of an inmate death, the Department of Correction shall notify the Medical Examiner's Office and the inmate's next of kin immediately.

(c) **Review.** (1) A postmortem examination shall be performed promptly whenever an inmate dies in the custody of the Department of Correction. A copy of the report will be sent to the Board of Correction.

(2) The Board of Correction shall conduct an investigation of inmate deaths including the review of all medical records of the deceased. Appropriate reviews will be discussed by the Prison Death Review Board that the Board of Correction will staff and the Deputy Mayor for Public Safety's Office will convene. The Prison Death Review Board will meet on an as needed basis and will include representatives from the Mayor's office, the Health Authority, the Department of Mental Health, Mental Retardation and Alcoholism Services, the Health and Hospitals Corporation, the Department of Correction, the Board of Correction and other health care providers involved in the care of the deceased.

(3) Nothing in this section substitutes for the reviews that must be conducted of every death by the Health Authority and the Department of Correction.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

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40 RCNY 3-11

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-11 Disaster Plan.

(a) **Policy.** There shall be policies and procedures for the management and delivery of health care in the event of a man-made or natural disaster.

(b) **Disaster Plan.** (1) The Health Authority and the Department of Correction shall be responsible for designing written policies and procedures to provide timely and orderly emergency services in the event of a natural or man-made disaster. This disaster plan shall include, but not be limited to the following:

(i) use of an alert system;

(ii) use of emergency equipment and supplies;

(iii) re-assignment of health care and correctional personnel Department-wide to best meet each facility's needs;

(iv) a training program and schedule;

(v) security, storage, and maintenance of medical supplies and health records; (vi) delivery of medical and dental supplies;

(vii) use of ambulance services; and

(viii) periodic recorded practice drills and staff training.

(2) The disaster plan must be approved by the Health Authority and the Department of Correction and reviewed and updated annually. Certification of annual review must be sent to the Board of Correction.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

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40 RCNY 3-12

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-12 Shackling of Inmates.

(a) **Policy.** The Department of Correction, the Health Authority, and the Health and Hospitals Corporation shall develop and implement procedures governing the shackling of inmates who are receiving medical treatment and are housed in beds outside secure medical wards at the municipal hospitals. Inmates housed outside secure medical wards shall not be routinely shackled. The decision to shackle shall be made on a case by case basis and shall not serve as a substitute for appropriate security precautions or as punishment or for the convenience of staff. Shackling of inmates being transported between clinical settings shall be the least restrictive possible. All non-emergency decisions to shackle inmates must not be medically contraindicated.

(b) **Definition.** Shackling includes the use of all devices which encircle the ankle or wrist of an inmate and restrict movement.

(c) **Procedures.** The procedures developed for inmates housed in hospitals in beds outside of secure medical wards must include the following:

(1) Shackling shall be used only upon the direction of the Chief Correctional Officer or his/her designee after a review of the individual case. Pending the receipt of security-related information necessary to perform the review, an inmate may be shackled unless he/she falls into categories listed in (3)(i) through (iv) below. This security-related information must be obtained promptly.

(2) Shackling shall only be used when a Chief Correctional Officer or his/her designee demonstrates with clear and articulable facts that twenty-four hour officer coverage may be insufficient to protect the safety of others or to prevent

escape.

(3) An inmate who is to be restrained shall be seen by a physician. DOC will not shackle an inmate where a physician has determined that the inmate is:

(i) pregnant and admitted for delivery of a baby; or

(ii) dependent on a ventilator or respirator; or

(iii) in imminent danger or expectation of death (unless the inmate while in the condition described by (i)-(iii) above attempts to escape or engages in violent behavior at the hospital which presents a danger of injury); or

(iv) where shackling is medically contraindicated. Provided, however, that should an inmate, while in a condition described by (iv) above, attempt to escape or engage in violent behavior at the hospital which presents a danger of injury, he/she may be restrained pending an immediate review of his/her medical condition by a physician to determine whether the use of shackles threatens the inmate's life. DOC shall promptly make alternative security arrangements before the restraints are removed, unless a life-threatening condition exists. In the case of a life-threatening condition, the shackles shall be removed immediately.

(4) At least daily, physicians shall update and review the medical condition of shackled inmates. They shall convey their findings to the Department of Correction including whether the use of mechanical restraints, while the inmate ambulates is medically contraindicated.

(5) A shackled inmate shall be given the opportunity to use the bathroom as often as the need arises unless the physician has ordered the use of bed pans instead.

(6) The decision to shackle an inmate shall be reviewed on a daily basis by a Chief Correctional Officer or his/her designee and must be revised immediately if a physician determines that the shackles have become medically contraindicated. In the latter case, unless a life-threatening medical emergency exists, DOC shall have the opportunity to make alternative security arrangements, if necessary, before the shackles are removed. These arrangements must be made promptly.

(7) All decisions to apply mechanical restraints will be made by the Department of Correction's office of operations.

(8) Written records shall be maintained at the hospitals which indicated the reason for shackling, the time and date of the approval for shackling, the name and title of the person giving approval, and the inmate's name, book and case number and medical status.

(9) Hospital-based physicians caring for inmates outside secure medical wards at the municipal hospitals shall receive training in this standard.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

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***** Current through December 2009 ****

40 RCNY 3-13

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-13 Variances.

(a) **Policy.** Any Department may apply for a variance from a specific Section or Subdivision of these minimum standards when compliance cannot be achieved or continued.

Continuing Variance. A "continuing variance" is an exemption granted by the Board from full compliance with a particular Section or Subdivision for an indefinite period of time.

Emergency Variance. An "emergency variance" as defined in §3-13(c)(3) is an exemption granted by the Board from full compliance with a particular Section or Subdivision for no more than 30 days.

Limited Variance. A "limited variance" is an exemption granted by the Board from full compliance with a particular Section or Subdivision for a specified period of time.

(b) **Variances Prior to Effective Date.** A Department may apply to the Board for a variance prior to the effective date of a particular Section or Subdivision when:

(1) despite its best efforts and the best efforts of other New York City officials and agencies, full compliance with the Section or Subdivision cannot be achieved by the effective date; or

(2) compliance is to be achieved in a manner other than specified in the Section or Subdivision.

(c) **Limited, Continuing and Emergency Variances.** (1) A Department may apply to the Board for a limited variance when:

(i) despite its best efforts, and the best efforts of other New York City officials and agencies, full compliance with the Section or Subdivision cannot be achieved; or

(ii) compliance is to be achieved for a limited period in a manner other than specified in the Section or Subdivision.

(2) A Department may apply to the Board for a continuing variance when despite its best efforts and the best efforts of other New York City officials compliance cannot be achieved in the foreseeable future because:

(i) full compliance with a Section or Subdivision creates extreme practical difficulties as a result of circumstances unique to the design of a particular facility, and lack of full compliance would not create a danger or undue hardship to staff or inmates; or

(ii) compliance is to be achieved in an alternative manner sufficient to meet the intent of the Section or Subdivision.

(3) A Department may apply to the Board for an emergency variance when an emergency situation prevents continued compliance with the Section or Subdivision. An emergency variance for a period of less than 24 hours may be declared by a Department when an emergency situation prevents continued compliance with a particular Section or Subdivision. The Board or a designee shall be immediately notified of the emergency situation and the variance application.

(d) **Variance Application.** (1) An application for a variance must be made in writing to the Board by the Commissioner of a Department as soon as a determination is made that continued compliance will not be possible and shall state:

(i) the type of variance requested;

(ii) the particular Section or Subdivision at issue;

(iii) the requested commencement date of the variance;

(iv) the efforts undertaken by a Department to achieve compliance;

(v) the specific facts or reasons making full compliance impossible, and when those facts and reasons became apparent;

(vi) the specific plans, projections and timetables for achieving full compliance;

(vii) the specific plans for serving the purpose of the Section or Subdivision for the period that strict compliance is not possible; and

(viii) if the application is for a limited variance, the time period for which the variance is requested, provided that this shall be no more than six months.

(2) In addition to the provisions of subsection (1), an application for a continuing variance shall state:

(i) the specific facts and reasons underlying the impracticability or impossibility of compliance within the foreseeable future, and when those facts and reasons became apparent; and

(ii) the degree of compliance achieved and the Department's efforts to mitigate any possible danger or hardships attributable to lack of full compliance; or

(iii) a description of the specific plans for achieving compliance in an alternative manner sufficient to meet the intent of the Section or Subdivision.

(3) In addition to the requirements of subsection (1), an application for an emergency variance for a period of 24 hours or more, (or for renewal of an emergency variance) shall state:

(i) the specific facts or reasons making continued compliance impossible, and when those facts and reasons became apparent;

(ii) the specific plans, projections and timetables for achieving full compliance; and

(iii) the time period for which the variance is requested, provided that this shall be no more than thirty days.

(e) **Variance procedure for limited and continuing variances.**

(1) Prior to a decision on a variance application for a limited or continuing variance, whenever practicable, the Board will consider the positions of all interested parties, including correctional employees, health service professionals, inmates and their representatives, other public officials and legal religious and community organizations.

(2) Whenever practicable, the Board shall hold a public meeting or hearing on the variance application and hear testimony from all interested parties.

(3) The Board's decision on a variance application shall be in writing.

(4) Interested parties shall be notified of the Board's decision as soon as practicable and no later than 5 business days after the decision is made.

(f) **Granting of variance.** (1) The Board shall grant a variance only if it is convinced that the variance is necessary and justified.

(2) Upon granting a variance, the Board shall state:

(i) the type of variance;

(ii) the date on which the variance will commence;

(iii) the time period of the variance, if any; and

(iv) any requirements imposed as conditions on the variance.

(g) **Renewal of variance.** (1) An application for a renewal of a limited or emergency variance shall be treated in the same manner as an original application as provided in §3-13(c)-(f). The Board shall not grant renewal of a variance unless it finds that, in addition to the requirements for approving an original application, a good faith effort has been made to comply with the Section or Subdivision within the previously prescribed time limitation, and that the requirements set by the Board as conditions on the original variance have been met.

(2) A petition for review of a continuing variance may be made upon the Board's own motion or by officials of a Department, or its employees, inmates or their representatives. Upon receipt of a petition, the Board shall review and reevaluate the continuing necessity and justification for the continuing variance. Such review shall be conducted in the same manner as the original application as provided in the §3-13(c)-(f). The Board will discontinue the variance, if after such review and consideration, it determines that:

(i) full compliance with the standard can now be achieved; or

(ii) requirements imposed as conditions upon which the continuing variance was granted have not been fulfilled or maintained; or

(iii) there is no longer compliance with the intent of the Section or Subdivision in alternative manner as required by §3-13(b)(ii).

(3) The Board shall specify in writing and publicize the facts and reason for its decision on an application for renewal or review of a variance. The Board's decision must comply with the requirements of §3-13(f), and, in the case of limited and continuing variances, §3-13(e)(3) and (4). Where appropriate, the Board shall set an effective date for discontinuance of a continuing variance after consultation with all interested parties.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

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40 RCNY 3-14

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-14 Effective Date.

These standards (§§3-01 through 3-13) shall take effect May 15, 1991.

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

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***** Current through December 2009 ****

40 RCNY 3-15

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 3 HEALTH CARE MINIMUM STANDARDS

§3-15 Implementation Dates.

The policies, procedures, criteria, plans, programs and forms required by the various subdivisions of these standards shall be developed, approved and implemented with the time periods stated below. All time periods are computed from the effective date of these standards (see §3-14).

[See tabular material in printed version]

HISTORICAL NOTE

Section added City Record Apr. 15, 1991 eff. May 15, 1991.

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40 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 4 [PROCEDURES FOR CONSIDERATION OF PETITIONS FOR RULEMAKING SUBMITTED TO THE BOARD OF CORRECTION]*1

§4-01 Definitions.

(a) "Petition" shall mean a request or application for the Board of Correction ("the Board") to adopt a rule.

(b) "Petitioner" shall mean the person or entity who files the petition.

(c) "Rule" shall have the same meaning set forth in §1041(5) of the New York City Charter.

HISTORICAL NOTE

Section added City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. [See Chapter 4 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added (without heading) City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. Note Statement of Basis and Purpose:

To comply with the requirements of City Charter §1043(f), the Board of Correction adopted procedures for the consideration of petitions for rulemaking.

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RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 4 [PROCEDURES FOR CONSIDERATION OF PETITIONS FOR RULEMAKING SUBMITTED TO THE BOARD OF CORRECTION]*1

§4-02 Scope.

This rule shall govern the procedures by which any person or entity may petition the Board to commence rulemaking pursuant to §1043(f) of the New York City Charter and the procedure for submission, consideration and disposition of such petitions.

HISTORICAL NOTE

Section added City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. [See Chapter 4 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added (without heading) City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. Note Statement of Basis and Purpose:

To comply with the requirements of City Charter §1043(f), the Board of Correction adopted procedures for the consideration of petitions for rulemaking.

Rules of the City of New York

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40 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 4 [PROCEDURES FOR CONSIDERATION OF PETITIONS FOR RULEMAKING SUBMITTED TO THE BOARD OF CORRECTION]*1

§4-03 Procedures for submitting petitions.

(a) Any person or entity may petition the Board to consider the adoption of a rule.

(b) A petition must contain the following information:

(1) the rule to be considered, with the proposed language for adoption;

(2) a statement of the Board's authority to promulgate the rule and its purpose;

(3) petitioner's arguments in support of adoption of the rule;

(4) the period of time the rule should be in effect;

(5) the name, address, email address and telephone number of the petitioner or his or her authorized representative;

(6) petitioner's signature or that of his or her authorized representative if the petition is submitted on paper or by facsimile.

(c) Any change in the information provided pursuant to §4.03(b)(5) shall be communicated promptly in writing to the office of the Board's Executive Director.

(d) Petitions shall be delivered, mailed or submitted by facsimile or electronic mail to the office of the Board's

Executive Director.

HISTORICAL NOTE

Section added City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. [See Chapter 4 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added (without heading) City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. Note Statement of Basis and Purpose:

To comply with the requirements of City Charter §1043(f), the Board of Correction adopted procedures for the consideration of petitions for rulemaking.

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***** Current through December 2009 ****

40 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 40 Board of Correction

CHAPTER 4 [PROCEDURES FOR CONSIDERATION OF PETITIONS FOR RULEMAKING SUBMITTED TO THE BOARD OF CORRECTION]*1

§4-04 Procedures for responding to petitions.

(a) Upon receipt of a petition in proper form, the Executive Director shall promptly forward it to the Board.

(b) Within 60 days from the date a petition is received by the office of the Executive Director, the Chair shall either state in writing the Board's intention to initiate rulemaking by a specified date, or shall deny the petition in writing, stating the reasons for denial.

(1) Whenever the Chair decides to initiate rulemaking, the petition shall be made part of the record of the Board meeting at which rulemaking is initiated. In proceeding with rulemaking, the Board shall not be bound by the language proposed by the petitioner, but may amend or modify such proposed language at the Board's discretion. Neither shall the Board be bound to enact the substance of a petition for which the Chair has decided to initiate rulemaking.

(2) Whenever the Chair intends to deny a petition, the proposed denial and the reasons therefore shall be promptly provided to the members of the Board. Should a member object to the proposed denial of the petition within 10 days of receiving notice of the Chair's intention to deny, the petition shall be placed before the full Board for consideration as to whether the petition should be denied or the Board should proceed to rulemaking.

(c) The Chair's decision to initiate rulemaking, or to deny a petition in the absence of a member's timely objection, or a decision by the Board to initiate rulemaking or deny a petition, shall be a final decision which is not subject to judicial review.

HISTORICAL NOTE

Section added City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. [See Chapter 4 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added (without heading) City Record Aug. 7, 2008 §1, eff. Sept. 6, 2008. Note Statement of Basis and Purpose:

To comply with the requirements of City Charter §1043(f), the Board of Correction adopted procedures for the consideration of petitions for rulemaking.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-01 Purpose and Scope.

(a) The people's right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or con- fidentiality.

(b) These regulations provide information concerning the procedures by which records may be obtained.

(c) Personnel shall furnish to the public the information and records required by the Freedom of Information Law, as well as records otherwise available by law.

(d) Any conflicts among laws governing public access to records shall be constructed in favor of the widest possible availability of public records.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-02 Designation of Records Access Officer.

(a) Commissioner Rose W. Washington is responsible for insuring compliance with the regulations herein, and designates the following person as Records Access Officer:

Kay C. Murray, Esq., Counsel

Department of Juvenile Justice

365 Broadway

New York, NY 10013

(212) 925-7779, Ext. 211

(b) The Records Access Officer is responsible for insuring appropriate agency response to public requests for access to records.

(c) Records Access Officer shall insure that personnel:

(1) Maintain a reasonably detailed current subject matter list of all records in the possession of the agency, whether or not such records are available for inspection and copying pursuant to the Freedom of Information Law. The list shall be of sufficient detail to permit identification by the public of categories of records. The subject matter list shall be updated not less than twice per year and the date of the most recent revision of the list shall appear on its first page;

(2) Assist the requester in identifying requested records, if necessary;

(3) Upon locating the records, take one of the following actions:

(i) make records available for inspection or,

(ii) deny access to the records in whole or in part and explain in writing the reasons therefore.

(4) Upon request for copies of records, arrange to make copies available on payment of or offer to pay the established fee;

(5) Upon request, certify that a record is a true copy; and

(6) Upon failure to locate records, certify that:

(i) the Department of Juvenile Justice is not the custodian for such records, or

(ii) the records of which the Department of Juvenile Justice is a custodian cannot be found after diligent search.

(d) The Records Access Officer shall retain a file copy of each writing granting, denying or acknowledging a request pursuant to §1-07(c) and shall promptly forward to the NYC Law Department a copy of each denial.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-03 Location.

Records shall be available for public inspection and copying at:

Department of Juvenile Justice

365 Broadway

New York, NY 10013

(212) 925-7779

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-04 Hours for Public Inspection.

Requests for public access to records shall be accepted and records produced during all hours regularly open for business.

These hours are: 9 a.m.-5 p.m.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-05 Subject Matter List.

(a) The Records Access Officer shall maintain a reasonably detailed current list by subject matter of all records in the possession of the agency, whether or not records are available pursuant to Subdivision two of Section eighty-seven of the Public Officers Law.

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-06 Records Not Subject to FOIL Requests.

The following records are specifically excluded from coverage under these regulations and public access may be denied to records or portions thereof that:

(a) Are specifically exempted from disclosure by state or federal statute;

(b) If disclosed would constitute an unwarranted invasion of personal privacy under the provision of Subdivision two of Section eighty-nine of FOIL;

(c) If disclosed would impair present or imminent contract awards or collective bargaining negotiations;

(d) Are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

(e) Are compiled for law enforcement purposes and which, if disclosed, would:

(1) interfere with law enforcement investigations or judicial proceedings;

(2) deprive a person of a right to a fair trial or impartial adjudication;

(3) identify a confidential source or disclose confidential information relating to a criminal investigation; or

(4) reveal criminal investigative techniques or procedures, except routine techniques and procedures.

(f) Records that would endanger the life or safety of any person;

(g) Records that are inter-agency or intra-agency materials that are not statistical or factual tabulations or data, or instructions to staff that affect the public, or final agency police determinations;

(h) Records that are examination questions or answers which are requested prior to the final administration of the questions; or

(i) Records that are computer access codes. The Records Access Officer shall examine requests to ascertain if the requested records may be exempted as per this statute.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-07 Procedures for Making Requests, Responses.

(a) Any request to inspect and/or copy records shall be made in writing and addressed to the Records Access Officer of the agency. The requests shall reasonably describe the record or records sought and shall, whenever possible, supply information regarding dates, file designations or other information which will enable the Records Access Officer to identify the records sought.

(b) Any present or former DJJ employee who wishes to review his or her personnel file, should submit such request on the pre-printed agency form designed for that purpose. A supply of that form shall be available at the DJJ Personnel Office and at the Spofford Personnel Office. The Personnel Director may handle these routine requests without the Records Access Officer. A copy of the request form shall be retained in the employee's personnel file.

(c) A response shall be given regarding any request reasonably describing the record or records sought within five business days of receipt of the request.

(d) If the Records Access Officer does not provide or deny access to the record sought within five business days of receipt of a request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-08 Denial of Access to Records.

Denial of access to records shall be in writing stating the reason therefore and advising the requester of the right to appeal to the individual or body established to hear appeals.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-09

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-09 Procedure for Appeals.

(a) When a request for inspection has been denied in writing in whole or in part by the Records Access Officer, the requesting party shall have thirty days after receipt of the denial within which to appeal. An appeal shall be in writing, addressed to the agency's Appeals Officer. The following person shall hear appeals for denial of access to records under the Freedom of Information Law:

Rose W. Washington, Commissioner

Department of Juvenile Justice

365 Broadway

New York, NY 10013

(212) 925-7779 Ext. 201

(b) The time for deciding an appeal by the Appeals Officer shall commence upon receipt of a written appeal identifying:

(1) the date of the appeal;

(2) the date and location of the request for records;

(3) the name of the Records Access Officer who denied the request;

(4) the records to which the requester was denied access;

(5) the date of the denial;

(6) the name and return address of the requester.

(c) The Appeals Officer shall transmit to the NYC Law Department and the Committee on Public Access to Records, Department of State, 162 Washington Avenue, Albany, New York, 12231, copies of all appeals upon their receipt.

(d) The Appeals Officer shall inform the appellant and the Committee on Public Access to Records of her determination in writing within ten business days of receipt of an appeal. The determination shall be transmitted to the Committee on Public Access to Records in the same manner as set forth in subdivision (c) of this section.

(e) Determination affirming denials shall state the grounds for withholding of the requested records and that judicial review of the denial may be obtained in a proceeding under Article 78 of the Civil Practice Law and Rules commenced within four months after determination of the appeal.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-10

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-10 Fees.

(a) There shall be no fee charged for:

(1) inspection of records;

(2) search for records; or

(3) any certification pursuant to this part.

(b) Copies of records shall be provided for a fee of $.25 per page not exceeding 9 × 15 inches or the actual cost of duplication, if greater. The Records Access Officer shall ensure that the fee is collected or may, at her discretion, waive the fee.

(c) Payment for copying shall be made by check or money order payable to the City of New York and shall be made upon delivery of the copies to the person requesting them.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-11 Public Notice.

A notice containing the title or name and business address of the Records Access Officer and Appeals Officer, and the time and location where records can be seen or copied shall be posted in a conspicuous location wherever records are kept.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-12 Removal of Records.

In no case shall the agency permit the removal of agency records from agency premises by a requesting party.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 COMPLIANCE WITH FOIL

§1-13 Severability.

If any provision of these regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of these regulations or the application thereof to other persons and circumstances.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 2 ADJUDICATIONS

§2-01 Conducted by the Office of Administrative Trials and Hearings.

Pursuant to the New York City Charter, §§1041 and 1046-48, the Department of Juvenile Justice has determined that adjudications shall be conducted by the Office of Administrative Trials and Hearings.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 2 ADJUDICATIONS

§2-02 Findings of Fact and Decisions.

Adjudications arising under §75 of the Civil Service Law and the Citywide collective bargaining agreement, if referred to the Office of Administrative Trials and Hearings, shall be conducted by the Office of Administrative Trials and Hearings. The OATH Administrative Law Judge shall make written proposed findings of fact and recommend decisions.

HISTORICAL NOTE

Section in original publication July 1, 1991.

41 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 3*1 GUIDELINES FOR CONTINUITY AND PROVISION OF MEDICAL CARE

§3-01 Purpose.

(a) It is the treatment philosophy of the Department of Juvenile Justice ("the Department" or "DJJ") to seek the active participation of the resident, his/her parent(s) or legal guardian(s), and previous health care providers, in the care and treatment of residents in the custody of the Department.

(b) DJJ recognizes that, as the resident's primary medical provider while in the Department's custody, it is in the best interest of the resident to have accurate and current information concerning the resident's medical and psychiatric cre and medication in order to provide continuity of care.

(c) As part of providing a continuum of appropriate health care services, DJJ endorses the principle of continuing previously provided medical and psychiatric are, including medications, in accordance with the procedures set forth below. Medical and psychiatric care and medication which the resident was receiving prior to admission to DJJ shall continue unless modified in accordance with the procedures set forth below.

HISTORICAL NOTE

Section added City Record Apr. 16, 2001 eff. May 16, 2001. [See T41 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Apr. 16, 2001 eff. May 16, 2001. Note provisions of City Record Apr. 16, 2001:

This rule has been adopted in furtherance of the settlement of a motion brought by the Family Court (Hon. Paula J. Hepner, J.F.C.) in a juvenile delinquency proceeding under Article III of the Family Court Act. Its purpose is to establish guidelines for the continuity and provision of medical care for youths in the custody of DJJ.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 3*1 GUIDELINES FOR CONTINUITY AND PROVISION OF MEDICAL CARE

§3-02 Parental Involvement.

(a) Upon a youth's admission to a Department facility, DJJ shall promptly seek to have the parent/legal guardian execute appropriate consent forms authorizing routine medical treatment.

(b) Whenever, in the course of non-emergency or routine medical care, DJJ proposes a "substantial alteration" to a course of treatment that a resident was receiving prior to his/her admission to the Department, DJJ shall make reasonable efforts to seek the consent of the parent/legal guardian prior to initiating the "substantial alteration". The parent/legal guardian shall have the opportunity to consult with a DJJ physician, physician's assistant, or nurse practitioner regarding the proposed "substantial alteration".

(c) For purposes of this chapter, "substantial alteration" shall mean:

(1) The proposal to initiate medical or psychiatric care or medication where not previously prescribed for the resident, other than routine medical care or emergency medical treatment;

(2) A change in a continuous and uninterrupted course of therapy or medication that had been in effect either at an inpatient facility or by a private physician prior to the resident's admission to the Department. However, changes in the dosage or timing in administering medication which remain consistent with the pharmacological intent of the medication and which are intended to enhance the resident's functional abilities while in DJJ's custody shall not constitute a substantial alteration of a medication regimen. Any such changes in the dosage or timing in administering medication must be based on a specific and clearly identified clinical requirement that is accordingly documented in the patient's record.

(3) The substitution of a generic equivalent where the prescription states "dispense as written".

(d) If, after reasonable efforts to contact a parent/legal guardian, that person is non-responsive, absent or otherwise uninvolved, DJJ shall treat the resident consistent with his/her medical and psychiatric history and current symptomatology.

(e) In the event that DJJ proposes a "substantial alteration" but the parent/legal guardian refuses to consent, then, absent further court intervention, the only treatment that may occur is routine medical care, emergency treatment, and the administration of previously prescribed medications that have been confirmed in accordance with the procedures set forth in §3-03 below.

HISTORICAL NOTE

Section added City Record Apr. 16, 2001 eff. May 16, 2001. Note internal relettering by Law

Department per Charter §1045(b). [See T41 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Apr. 16, 2001 eff. May 16, 2001. Note provisions of City Record Apr. 16, 2001:

This rule has been adopted in furtherance of the settlement of a motion brought by the Family Court (Hon. Paula J. Hepner, J.F.C.) in a juvenile delinquency proceeding under Article III of the Family Court Act. Its purpose is to establish guidelines for the continuity and provision of medical care for youths in the custody of DJJ.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 3*1 GUIDELINES FOR CONTINUITY AND PROVISION OF MEDICAL CARE

§3-03 Consultation With Prior Medical Providers.

(a) If a newly admitted resident had been under the continuous and uninterrupted care of a physician or hospital prior to admission to the Department, upon admission to a DJJ facility, DJJ shall make reasonable efforts to confirm with the prior provider the following information:

(1) If from a physician: prescribed medications; significant medical history; and current treatment recommendations;

(2) If from a hospital: discharge information; current medications; significant medical history; current treatment recommendations;

(3) If from a pharmacy: current medication and prescription renewal information.

(b) Where a youth is admitted to DJJ on a medication regimen that is confirmed pursuant to subdivision (a) of this section, DJJ shall continue that medication in accordance with the procedures set forth herein within twenty-four hours of the completion of the initial medical screening.

(c) Where the medication is not in the DJJ pharmacological inventory, DJJ will make every reasonable effort to obtain the medication and initiate it as soon thereafter as practicable.

(d) If unable to confirm information regarding a resident's medical or psychiatric regimen or medication after reasonable efforts, DJJ shall treat the resident consistent with his/her disclosed history and current symptomatology.

(e) In the event that DJJ does not authorize a continuation of the resident's medication regimen, DJJ shall have the resident seen by a doctor within twenty-four hours of the initial medical screening.

HISTORICAL NOTE

Section added City Record Apr. 16, 2001 eff. May 16, 2001. Note internal relettering by Law

Department per Charter §1045(b). [See T41 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Apr. 16, 2001 eff. May 16, 2001. Note provisions of City Record Apr. 16, 2001:

This rule has been adopted in furtherance of the settlement of a motion brought by the Family Court (Hon. Paula J. Hepner, J.F.C.) in a juvenile delinquency proceeding under Article III of the Family Court Act. Its purpose is to establish guidelines for the continuity and provision of medical care for youths in the custody of DJJ.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 3*1 GUIDELINES FOR CONTINUITY AND PROVISION OF MEDICAL CARE

§3-04 Information Regarding Medical and Psychiatric Care and Medications.

(a) When a youth is remanded to DJJ, DJJ shall use a Medication Referral Form (such as the form currently in use, annexed as Appendix A, or a revised form which may be developed by DJJ as needed), to obtain information concerning a resident's current medication regimen from a parent, legal guardian, or prior provider. This form shall be made available in the Courthouse.

(b) When a resident is admitted to a DJJ facility, DJJ shall use an Initial Medical Screening Form (Such as the form currently in use, annexed as Appendix B, or a revised form which may be developed by DJJ as needed) to obtain information concerning a resident's current medical and psychiatric care.

HISTORICAL NOTE

Section added City Record Apr. 16, 2001 eff. May 16, 2001. Note internal relettering by Law

Department per Charter §1045(b). [See T41 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Apr. 16, 2001 eff. May 16, 2001. Note provisions of City

Record Apr. 16, 2001:

This rule has been adopted in furtherance of the settlement of a motion brought by the Family Court (Hon. Paula J. Hepner, J.F.C.) in a juvenile delinquency proceeding under Article III of the Family Court Act. Its purpose is to establish guidelines for the continuity and provision of medical care for youths in the custody of DJJ.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 3*1 GUIDELINES FOR CONTINUITY AND PROVISION OF MEDICAL CARE

§3-05 Routine Medical Care and Emergency Treatment.

Nothing in these Guidelines shall preclude DJJ from administering routine medical care and emergency treatment.

HISTORICAL NOTE

Section added City Record Apr. 16, 2001 eff. May 16, 2001. [See T41 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Apr. 16, 2001 eff. May 16, 2001. Note provisions of City Record Apr. 16, 2001:

This rule has been adopted in furtherance of the settlement of a motion brought by the Family Court (Hon. Paula J. Hepner, J.F.C.) in a juvenile delinquency proceeding under Article III of the Family Court Act. Its purpose is to establish guidelines for the continuity and provision of medical care for youths in the custody of DJJ.

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 3*1 GUIDELINES FOR CONTINUITY AND PROVISION OF MEDICAL CARE

§3-06 Disagreement With Prior Treatment and/or Court-Ordered Treatment.

(a) In the event that the parent or legal guardian of a resident is absent, non-responsive or otherwise uninvolved, and DJJ proposes a "substantial alteration" to medical or psychiatric are or medication prescribed by a prior treatment provider, DJJ shall contact the prior treatment provider in accordance with the procedures set forth in §3-03 above. In the event that DJJ and a resident's prior treatment provider disagree regarding the resident's treatment, DJJ shall provide written notification of its alternative treatment plan to the Court wherein the delinquency matter is pending by the next business day.

(b) At any stage of the proceeding, if a court order is entered directing a resident's course of treatment, that order will be followed unless DJJ returns to court to vacate or modify the order by the next business day. Where an application to vacate or modify cannot be made within 24 hours, DJJ will make every reasonable effort to comply with the court order until an application to vacate or modify can be heard.

HISTORICAL NOTE

Section added City Record Apr. 16, 2001 eff. May 16, 2001. Note internal relettering by Law

Department per Charter §1045(b). [See T41 Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record Apr. 16, 2001 eff. May 16, 2001. Note provisions of City Record Apr. 16, 2001:

This rule has been adopted in furtherance of the settlement of a motion brought by the Family Court (Hon. Paula J. Hepner, J.F.C.) in a juvenile delinquency proceeding under Article III of the Family Court Act. Its purpose is to establish guidelines for the continuity and provision of medical care for youths in the custody of DJJ.

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41 RCNY 3 - APPENDIX A

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

APPENDIX A MEDICATION REFERRAL FORM

APPENDIX A MEDICATION REFERRAL FORM

DATE_____

I. RESPONDENT INFORMATION:

Name of Respondent_____ D.O.B._____

DOCKET #_____ COURT AND COUNTY_____

II. HEALTH CARE PROVIDER INFORMATION:

Name of Hospital/Clinic:_____ TEL.# _____

Address of Hospital/Clinic:_____

Name of Prescribing Physician: _____ TEL# _____

III. CURRENTLY PRESCRIBED MEDICATION(S):

NAME	DOSAGE AND FREQUENCY	DIRECTIONS	DATE FIRST PRESCRIBED	DATE LAST TAKEN
1.				
2.				
3.				
4.				

IV. PARENTAL/LEGAL GUARDIAN INFORMATION:

Name of Parent/Legal Guardian:_____

Telephone Number of Parent/Legal Guardian: Day _____ Evening/Weekend_____

Discharge Summary Attached: Yes_____ No_____

V. ADDITIONAL COMMENTS: _____

_____

_____

I authorize the Department of Juvenile Justice to request and be provided any information, records and reports concerning past medical, psychiatric, surgical or dental services given to my son/daughter that the Department may determine to be necessary for providing health services.

Signature of Parent/Legal Guardian_____

Instructions: DJJ cannot accept bottles containing medication. The parent/legal guardian must empty the bottles before giving them to DJJ Court Service Staff. The bottles and this form should be placed in the envelope attached.

MOVEMENT CONTROL AND COMMUNICATIONS UNIT (MCCU)
365 BROADWAY, NY, NY 10013
TEL: (212) 925-7779 ext. 226, 212

Rules of the City of New York

***** Current through December 2009 ****

41 RCNY 3 - APPENDIX B

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

APPENDIX B CITY OF NEW YORK DEPT. OF JUVENILE JUSTICE FORM

APPENDIX B CITY OF NEW YORK DEPT. OF JUVENILE JUSTICE FORM

EMSA *CORRECTIONAL CARE* **INITIAL MEDICAL SCREENING**

ARE YOU ILL? ☐ **YES** ☐ **NO** **ARE YOU INJURED?** ☐ **YES** ☐ **NO** **HOUSING** _____ **PROP#** _____

NAME _____ **T.N./AKA** _____

ADDRESS _____ **PHONE** _____

SEX _____ **DOB** _____ **ID#** _____ **DATE** _____ **TIME** _____

PREVIOUS ADMISSIONS _____

DO YOU HAVE MEDICAL INSURANCE? ☐ **YES** ☐ **NO** **INSURANCE COMPANY** _____

VISUAL OBSERVATION Circle Y or N (Explain all "Yes" answers)	Yes	No
ALLERGIES: _____		
1. Is resident unconscious or showing visible signs of illness, injury, bleeding, pain or other symptoms suggesting the need for immediate emergency medical referral? If yes, _____	Y	N
2. Are there obvious signs of fever, jaundice, skin lesions, rash, or infection? Needle marks? Body vermin? Trauma markings, bruises? If Yes, _____	Y	N
3. Does the resident's behavior/appearance suggest the risk of suicide or assault? If Yes, _____	Y	N
4. Does the resident exhibit any signs of abnormal behavior? (e.g. tremors, sweating) If Yes, _____	Y	N
5. Does the resident appear to be under the influence of, or withdrawing from, drugs or alcohol? If Yes, _____	Y	N
6. Is the resident's mobility restricted in any way due to deformity, cast, injury, etc.? If Yes, _____	Y	N
7. Does the resident have a persistent cough or appear to be lethargic? If Yes, _____	Y	N
RESIDENT QUESTIONNAIRE Circle Y or N (Explain all "Yes" answers)	Yes	No
8. Are you taking medication for: (circle as appropriate) asthma, diabetes, heart condition, high blood pressure, mental health problems, ulcers, arthritis, or other condition? If Yes, what medication? _____	Y	N
9. When were you last seen by a physician or at a clinic for a medical, dental or mental health condition? _____		
10. Are you allergic to any medications, foods, plants, etc.? If Yes, _____	Y	N
11. Have you fainted or had a head injury within the last 72 hours? If Yes, _____	Y	N
12. Do you have or have you been exposed to AIDS, hepatitis, TB, VD, or other communicable disease? Have you experienced lethargy, weakness, weight loss, loss of appetite, fever or night sweats? If Yes, _____	Y	N
13. Have you been hospitalized by a physician or psychiatrist within the last year? If Yes, _____	Y	N
14. Have you ever considered or attempted suicide? It Yes, _____	Y	N
15. Do you have a painful dental condition? If Yes, _____	Y	N
16. Are you on a specific diet prescribed by a physician? If Yes, _____	Y	N
17. Do you use drugs and/or alcohol? What kind? _____ How often? _____ How much? _____	Y	N
18. Females: Last menstrual period _____. Are you pregnant, on birth control pills, recently delivered or aborted? If Yes, _____	Y	N

HOUSING RECOMMENDATION (Check one)

☐ Emergency Room ☐ General Population ☐ Health Services Unit
☐ Isolation ☐ Observation ☐ Sick Call _____ Date/Time

REMARKS: _____

(Check one) MD ☐ PA ☐ NP ☐ Clinic _____ Date/Time

I have answered all questions truthfully. I have been told and shown how to obtain medical services. I hereby give my consent for professional services to be provided to me by and through EMSA Correctional Care.

_____ Resident's signature _____ Date

PAT Pre-screening Form

Screening Staff:_____ ☐ **NSD**
(please print your name)

☐ **SECURE**

Name of Resident:_____
(please print name)

DOB:_____

Date of screening: ____/____/____

Date of intake: ____/____/____

Have you EVER used:

1. Alcohol	☐ **yes**	☐ **no**
2. Marijuana	☐ **yes**	☐ **no**
3. Crack	☐ **yes**	☐ **no**
4. Cocaine	☐ **yes**	☐ **no**
5. Sniffing glue/huffing/solvents	☐ **yes**	☐ **no**
6. Heroin/Methadone	☐ **yes**	☐ **no**
7. Pain Killers/opiates/Special K	☐ **yes**	☐ **no**
8. PCP/Angel Dust	☐ **yes**	☐ **no**
9. LSD/Acid/Mushrooms	☐ **yes**	☐ **no**
10. Ecstasy/X	☐ **yes**	☐ **no**
11. Tranquilizers/Valium	☐ **yes**	☐ **no**
12. Uppers/Speed/Crystal Meth	☐ **yes**	☐ **no**
13. Downers/Quaaludes	☐ **yes**	☐ **no**
14. Any Other Drug (pain killers, cough syrup)	☐ **yes**	☐ **no**

15. In the last MONTH (30 days), how many days have you been in a jail, hospital, or other place where you could not use alcohol, marijuana or other drugs? _____ **days**

16. How many times have you used ANY drug in the past 30 days? _____ **times**

17. Have you ever had a craving or strong desire for alcohol or drugs?	☐ **yes**	☐ **no**
18. Have you ever tried to cut down or stop using alcohol or drugs?	☐ **yes**	☐ **no**
19. Have you ever needed more and more alcohol or drugs to get the high you want?	☐ **yes**	☐ **no**
20. Have you ever felt "hooked" or addicted to alcohol or drugs?	☐ **yes**	☐ **no**
21. Have you ever felt unable to control your alcohol or drug use?	☐ **yes**	☐ **no**

22. How old were you the first time you got high or drunk? _____

CITY OF NEW YORK DEPT OF JUVENILE JUSTICE

EMSA Correctional Care

NAME: _____

D.O.B. _____

LOCATION: _____

INITIAL MENTAL HEALTH SCREENING

FAMILY SOCIAL PSYCHIATRIC HISTORY

1. Where do you live? _____
   Address Zip Code

   _____
   Contact Person Emergency #

2. Who lives in your household? (List all by relationship)

   _____

   _____

3. Who raised you? (Relationship & Occupation)

   _____

   _____

4. Tell me about your parents. (Major psychiatric illness, drinking, drug problems, incarcerations, separations, deaths, suicides)

   _____

   _____

5. Whom do you feel close to?

   _____

6. How do your parents react when you do something you're not supposed to?

   _____

   Have you ever required medical attention for this?

   _____

7. Have other agencies been involved with your family? (e.g. ACS)

   _____

   _____

PERSONAL EDUCATIONAL HISTORY

1. **Do you attend school? (Special Ed?)**

   _____

2. **Do you like school? (if dropped out, why?)**

   _____

3. **Highest grade achieved**

   _____

4. **Read 3rd grade paragraph. Yes ☐ No ☐**
   Comments on reading ability:

   _____

5. **Plans for the future.**

   _____

PERSONAL PSYCHIATRIC HISTORY	YES	NO	If yes, give details.
1. Have you ever seen a Psychiatrist or social worker?			
2. Hospitalized for your nerves.			
3. Tried to hurt yourself?			
4. Taken medicine for your nerves.			

SLEEPING AND EATING HABITS	NL	ABNL	Give detail for any ABNL or Yes answers
1. What are your sleeping habits? (excessive sleep, early AM waking, unrefreshed sleep, nightmares, trouble falling asleep or staying awake)			
2. How is your appetite?			
3. Any recent weight loss?			
MENTAL STATUS	**NL**	**ABNL**	
1. Orientation to person, place & time?			
2. Thought and speech: • attention span . . . . . . • tone of voice . . . . . . • speech patterns . . . . . . • unusual thoughts . . . . . . • delusions . . . . . . • hallucinations . . . . . . • sexual orientation or obsessions?			
ASPECTS AND BEHAVIOR	**NL**	**ABNL**	
1. Facial expressions, eye contact, and appropriateness of response to communication			
2. Evidence of hyperactivity, lethargy, compulsiveness			
3. What do you do when you get upset? (impulse control-violence, hurt self, hurt others, isolation)			
	YES	**NO**	
4. Is resident suicidal now? Does resident have a concrete plan			
5. Is resident potentially violent? Who is target person(s)?			
6. Interaction with interviewer, (friendly, open, guarded, hostile, withdrawn, suspicious)			
ASSESSMENT AND PLAN:			Signature/Title Date

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RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 PROCEDURE FOR OBTAINING PRE-SENTENCE REPORTS

§1-01 Requests for Records.

The request for such records shall be in writing, indicating the case name and appellate court where pending, submitted by the subject-defendant, counsel on appeal, or the Assistant District Attorney, or by order of the sentencing court or by subpoena and directed to the New York City Department of Probation, Office of the General Counsel, 115 Leonard Street, New York, N.Y. 10013.

In order to identify the correct records, the request shall also include the following information:

Defendant's full name.

NYSIS number.

Indictment or Docket number.

County of conviction.

Sentence received, date and name of judge.

The request should also include whenever possible the following:

Aliases used by defendant.

If sentenced to probation, the county and name of supervising officer.

If sentenced to a term of imprisonment, the name and address of the facility where served and the inmate identification number.

Defendant's date of birth.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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42 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 1 PROCEDURE FOR OBTAINING PRE-SENTENCE REPORTS

§1-02 Production of Records.

(a) **Basic procedure.** Upon receipt of a proper request, as indicated above, the Department of Probation shall cause three copies of the pre-sentence investigation report to be forwarded to the appropriate appellate court. Said records may then be obtained from the Office of the Clerk of that court. **Under no circumstances will the Department of Probation release pre-sentence investigation reports directly to any defendant or attorney.** CPL 390.50 provides that probation records are confidential, and are available only for purposes of initial sentencing and upon appeal, and that in those instances "the court shall release" the records.

(b) **Time of requests for production.** Requests for probation records should be made as far in advance of the date for perfection of the appeal as is possible. Cases which are two or more years old are archived and take a minimum of three to four weeks to locate and forward to the appellate court. Some take longer.

(c) **Failure to produce records.** It is the responsibility of the requesting party to ascertain whether the probation records have reached the appellate court. No notice will be sent by the Department of Probation. However, if the appellate court indicates that the records have not been received in a reasonable time, further inquiries should be directed either in writing or by telephone to the New York City Department of Probation, Office of the General Counsel, (212) 374-3718, 115 Leonard Street, New York, N.Y. 10013.

HISTORICAL NOTE

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***** Current through December 2009 ****

42 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 42 Department of Probation

CHAPTER 2 ADJUDICATIONS

§2-01 Fitness and Discipline Adjudications of Department of Probation Em- ployees.

New York City Department of Probation adjudications regarding the fitness and discipline of agency employees will be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Commissioner of the Department of Probation.

HISTORICAL NOTE

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43 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-01 Scope.

(a) These Rules and Regulations shall govern the procedures by which records made available for public inspection pursuant to the Freedom of Information Law (Public Officers Law, Art. 6) may be obtained from a city agency.

(b) Agency personnel shall furnish to the public the information and records required to be made available by the Freedom of Information Law, as well as records otherwise available by law. Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

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CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-02 Designation of Records Access Officer.

The head or governing body of each agency shall be responsible for insuring compliance with these Rules and Regulations and shall designate one or more persons as records access officer or officers to coordinate the agency's response to public requests for inspection and copying of records. The designation shall include the name, specific job title, telephone number and business address of such access officer. The designation of a records access officer or officers shall not be construed to prohibit other agency officers and employees who have been authorized previously to make records or information available to the public from continuing to do so.

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CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-03 Responsibilities of Records Access Officer.

Each agency's records access officer shall have the following responsibilities:

(a) He shall maintain a reasonably detailed current subject matter list of all records in the possession of the agency, whether or not such records are available for inspection and copying pursuant to the Freedom of Information Law. The list shall be of sufficient detail to permit identification by the public of categories of records. The subject matter list shall be updated not less than twice per year and the date of the most recent revision of the list shall appear on its first page.

(b) He shall assist members of the public in identifying requested records.

(c) When requested records are located, he shall either make such records available for inspection or deny access to such records in whole or in part, with a written statement of the grounds for denial of access.

(d) Upon request for copies of records, he shall either arrange to make copies available on payment of or offer to pay the established fee or shall permit the requesting party to copy the records using photocopying equipment on agency premises.

(e) He shall, upon request, certify that a copy of a record is a true copy.

(f) Upon failure to locate records, he shall state in writing that the agency is not the custodian of such records or

that the records cannot be found after diligent search.

(g) He shall maintain the records required to be maintained by subdivisions (b) and (f) of §1-05 of these Rules and Regulations.

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CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-04 Hours and Location.

(a) Each agency shall designate a location or locations where records shall be available for public inspection and copying.

(b) Each agency shall accept requests for public access to records and shall produce records during the agency's regular business hours. If an agency does not have regular business hours, it shall establish a written procedure by which a member of the public may arrange an appointment to inspect and copy records. The procedure shall specify the name, job title, telephone number and business address of the person to be contacted for the purpose of making such appointments.

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CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-05 Procedure for Making Requests; Responses to Requests.

(a) Any request to inspect or copy records shall be made in writing and addressed to the records access officer of the appropriate agency. The request shall reasonably describe the record or records sought and shall, whenever possible, supply information regarding dates, file designations or other information which will enable the records access officer to identify the records sought.

(b) Upon receipt of a request, the records access officer shall forward the request to the division of the agency having custody of the records requested. The records access officer shall retain a file copy of each request received by him and shall maintain or cause to be maintained a record showing the date on which the request was received, the division to which it was forwarded and the date of forwarding.

(c) Within five business days of receipt of a request, the records access officer shall respond to the request:

(1) If the agency determines that the request should be granted, the records access officer shall so notify the requesting party in a writing which states the time and place at which the requested records may be inspected and the procedures and fees for copying of records.

(2) If the agency determines that the requested records are exempt from disclosure under the terms of the Freedom of Information Law and that the request should be denied, the records access officer shall so notify the requesting party in a writing which states the grounds for the denial.

(3) If a request does not adequately describe the records sought, the records access officer shall notify the requesting party in writing that his request has been denied, stating the reasons why the request does not meet the requirements of this section and extending to the requesting party an opportunity to confer with the records access officer in order to attempt to reformulate the request in a manner that will enable the agency to identify the records sought.

(4) If a requested record does not exist, has been destroyed or otherwise disposed of, or is in the possession, custody or control of another agency, the records access officer shall so notify the requesting party in writing. In the case of records which the records access officer believes to be in the possession, custody or control of another agency, he shall state in the writing the agency to which the request should be addressed.

(5) If the agency determines that a request should be granted in part and denied in part, the records access officer shall so notify the requesting party in a writing which sets forth the information required by subparagraphs (1), (2), (3) and (4) of this subdivision (c), as applicable.

(6) Each writing denying a request in whole or in part shall inform the requesting party of his right to appeal the determination of the agency within thirty days and shall state the name of the person or body designated in the agency to hear such appeals. Such person or body shall be identified by name, title, business address and telephone number.

(d) If, because of unusual circumstances, an agency is unable to determine within five business days whether to grant, deny or otherwise respond to a request for inspection and copying, the records access officer shall, within such five day period, acknowledge receipt of the request in writing to the requesting party, stating the approximate date, not to exceed ten business days from the date of the acknowledgement, by which a determination with respect to the request will be made. If the agency does not make a determination with respect to the request within ten business days from the date of such acknowledgement, the request may be deemed denied and an appeal may be taken to the person or body designated in the agency to hear appeals. As used in this subdivision (d), "unusual circumstances" means:

(1) The need to search for and collect the requested records from facilities or offices that are separate from the office processing the request; or

(2) The need to search for, collect, examine and evaluate a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or between two or more divisions or departments of an agency having a substantial subject matter interest therein; or

(4) Any other circumstances in which the agency is unable, by the exercise of due diligence, and acting in good faith, to comply with the time limits set forth in this sub- division.

(e) To prevent unwarranted invasions of personal privacy, an agency, in making records available for inspection and copying, may delete identifying details or may withhold records otherwise available, if deletion of identifying details is impracticable or will not, in fact, prevent an unwarranted invasion of the privacy of the person to whom the record refers.

An unwarranted invasion of privacy includes, but is not limited to:

(1) Disclosure of employment, medical or credit histories or personal references of applicants for employment; or

(2) Disclosure of items involving the medical or personal records of a client or patient in a medical facility; or

(3) Sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising

purposes; or

(4) Disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; or

(5) Disclosure of information of a personal nature reported in confidence to an agency requesting or maintaining it and which is not relevant to the ordinary work of such agency.

(f) The records access officer shall retain a file copy of each writing granting, denying or acknowledging a request pursuant to subdivision (d) of this section and shall promptly forward to the Law Department a copy of each denial.

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CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-06 Procedures for Appeals.

(a) The head or governing body of each agency shall hear appeals or shall designate a person or body to hear appeals (an "appeals officer") from denials of requests by a records access officer. No records access officer shall also serve as an appeals officer.

(b) When a request for inspection has been denied in writing in whole, or in part by a records access officer, the requesting party shall have thirty days after receipt of the denial within which to appeal. An appeal shall be in writing, addressed to the denying agency's appeals officer, and shall include the name of the records access officer who denied the request, the date of the request, the date of the denial, the records which were the subject of the request and the name and address of the appellant.

(c) Each appeals officer shall transmit to the Law Department and the Committee on Open Government, Department of State, 162 Washington Avenue, Albany, N.Y. 12231, copies of all appeals upon their receipt.

(d) Within ten business days from the date of actual receipt of an appeal, the appeals officer shall make a written determination either affirming or reversing the denial and shall transmit copies of his or its determination to the appellant, the Law Department and the Committee on Open Government. Determinations affirming denials shall state the grounds for withholding of the requested records and that judicial review of the denial may be obtained in a proceeding under Article 78 of the Civil Practice Law and Rules commenced within four months after determination of the appeal.

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§1-07 Fees.

Except when a different fee is otherwise prescribed by law:

(a) Each agency shall charge a fee for copying of records equal to the actual reproduction cost, which is the average unit cost for copying of records, excluding fixed costs of the agency, such as operators' salaries; provided that, in no case shall the fee charged for copying exceed 25 cents per page for photocopies not exceeding 9 by 14 inches in size.

(b) No fee shall be charged for the search for records, the inspection of records or for any certification made pursuant to these Rules and Regulations.

(c) If an agency does not have operational photocopying equipment, the agency may either arrange for the production of photocopies outside the agency or prepare a transcript of requested records upon request. A transcript prepared by the agency may be either typed or handwritten and the persons requesting the records may be charged for the clerical time involved in making the transcript. Photocopies obtained by agencies which do not have operational photocopying equipment shall be charged to the requesting party at the same rate as that paid by the agency to the person or firm which made the photocopies.

(d) Payment for copying shall be made by check or money order payable to the City of New York and shall be made upon delivery of the copies to the person requesting them. Where the anticipated fee chargeable under this section exceeds $25, an advance deposit of 25 percent of the anticipated fee or $25, whichever is greater, may be required.

Where a requesting party has previously failed to pay a fee under this section, payment of any past-due fees and an advance deposit of the full amount of the anticipated fee may be required.

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§1-08 Public Notice; Promulgation of Rules and Regulations by City Agencies.

(a) Each agency shall publicize by posting in a conspicuous location:

(1) the location or locations where records shall be made available for inspection and copying;

(2) the hours during which records may be inspected and copied or the procedures for requesting an appointment to inspect and copy;

(3) the procedures for requesting and inspecting records and the procedures and fees for copying;

(4) the name, title, business address and telephone number of the designated records access officer or officers; and

(5) the procedures for appeals and the name, title and business address of the agency's appeals officer.

(b) Each agency shall forthwith submit for publication in the City Record notice of the hours when records are available for inspection and copying, the location or locations where records may be inspected and copied, the fees for copying, and the name, title, business address and telephone number of the person(s) designated to serve as records access officer(s) and of the person or body designated to serve as appeals officer. Notice of any change in the above information shall be published as soon as practicable in the City Record.

(c) In addition to the matters required to be published pursuant to subdivision (b) of this section, each agency may, after consultation with the Law Department, promulgate such additional rules and regulations as may be necessary to

effectuate the purpose of these Rules and Regulations; provided that any such agency rules and regulations must be consistent with the Freedom of Information Law, the applicable Rules and Regulations of the Committee on Open Government and the Rules and Regulations set forth herein. Such additional rules and regulations may provide where appropriate for the safeguarding of records during inspection and copying.

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§1-09 Removal of Records.

In no case shall an agency permit removal of agency records from agency premises by a requesting party.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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CHAPTER 1 UNIFORM RULES AND REGULATIONS FOR ALL CITY AGENCIES PERTAINING TO THE ADMINISTRATION OF THE FREEDOM OF INFORMATION LAW

§1-10 Severability.

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of these Rules and Regulations or the application thereof to other persons and circumstances.

HISTORICAL NOTE

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43 RCNY 2-01

RULES OF THE CITY OF NEW YORK

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CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-01 Definitions.

Agency. "Agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

Architect. "Architect" means the professional, whether a city employee, or a consultant, responsible for the design of an eligible project.

Art allocation. "Art allocation" means the dollar amount of the budget of an eligible project available for expenditure for works of art, calculated as follows:

(a) Not less than 1 percent of the first twenty million dollars ($20,000,000) of capital funds appropriated in the city capital budget for an eligible project, not including funds appropriated for the acquisition of real property; plus,

(b) Not less than 1/2 of 1 percent of the capital funds in excess of the first twenty million dollars ($20,000,000) appropriated in the city capital budget for such eligible project, not including funds appropriated for the acquisition of real property; provided, however, that such allocation will be recalculated if changes in the project scope prior to the selection of works of art result in a change of 15 percent or more of the capital funds originally appropriated in the city capital budget for such eligible project; and provided further, however, that in no case shall §224 of the Charter require the expenditure of more than four hundred thousand dollars ($400,000) for works of art for any one eligible project, not more than one and one-half million dollars ($1,500,000) for works of art in any one fiscal year. This allocation may be used for, but is not limited to, the acquisition of existing works of art, the commissioning and acquisition of new works

of art, the restoring or refurbishing of existing works of art, the removal of works of art to an eligible project from another site, and/or the installation of works of art at the site of an eligible project.

Art Commission. "Art Commission" means the body created pursuant to Chapter 37 of the Charter.

Commissioner. "Commissioner" means the Commissioner of the Department of Cultural Affairs.

Design agency. "Design agency" means the city agency responsible for the preparation of the design of a project.

Director. "Director" means the director of the Mayor's Office of Construction or its successor.

Eligible project. "Eligible project" means a capital project for which capital funds are appropriated by the city, and which involves the construction or substantial reconstruction of a city-owned building or structure, the intended use of which requires that it be accessible to the public generally or to members of the public participating in, requiring or receiving programs, services or benefits provided thereat. Buildings or structures within this category include, but shall not be limited to, office buildings, buildings designed for recreational purposes, police precinct houses, fire houses, schools, prisons and detention centers, hospitals and clinics, passenger terminals, shelters, libraries, community centers and court buildings.

Panel. "Panel" means an advisory panel as provided in §2-03 hereof.

Substantial reconstruction. "Substantial reconstruction" means a capital project in which at least two of the major systems [electrical, HVAC (heating, ventilating and air conditioning), or plumbing] of a building are replaced and general construction work, including but not limited to new flooring, ceilings, partitions, windows, affects at least 80 percent of the building's floor area.

Work(s) of art. "Work(s) of art" means all forms of visual arts conceived in any medium, material or combination thereof.

HISTORICAL NOTE

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43 RCNY 2-02

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CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-02 Applicability.

These Regulations apply to projects listed in the city's capital budget and include each line project and each project of a multi-project effort generally described in a lump sum budget line. Individual projects including multi-year projects, which are part of a major improvement program or betterment at a specific site may be subject to these Rules as set forth below.

HISTORICAL NOTE

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43 RCNY 2-03

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CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-03 Panel.

(a) **Membership and organization.** (1) For each eligible project, the Commissioner will convene a panel consisting of:

(i) the Commissioner or his/her designee;

(ii) one representative of the city agency having jurisdiction over the eligible project upon its completion, if other than the Department of Cultural Affairs (such representative shall not be the Architect);

(iii) one representative of the Design agency, if other than (ii) above (such representative shall not be the Architect); and,

(iv) three representatives of the public generally recognized as knowledgeable in the field of public art, and selected by the Commissioner, at least one of whom shall reside in or maintain a place of business in the borough in which the project is located. If the Department of Cultural Affairs is the agency referred to in both (ii) and (iii) above, then four such representatives of the public, selected by the Commissioner.

(2) Each member shall have one vote; except, in the event of a tie vote by the members, the Chairperson shall have two votes.

(3) A majority of the votes eligible to be cast shall constitute a quorum to do business. Any action taken by the Panel shall require the assent of a majority of the votes present.

(4) One representative of the Art Commission and one representative or the Director will be non-voting ex officio members of each panel and will not be counted as part of the quorum.

(5) The Commissioner or his/her designee shall serve as Chairperson of the Panel.

(6) The Chairperson may invite other knowledgeable persons to address the Panel but they shall not have a vote.

(b) **Duties.** Upon reviewing the scope of each eligible project and any reports, comments or recommendations of the Architect and the agencies involved in its construction, after due deliberation, and following full consultation with the Architect, the Panel shall inform the Design Agency in writing of its recommendations as follows:

(1) the nature of work(s) of art to be considered for the eligible project;

(2) if new work(s) of art are to be commissioned, then the names of artists to be considered to create the work(s) of art or the manner to be used to select an artist, as through a competition, for example;

(3) if work(s) of art already in existence are to be used, then specific art works or works of suggested artists shall be recommended;

(4) other suggestions for the use of the art allocation, such as refurbishing or restoring existing work(s) of art located at the site or to be relocated to the site.

HISTORICAL NOTE

Section in original publication July 1, 1991.

43 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-04 Procedures.

(a) Upon the initiation of design of an eligible project in accordance with §219(b) of the Charter, the Design Agency shall notify the Commissioner in writing of the following:

(1) scope of the project;

(2) budget for the project;

(3) time schedule for the project; and

(4) the Architect's name and address.

(b) The duties of the panel shall be performed as part of the eligible project's design phase but, in no event shall they interfere with the project's schedule.

(c) Panels shall be convened by the Commissioner in consultation with the Design Agency, so as to expeditiously process eligible projects.

(d) The Commissioner will keep a list of the eligible projects submitted, will establish a schedule for their consideration by a panel, will appoint the three (or four, if required hereby) panel members to each panel representing the public, will notify all members of the time and place of each panel meeting, and prior to each such meeting will distribute materials for consideration. If necessary, a panel may be scheduled to convene more than once during its review of an eligible project, as for example, to visit the site of the eligible project, or to have additional opportunities to

confer with the Architect and/or Design Agency.

(e) The Commissioner will give reasonable advance notification of the intention to include works of art in an eligible project to the appropriate district council members, borough president and chairperson of the community board of the district in which the project is located, in writing, at the time the panel to consider such project is appointed. The notification shall include the time and place of such panel meeting(s).

(f) Submissions to a panel shall be made through the Commissioner by the Design Agency. The contract or agreement with the Architect (if the Architect is a consultant to the Design Agency) will provide that the Architect will consult with, and cooperate with, the panel, in carrying out the requirements of §224 of the charter, and will prepare all other necessary data, drawings and plans to be presented to and considered by the panel.

(g) Not later than ten (10) business days prior to the first date a panel is scheduled to convene to consider an eligible project, the Design Agency, in consultation with the Architect, shall submit a statement, in writing, to the Commissioner, which shall include:

(1) description and scope of the eligible project;

(2) the amount of the art allocation;

(3) suggestions as to the nature and types of works of art to be included in the eligible project and to be paid out of the art allocation; and

(4) suggested works of art already existing to be acquired and/or suggested artists to execute the works of art.

(h) The Commissioner shall distribute the statement to the members of the panel prior to the meeting.

(i) At the panel meeting(s), the Architect will be present to discuss the eligible project with the panel members and respond to questions and comments. Following full discussion and upon a majority vote, the panel will render its recommendations, including specific recommendations regarding work(s) of art and artists. For any eligible project the Architect may request and the panel may recommend that the art allocation be spent on restoring or refurbishing existing work(s) of art for the site; or the removal of works of art to the eligible project from another site; or any other alternative recommendations for the use of the art allocation.

(j) Within two weeks after the panel's final meeting, the Commissioner will forward the panel's written recommendations, in accordance with §203(b) above, to the Design Agency to be used in the Architect's preparation of initial designs for the eligible project, with copies to the members of the panel and to those persons referred to in §2-04(e) above.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-05 Eligibility and Exemptions.

(a) In the scope of each capital project, the Design Agency shall specifically state, either, that:

(1) the project is an eligible project as defined in §224 of the Charter; or

(2) the project is not an eligible project.

(b) The Mayor may exempt capital projects from the provisions of §224 of the Charter if in his sole judgement the inclusion of works of art as provided thereby would be inappropriate.

(c) If any city agency takes issue with the finding that a project is or is not an eligible project, the matter shall be referred to the Director, whose decision will be final.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 2-06

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-06 Project Eligibility Monitoring.

(a) Each capital budget request form ("CB Form III") submitted to the Office of Management and Budget ("OMB") shall have indicated thereon that such project either is or is not an eligible project, or that at such stage of planning, eligibility cannot yet be determined.

(b) OMB shall submit a set of all CB Form III's received by it to the Commissioner for the purpose of monitoring and determining capital projects that come within §224 of the Charter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 2-07

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-07 Art Commission; Removal or Alteration of Works of Art.

(a) The procedures set forth herein are in addition to and not in lieu of the procedures of the Art Commission pursuant to §854 of the Charter.

(b) Works of art acquired pursuant to §224 of the Charter shall not be, without the prior written approval of the Art Commission,

(1) sold or otherwise alienated or disposed of; or

(2) altered, modified in any way or relocated.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 2-08

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 2 PERCENT FOR ART LAW PROCEDURES

§2-08 Implementation.

(a) Following receipt of the panel's recommendations, the Design Agency shall make its final decision concerning the work(s) of art to be included in the eligible project. If the Design Agency's decision differs from the panel's recommendations, the Design Agency shall promptly, and within the design phase, provide a written explanation for its decision to the Commissioner, who shall forward copies of such explanation to members of the panel and to the persons referred to in §2-03(e) above.

(b) It is the intent of §224 of the Charter that the works of art be an integral part of and compatible with the project being constructed. Hence, the procedures called for in these Regulations are meant to commence at the earliest stages of project design to assure that the project construction schedule has incorporated into it the schedule to be followed for the creation, acquisition or restoration of the works of art to be included therein.

(c) The Commissioner shall administer the implementation of §224 of the Charter and shall offer guidance, assistance and advice, throughout the pre- and post-panel process, to the agencies involved with eligible projects, the Architect, the artist(s) or the community.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 3 CITY POLICY CONCERNING ALIENS

§3-01 Definitions.

Alien. "Alien" means any person who is not a citizen or national of the United States.

Line worker. "Line worker" means a person employed by any City agency whose duties involve contact with the public.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 3 CITY POLICY CONCERNING ALIENS

§3-02 Confidentiality of Information Respecting Aliens.

(a) No City officer or employee shall transmit information respecting any alien to federal immigration authorities unless

(1) such officer's or employee's agency is required by law to disclose information respecting such alien, or

(2) such agency has been authorized, in writing signed by such alien, to verify such alien's immigration status, or

(3) such alien is suspected by such agency of engaging in criminal activity, including an attempt to obtain public assistance benefits through the use of fraudulent documents.

(b) Each agency shall designate one or more officers or employees who shall be responsible for receiving reports from such agency's line workers on aliens suspected of criminal activity and for determining, on a case by case basis, what action, if any, to take on such reports. No such determination shall be made by any line worker, nor shall any line worker transmit information respecting any alien directly to federal immigration authorities.

(c) Enforcement agencies, including the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity. However, such agencies shall not transmit to federal authorities information respecting any alien who is the victim of a crime.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 3 CITY POLICY CONCERNING ALIENS

§3-03 Availability of City Services to Aliens.

Any service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service unless such agency is required by law to deny eligibility for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligibility by law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 4 CHARGE FOR BAD CHECKS [EXECUTIVE ORDER NO. 125]

§4-01 Charge of Payment on Account of Insufficient Funds.

Pursuant to §85 of the General Municipal Law, a charge of fifteen dollars per check may be added to any account owing to the City of New York or any of its agencies where a tendered payment of such account was by a check or other written order that was returned for insufficient funds.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 5 PETITIONS FOR RULEMAKING

§5-01 Short Title.

These Rules and Regulations shall be known and may be cited as "Rules for Pe- titioning."

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 5 PETITIONS FOR RULEMAKING

§5-02 Definitions.

Agency. "Agency" shall mean an agency the head of which holds office upon the appointment of the Mayor.

Person. "Person" shall mean an individual, partnership, corporation or other legal entity, and any individual or entity acting in a fiduciary or representative capacity.

Petition. "Petition" shall mean a request or application for any agency to adopt a rule.

Petitioner. "Petitioner" shall mean the person who files a petition.

Rule. "Rule" shall have the meaning set forth in §1041(5) of the New York City Charter (City Administrative Procedure Act) and shall mean generally any statement or communication of general applicability that

(1) implements or applies law or policy or

(2) prescribes the procedural requirements of an agency, including an amendment, suspension, or repeal of any such statement or communication.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 5 PETITIONS FOR RULEMAKING

§5-03 Scope.

These Rules and Regulations shall govern the procedures by which the public may submit petitions for rulemaking pursuant to §1043(f) of the New York City Charter (City Administrative Procedures Act).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 5-04

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 5 PETITIONS FOR RULEMAKING

§5-04 Procedures for Submitting Petitions and Responses to Petitions.

(a) Any person may petition an agency to consider the adoption of a rule. The petition must contain the following information:

(1) The rule to be considered, with proposed language for adoption;

(2) A statement of the agency's authority to promulgate the rule and its purpose;

(3) Petitioner's argument(s) in support of adoption of the rule;

(4) The period of time the rule should be in effect;

(5) Responses to any questions posed on a form provided by an agency for such petitions, pursuant to subdivision (d) of this section;

(6) The name, address and telephone number of the petitioner or his or her authorized representative;

(7) The signature of petitioner or his or her representative.

(b) Any change in the information provided pursuant to §5-04(a)(6) must be communicated promptly in writing to the office of which the petition was submitted.

(c) All petitions should be typewritten, if possible, but handwritten petitions will be accepted, provided they are

legible.

(d) Each agency is authorized to adopt a form petition. Every petition for rulemaking shall be submitted on such form, unless such a form is not available from the agency, in which case the petition shall be filed in duplicate on plain white paper.

(e) Each agency may designate an officer or location to which a petition must be addressed or delivered. If no officer or location is designated, petitions shall be mailed or delivered to the agency's General Counsel.

(f) Upon receipt of a petition submitted in the proper form, the designated officer for each agency will stamp the petition with the date it was received and will assign the petition number. If that officer is not the person who will ultimately accept or deny the petition for adoption of a rule, the officer will forward the petition to the agency's Commissioner, or the officer or employee of the agency authorized to accept or deny such petitions for the agency.

(g) Within sixty days from the date the petition was received by the agency, the agency shall either deny such petition in a written statement containing the reasons for denial, or shall state in writing the agency's intention to grant the petition and to initiate rulemaking by a specified date. In proceeding with such rulemaking, an agency shall not be bound by the language proposed by petitioner, but may amend or modify such proposed language at the agency's discretion. The agency's decision to grant or deny a petition is final.

(h) The agency's decision to grant or deny an appeal is final.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 5-05

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 5 PETITIONS FOR RULEMAKING

§5-05 Public Notice and Promulgation of Rules and Regulations by City Agencies.

(a) Each agency shall publicize by posting in a conspicuous location,

(1) the procedures for submitting petitions for rulemaking including the location at which any necessary forms may be obtained, and

(2) the name, title, business address and telephone number of the officer designated to receive petitions.

(b) Each agency shall forthwith submit for publication in The City Record notice of the name, title, business address and telephone number of the officer designated to receive petitions, and the location at which any necessary forms may be obtained. Notice of any change in the above information shall be published as soon as practicable in The City Record. Such notice shall not constitute a rule as defined in the City Charter, §1041, subd. 5.

(c) In addition to the matters required to be published pursuant to subdivision (b) of this section, each agency may, after consultation with the Law Department, promulgate such additional rules as may be necessary to effectuate the purpose of these Rules and Regulations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 5-06

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 5 PETITIONS FOR RULEMAKING

§5-06 Severability.

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of these Rules and Regulations or the application thereof to other persons and circumstances.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 6-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-01 Applicability.

[Except as modified by City Planning Rules, §5-02(a) and (d).] No final decision to carry out or approve any action which may have a significant effect on the environment shall be made by any agency until there has been full compliance with the provisions of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. Promulgation of protocols regarding removal of lead paint from City owned bridge was subject to requirements of City environmental quality review regulations. Thus, the court granted injunctive relief requiring the City to comply with the required environmental procedures before the work could be undertaken. The court noted that the work constituted more than routine maintenance (which is not subject to environmental review) because of the environmental hazards posed by lead. Note that where petitioner seeks to nullify a regulation, have heavy burden to show that reg. is unreasonable and unsupported by evidence. Here, petitioner failed to meet that burden. Williamsburgh Around the Bridge Block Association v. Guiliani, 223 A.D.2d 64, 644 N.Y.S.2d 252 (App.Div. 1st Dept. 1996).

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 6-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-02 Definitions.

[Additional definitions, City Planning Rules §5-02(c).] As used herein, the following terms shall have the indicated meanings unless noted otherwise:

Action. **[Modified by City Planning Rules §5-02(c)(2).]** "Action" means any activity of an agency, other than an exempt action enumerated in §6-04 of this chapter, including but not limited to the following:

(1) non-ministerial decisions on physical activities such as construction or other activities which change the use or appearance of any natural resource or structure;

(2) non-ministerial decisions on funding activities such as the proposing, approval or disapproval of contracts, grants, subsidies, loans, tax abatements or exemptions or other forms of direct or indirect financial assistance, other than expense budget funding activities;

(3) planning activities such as site selection for other activities and the proposing, approval or disapproval of master or long range plans, zoning or other land use maps, ordinances or regulations, development plans or other plans designed to provide a program for future activities;

(4) policy making activities such as the making, modification or establishment of rules, regulations, procedures, policies and guidelines;

(5) non-ministerial decisions on licensing activities, such as the proposing, approval or disapproval of a lease, permit, license, certificate or other entitlement for use or permission to act.

Agency. **[Inapplicable. See City Planning Rules §5-02(a), §5-02(c)(i).]**"Agency" means any agency, administration, department, board, commission, council, governing body or any other governmental entity of the City of New York, unless otherwise specifically referred to as a state or federal agency.

Applicant. "Applicant" means any person required to file an application pursuant to this chapter.

Conditional negative declaration. "Conditional negative declaration" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action and accepted by the applicant in writing, which announces that the lead agencies have determined that the action will not have a significant effect on the environment if the action is modified in accordance with conditions or alternatives designed to avoid adverse environmental impacts.

DEC. "DEC" means the New York State Department of Environmental Conservation.

Environment. "Environment" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution or growth, and existing community or neighborhood character.

Environmental analysis. "Environmental analysis" means the lead agencies' evaluation of the short and long term, primary and secondary environmental effects of an action, with particular attention to the same areas of environmental impacts as would be contained in an EIS. It is the means by which the lead agencies determine whether an action under consideration may or will not have a significant effect on the environment.

Environmental assessment form. **[Retitled Environmental Assessment Statement; see City Planning Rules §5-04(c)(3).]** "Environmental assessment form" means a written form completed by the lead agencies, designed to assist their evaluation of actions to determine whether an action under consideration may or will not have a significant effect on the environment.

Environmental impact statement (EIS). "Environmental impact statement (EIS)" means any written document prepared in accordance with §§6-08, 6-10, 6-12 and 6-13 of this chapter. An EIS may either be in a draft or a final form.

Environmental report. "Environmental report" means a report to be submitted to the lead agencies by a non-agency applicant when the lead agencies prepares or cause to be prepared a draft EIS for an action involving such an applicant. An environmental report shall contain an analysis of the environmental factors specified in §6-10 of this chapter as they relate to the applicant's proposed action and such other information as may be necessary for compliance with this chapter, including the preparation of an EIS.

Lead agencies. **[Inapplicable, City Planning Rules §5-02(a). Superseded by City Planning Rules §5-02(b)(1) and §5-02(c)(3)(vi); also see City Planning Rules §5-03 for choice of lead agency.]**"Lead agencies" means the Department of Environmental Protection and the Department of City Planning of the City of New York, as designated by the Mayor pursuant to §617.4 of Part 617 of Volume 6 of the New York Code of Rules and Regulations, for the purpose of implementing the provisions of Article 8 of the Environmental Conservation Law (SEQRA) in the City of New York, by order dated December 23, 1976.

Ministerial action. "Ministerial action" means an action performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the action, although such law may require, in some degree, construction of its language or intent.

Negative declaration. "Negative declaration" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the

action will not have a significant effect on the environment.

Notice of determination. **[See also City Planning Rules §5-02(c)(3)(iii).]** "Notice of determination" means a written statement prepared by the lead agencies after conducting an environmental analysis of an action which announces that the lead agencies have determined that the action may have a significant effect on the environment, thus requiring the preparation of an EIS.

NYCRR. **[See also City Planning Rules §5-02(c)(3)(viii).]** "NYCRR" means the New York Code of Rules and Regulations.

Person. "Person" means an agency, individual, corporation, governmental entity, partnership, association, trustee or other legal entity.

Project data statement. **[Inapplicable, City Planning Rules §5-02(a). Superseded by Environmental Assessment Statement, see City Planning Rules §5-04(c)(3). See also City Planning Rules §5-05(b)(1) and §5-08(a).]**"Project date statement" means a written submission to the lead agencies by an applicant on a form prescribed by the lead agencies, which provides an identification of an information relating to the environmental impacts of a proposed action. The project data statement is designed to assist the lead agencies in their evaluation of an action to determine whether an action under consideration may or will not have significant effect on the environment.

SEQRA. "SEQRA" means the State Environmental Quality Review Act (Article 8 of the New York State Environmental Conservation Law).

Typically associated environmental effect."Typically associated environmental effect" means changes in one or more natural resources which usually occur because of impacts on other such resources as a result of natural interrelationships or cycles.

ULURP. "ULURP" means the Uniform Land Use Review Procedure (§197-c of Chapter 8 of the New York City Charter).

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 6-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-03 Actions Involving Federal or State Participation.

(a) **[See also City Planning Rules §5-04(e)]** If an action under consideration by an agency may involve a "major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969," then the following procedures shall apply:

(1) in the case of an action for which there has been duly prepared both a draft EIS and a final EIS, no agency shall have an obligation to prepare an EIS or to make findings pursuant to §6-12 of this chapter.

(2) in the case of an action for which there has been prepared a Negative Declaration or other written threshold determination that the action will not require a federal impact statement under the National Environmental Policy Act of 1969, the lead agencies shall determine whether or not the action may have a significant effect on the environment pursuant to this chapter, and the action shall be fully subject to the same.

(b) **[Inapplicable, City Planning Rules §5-02(a). Entire subdivision (b) superseded by City Planning Rules §5-03(j) and §5-04(d).]**If an action under consideration by any agency may involve any state action which may have a significant effect on the environment under SEQRA, pursuant to which a state agency is required to comply with the procedures specified in 6 NYCRR 617, then the determination as to whether the state agency or the lead agencies shall be responsible for the environmental review shall be made on the basis of the following criteria:

(1)the agency to first act on the proposed action;

(2)a determination of which agency has the greatest responsibility for supervising or approving the action as a whole;

(3)a determination of which agency has the more general governmental powers as compared to single or limited powers or purposes;

(4)a determination of which agency has the greatest capability for providing the most thorough environmental assessment of the action;

(5)a determination of whether the anticipated impacts of the action being considered are primarily of statewide, regional or local concern, e.g., if such impacts are primarily of local concern, the lead agencies shall conduct the environmental review. If this determination cannot be made within 30 days of the filing of an application, the Commissioner of DEC shall be requested, in writing, to make such determination.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 6-04

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-04 Exempt Actions.

[See also City Planning Rules §5-02(d).] The following actions shall not be subject to the provisions of this chapter:

(a) projects or activities classified as Type I pursuant to §6-15 of this chapter directly undertaken or funded by an agency prior to June 1, 1977 except that if such action is sought to be modified after June 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of [this chapter;

(1) such actions include, but are not limited to, those actions defined in §6-09. "Action" (1), (2), (3) and (4) of [this chapter;

(2) an action shall be deemed to be undertaken at the point that:

(i) the agency is irreversibly bound or committed to the ultimate completion of a specifically designed activity or project; or

(ii) in the case of construction activities, a contract for substantial construction has been entered into or if a continuous program of on-site construction or modification has been engaged in; or

(iii) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan

or other form of financial assistance; or

(iv) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.

(b) projects or activities classified as Type I pursuant to §6-15 of this chapter approved by an agency prior to September l, 1977 except that if such action is sought to be modified after September 1, 1977, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in §6-02, "Action" (2) and (5) of this chapter;

(2) an action shall be deemed to be approved at the point that:

(i) the agency gives final approval for the issuance to an applicant of a discretionary contract, grant, subsidy, loan or other form of financial assistance; or

(ii) the agency gives final approval for the issuance to an applicant of a discretionary lease, permit, license, certificate or other entitlement for use or permission to act; or

(iii) in the case of an action involving federal or state participation, a draft EIS has been prepared pursuant to the National Environmental Policy Act of 1969 or SEQRA, respectively.

(c) projects or activities not otherwise classified as Type I pursuant to §6-15 of this chapter directly undertaken, funded or approved by an agency prior to November 1, 1978 except that if such action is sought to be modified after November 1, 1978, which modification may have a significant adverse effect on the environment, then such modification shall be an action fully subject to the requirements of this chapter;

(1) such actions include, but are not limited to, those actions defined in §6-02 "Action" of this chapter;

(2) an action shall be deemed to be undertaken as provided in paragraphs (a)(2) and (b)(2) of this section, as applicable.

(d) enforcement or criminal proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;

(e) **[See City Planning Rules §5-02(d).]** ministerial actions, which shall appear on a list compiled, certified and made available for public inspection by the lead agencies, except as provided in §6-15(a), Type I, of this chapter, relating to critical areas and historic resources;

(f) maintenance or repair involving no substantial changes in existing structures or facilities;

(g) actions subject to the provisions requiring a certificate of environmental compatibility and public need in Article 7 and 8 of the Public Service Law;

(h) actions which are immediately necessary on a limited emergency basis for the protection or preservation of life, health, property or natural resources; and

(i) actions of the Legislature of the State of New York or of any court.

HISTORICAL NOTE

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FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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43 RCNY 6-05

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-05 Determination of Significant Effect-Applications.

(a) **[Inapplicable, City Planning Rules §5-02(a). Superseded by City Planning Rules §5-05(a). See also City Planning Rules §5-02(b)(2) and §5-02(d).]**Each agency shall ascertain whether an application need be filed pursuant to this section, employing lists of actions, classified as either exempt, Type I or Type II pursuant to §§6-04 and 6-15 of this chapter, respectively, which lists shall be certified by the lead agencies.

(b) **[Introductory paragraph inapplicable, City Planning Rules §5-02(a). Paragraph (b) superseded by City Planning Rules §5-08.]** The applicant initiating the proposed action, other than an exempt or Type II action pursuant to §6-04 of this chapter, shall file an application with the lead agencies, which application shall include a Project Data Statement and such other documents and additional information as the lead agencies may require to conduct an environmental analysis to determine whether the action may or will not have a significant effect on the environment. Where possible existing City applications shall be modified to incorporate this procedure and a one-stop review process developed;

(1) within 20 calendar days of receipt of a determination pursuant to §6-03(b) of this chapter, if applicable, the lead agencies shall notify the applicant, in writing, whether the application is complete or whether additional information is required;

(2) **[Determination pursuant to §5-03(b) deemed to refer to lead agency selection pursuant to City Planning Rules §5-03. See City Planning Rules §5-02(b)(3).]** when all required information has been received, the lead agencies shall notify the applicant, in writing, that the application is complete.

(c) Each application shall include an identification of those agencies, including federal or state agencies, which to the best knowledge of the applicant, have jurisdiction by law over the action or any portion thereof.

(d) Where appropriate, the application documents may include a concise statement or reasons why, in the judgment of the applicant, the proposed action is one which will not require the preparation of an EIS pursuant to this chapter.

(e) Initiating applicants shall consider the environmental impacts of proposed actions and alternatives at the earliest possible point in their planning processes, and shall develop wherever possible, measures to mitigate or avoid adverse environmental impacts. A statement discussing such considerations, alternatives and mitigating measures shall be included in the application documents.

(f) Nothing in this section shall be deemed to prohibit an applicant from submitting a preliminary application in the early stages of a project or activity for review and comment by the lead agencies.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

43 RCNY 6-06

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-06 Determination of Significant Effect-Criteria.

(a) An action may have a significant effect on the environment if it can reasonably be expected to lead to one of the following consequences:

(1) a substantial adverse change to ambient air or water quality or noise levels or in solid waste production, drainage, erosion or flooding;

(2) the removal or destruction of large quantities of vegetation or fauna, the substantial interference with the movement of any resident or migratory fish or wildlife species, impacts on critical habitat areas, or the substantial affecting of a rare or endangered species of animal or plant or the habitat of such a species;

(3) the encouraging or attracting of a large number of people to a place or places for more than a few days relative to the number of people who would come to such a place absent the action;

(4) the creation of a material conflict with a community's existing plans or goals as officially approved or adopted;

(5) the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources (including the demolition or alteration of a structure which is eligible for inclusion in an official inventory of such resources), or of existing community or neighborhood character;

(6) a major change in the use of either the quantity or type of energy;

(7) the creation of a hazard to human health or safety;

(8) a substantial change in the use or intensity of use of land or other natural resources or in their capacity to support existing uses, except where such a change has been included, referred to, or implicit in a broad "programmatic" EIS prepared pursuant to §6-13 of this chapter;

(9) the creation of a material demand for other actions which would result in one of the above consequences;

(10) changes in two or more elements of the environment, no one of which is substantial, but taken together result in a material change to the environment.

(b) **[Reference to §6-15 Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other contemporaneous or subsequent actions which are included in any long-range comprehensive integrated plan of which the action under consideration is a part, which are likely to be undertaken as a result thereof, or which are dependent thereon. The significance of a likely consequence (i.e., where it is material, substantial, large, important, etc.) should be assessed in connection with its setting, its probability of occurring, its duration, its irreversibility, its controllability, its geographic scope and its magnitude (i.e., degree of change or its absolute size). Section 6-15 of this chapter refers to lists of actions which are likely to have a significant effect on the environment and contains lists of actions found not to have a significant effect on the environment.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-07 Determination of Significant Effect-Notification.

(a) **[Error. Reference to §6-05(a) should be to §6-05(b).]** The lead agencies shall determine within 15 calendar days following notification of completion of the application pursuant to §6-05(a) of this chapter whether the proposed action may have a significant effect on the environment;

(1) **[Reference to §6-15(b) Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** In making their determination, the lead agencies shall employ the Environmental Assessment Form, apply the criteria contained in §6-06 and consider the lists of actions contained in §6-15 of this chapter;

(2) The lead agencies may consult with, and shall receive the cooperation of any other agency before making their determination pursuant to this subdivision (a).

(b) The lead agencies shall provide written notification to the applicant immediately upon determination of whether the action may or will not have a significant effect on the environment. Such determination shall be in one of the following forms:

(1) **Negative Declaration. [Reference to §6-15, Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See Rules §5-02(b)(2).]** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§6-04 and 6-15 of this chapter, respectively, and that the action will not have a significant effect on the environment, they shall issue a Negative Declaration which shall contain the following information:

(i) an action identifying number;

(ii) a brief description of the action;

(iii) the proposed location of the action;

(iv) a statement that the lead agencies have determined that the action will not have a significant effect on the environment;

(v) a statement setting forth the reasons supporting the lead agencies' determination.

(2) **Conditional Negative Declaration. [Reference to §6-15, Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§6-04 and 6-15 of this chapter, respectively, and that the action will not have a significant effect on the environment if the applicant modifies its proposed action in accordance with conditions or alternatives designed to avoid adverse environmental impacts, they shall issue a Conditional Negative Declaration impacts, they shall issue a Conditional Negative Declaration which shall contain the following information (in addition to the information required for a Negative Declaration pursuant to paragraph (1) of this subdivision):

(i) a list of conditions, modifications or alternatives to the proposed action which supports the determination;

(ii) the signature of the applicant or its authorized representative, accepting the conditions, modifications or alternatives to the proposed action;

(iii) a statement that if such conditions, modifications or alternatives are not fully incorporated into the proposed action, such Conditional Negative Declaration shall become null and void. In such event, a Notice of Determination shall be immediately issued pursuant to paragraph (3) of this subdivision.

(3) **Notice of Determination. [Reference to §6-15 Type II list, deemed to be State Type II list of 6 NYCRR Part 617.13. See City Planning Rules §5-02(b)(2).]** If the lead agencies determine that the proposed action is not an exempt action or a Type II action pursuant to §§6-04 and 6-15 of this chapter, respectively, and that the action may have a significant effect on the environment, they shall issue a Notice of Determination which shall contain the following information:

(i) an action description number;

(ii) a brief description of the action;

(iii) the proposed location of the action;

(iv) a brief description of the possible significant effects on the environment of the action;

(v) a request that the applicant prepare or cause to be prepared, at its option, a draft EIS in accordance with §§6-08 and 6-12 of this chapter.

(c) **[See additional circulation provisions, City Planning Rules §5-06(b) and §5-06(c). City Clerk function transferred to Office of Environ. Coord., City Planning Rules §5-02(b)(4).]** The lead agencies shall make available for public inspection the Negative Declaration, Conditional Negative Declaration or the Notice of Determination, as the case may be, and circulate copies of the same to the applicant, the Regional Director of the DEC, the Commissioner of DEC, the appropriate Community Planning Board(s), the City Clerk, and all other agencies, including federal and state agencies, which may be involved in the proposed action.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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43 RCNY 6-08

RULES OF THE CITY OF NEW YORK

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-08 Draft Environmental Impact Statements-Responsibility for Preparation.

(a) **Non-agency applicants.** (1) **[Rules add formal scoping, City Planning Rules §5-07. Interested and involved agencies assist with DEIS on request. See City Planning Rules §5-05(b)(2).]** After receipt of a Notice of Determination pursuant to §6-07(c)(3) of this chapter, a non-agency applicant shall notify the lead agencies in writing as to whether it will exercise its option to prepare or cause to be prepared a draft EIS, and as to whom it has designated to prepare the draft EIS, provided that no person so designated shall have an investment or employment interest in the ultimate realization of the proposed action;

(2) **[See also City Planning Rules §5-05(b)(3) for requirements of lead consultation on mitigations.]** The lead agencies may prepare or cause to be prepared a draft EIS for an action involving a non-agency applicant. In such event, the applicant shall provide, upon request, an environmental report to assist the lead agencies in preparing or causing to be prepared the draft EIS and such other information as may be necessary. All agencies shall fully cooperate with the lead agencies in all matters relating to the preparation of the draft EIS.

(3) If the non-agency applicant does not exercise its option to prepare or cause to be prepared a draft EIS, and the lead agencies do not prepare or cause to be prepared such draft EIS, then the proposed action and review thereof shall terminate.

(b) **Agency applicants.** (1) When an action which may have a significant effect on the environment is initiated by an agency, the initiating agency shall be directly responsible for the preparation of a draft EIS. However, preparation of the draft EIS may be coordinated through the lead agencies.

(2) **[See City Planning Rules §5-05(b)(3)for requirements of lead consultation on mitigations.]** All agencies, whether or not they may be involved in the proposed action, shall fully cooperate with the lead agencies and the applicant agency in all matters relating to the coordination of the preparation of the draft EIS.

(c) Notwithstanding the provisions contained in subdivisions (a) and (b) of this section, when a draft EIS is prepared, the lead agencies shall make their own independent judgment of the scope, contents and adequacy of such draft EIS.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-09 Environmental Impact Statements-Content.

(a) **[Lead to be guided by technical standards and methodologies developed by Office of Environ. Coord., City Planning Rules §5-04(c).]** Environmental impact statements should be clearly written in a brief and concise manner capable of being read and understood by the public. Within the framework presented in subdivision (d) of this section, such statements should deal only with the specific significant environmental impacts which can be reasonably anticipated. They should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.

(b) All draft and final EIS's shall be preceded by a cover sheet stating:

(1) whether it is a draft or a final;

(2) the name or other descriptive title of the action;

(3) the location of the action;

(4) the name and address of the lead agencies and the name and telephone number of a person at the lead agencies to be contacted for further information;

(5) identification of individuals or organizations which prepared any portion of the statement; and

(6) the date of its completion.

(c) If a draft or final EIS exceeds ten pages in length, it shall have a table of contents following the cover sheet.

(d) The body of all draft and final EIS's shall contain at least the following:

(1) a description of the proposed action and its environmental setting;

(2) a statement of the environmental impacts of the proposed action, including its short-term and long-term effects, and typically associated environmental effects;

(3) an identification of any adverse environmental effects which cannot be avoided if the proposed action is implemented;

(4) a discussion of the social and economic impacts of the proposed action;

(5) a discussion of alternatives to the proposed action and the comparable impacts and effects of such alternatives;

(6) an identification of any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(7) a description of mitigation measures proposed to minimize adverse environmental impacts;

(8) a description of any growth-inducing aspects of the proposed action, where applicable and significant;

(9) a discussion of the effects of the proposed action on the use and conservation of energy, where applicable and significant;

(10) a list of underlying studies, reports or other information obtained and considered in preparing the statement; and

(11) (for the final EIS only) copies or a summary of the substantive comments received in response to the draft EIS and the applicant's response to such comments.

(e) An EIS may incorporate by reference all or portions of other documents which contain information relevant to the statement. The referenced documents shall be made available to the public in the same places where copies of the statement are made available. When a statement uses incorporation by reference, the referenced document shall be briefly described and its date of preparation provided.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-10 Draft Environmental Impact Statements-Procedures.

(a) **Notice of Completion.** Upon the satisfactory completion of a draft EIS, the lead agencies shall immediately prepare, file and make available for public inspection a Notice of Completion as provided in paragraphs (1), (2) and (3) of this subdivision. Where a proposed action is simultaneously subject to the Uniform Land Use Review Procedure ("ULURP"), the City Planning Commission shall not certify an application pursuant to ULURP until a Notice of Completion has been filed as provided in paragraph (3) of this subdivision.

(1) **Contents of Notice of Completion.** All Notices of Completion shall contain the following:

(i) an action identifying number;

(ii) a brief description of the action;

(iii) the location of the action and its potential impacts and effects; and

(iv) a statement that comments on the draft EIS are requested and will be received and considered by the lead agencies at their offices. The Notice shall specify the public review and comment period on the draft EIS, which shall be for not less than 30 calendar days from the date of filing and circulation of the notice, or not less than 10 calendar days following the close of a public hearing on the draft EIS, whichever last occurs.

(2) **Circulating Notice of Completion.** All Notices of Completion shall be circulated to the following:

(i) all other agencies, including federal and state agencies, involved in the proposed action;

(ii) all persons who have requested it;

(iii) the editor of the State Bulletin;

(iv) the State clearinghouse;

(v) the appropriate regional clearinghouse designated under the Federal Office of Management and Budget Circular A-95.

(3) **Filing Notice of Completion.** All Notices of Completion shall be filed with and made available for public inspection by the following:

(i) the Commissioner of DEC;

(ii) the Regional Director of DEC;

(iii) the agency applicant, where applicable;

(iv) the appropriate Community Planning Board(s);

(v) the City Clerk;

(vi) the lead agencies.

(b) **Filing and availability of draft EIS. [City Clerk function transferred to OEC, City Planning Rules §5-02(b)(4).]** All draft EIS's shall be filed with and made available for public inspection by the same persons and agencies with whom Notices of Completion must be filed pursuant to paragraph (a)(3) of this section.

(c) **Public hearings on draft EIS.** (1) Upon completion of a draft EIS, the lead agencies shall conduct a public hearing on the draft EIS.

(2) The hearing shall commence no less than 15 calendar days or more than 60 calendar days after the filing of a draft EIS pursuant to subdivision (b) of this section, except where a different hearing date is required as appropriate under another law or regu- lation.

(3) Notice of the public hearing may be contained in the Notice of Completion or, if not so contained, shall be given in the same manner in which the Notice of Completion is circulated and filed pursuant to subdivision (a) of this section. In either case, the notice of hearing shall also be published at least 10 calendar days in advance of the public hearing in a newspaper of general circulation in the area of the potential impact and effect of the proposed action.

(4) Where a proposed action is simultaneously subject to ULURP, a public hearing conducted by the appropriate community or borough board and/or the City Planning Commission pursuant to ULURP shall satisfy the hearing requirement of this section. Where more than one hearing is conducted by the aforementioned bodies, whichever hearing last occurs shall be deemed the hearing for purposes of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-11 Final Environmental Impact Statements-Procedures.

(a) **[Interested and involved agencies assist with FEIS on request, City Planning Rules §5-05(b)(2).]** Except as provided in paragraph (1) of this subdivision, the lead agencies shall prepare or cause to be prepared a final EIS within 30 calendar days after the close of a public hearing.

(1) If the proposed action has been withdrawn or if, on the basis of the draft EIS and the hearing, the lead agencies have determined that the action will not have a significant effect on the environment, no final EIS shall be prepared. In such cases, the lead agencies shall prepare, file and circulate a Negative Declaration as prescribed in §6-07 of this chapter.

(2) The final EIS shall reflect a revision and updating of the matters contained in the draft EIS in light of further review by the lead agencies, comments received and the record of the public hearing.

(b) Immediately upon the completion of a final EIS, the lead agencies shall prepare, file, circulate and make available for public inspection a Notice of Completion of a final EIS in a manner specified in §6-11(a) of this chapter, provided, however, that the Notice shall not contain the statement described in subparagraph (a)(1)(iv) of such section.

(c) Immediately upon completion of a final EIS, copies shall be filed and made available for public inspection in the same manner as the draft EIS pursuant to §6-11(b) of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

43 RCNY 6-12

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-12 Agency Decision Making.

(a) No final decision to carry out or approve an action which may have a significant effect on the environment shall be made until after the filing and consideration of a final EIS.

(1) **[Inapplicable, City Planning Rules, §5-02(a).]**Except as provided in paragraph (2) of this subdivision where a final decision whether or not to carry out or approve an action is required by law to be made by any agency, such decision shall be made within 30 calendar days of the filing of a final EIS.

(2) **[Inapplicable, City Planning Rules, §5-02(a).]**Where a proposed action is simultaneously subject to ULURP, the final decision whether or not to carry out or approve the action shall be made by the Board of Estimate or its successor agency within 60 calendar days of the filing of the final EIS.

(b) When an agency decides to carry out or approve an action which may have a significant effect on the environment, it shall make the following findings in a written decision:

(1) consistent with social, economic and other essential considerations of state and city policy, from among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects to the maximum extent possible, including the effects disclosed in the relevant environmental impact statement;

(2) consistent with social, economic and other essential considerations of state and city policy, all practicable

means will be taken in carrying out or approving the action to minimize or avoid adverse environmental effects.

(c) For public information purposes, a copy of the Decision shall be filed in the same manner as the draft EIS pursuant to §6-11(b) of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

43 RCNY 6-13

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-13 Programmatic Environmental Impact Statements.

(a) Whenever possible, agencies shall identify programs or categories of actions, particularly projects or plans which are wide in scope or implemented over a long time frame, which would most appropriately serve as the subject of a single EIS. Broad program statement, master or area wide statements, or statements from comprehensive plans are often appropriate to assess the environmental effects of the following;

(1) a number of separate actions in a given geographic area;

(2) a chain of contemplated actions;

(3) separate actions having generic or common impacts;

(4) programs or plans having wide application or restricting the range of future alternative policies or projects.

(b) No further EIS's need be prepared for actions which are included in a programmatic EIS prepared pursuant to subdivision (a) of this section. However:

(1) a programmatic EIS shall be amended or supplemented to reflect impacts which are not addressed or adequately analyzed in the EIS as originally prepared; and

(2) actions which significantly modify a plan or program which has been the subject of an EIS shall require a supplementary EIS;

(3) programmatic EIS's requiring amendment and actions requiring supplementary EIS's pursuant to this section shall be processed in full compliance with the requirements of this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-14 Rules and Regulations.

[Inapplicable, City Planning Rules §5-02(a).]The lead agencies shall promulgate such rules, regulations, guidelines, forms and additional procedures as may be necessary to implement this chapter.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

43 RCNY 6-15

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 6 CITY ENVIRONMENTAL QUALITY REVIEW (CEQR) [EXECUTIVE ORDER NO. 91 OF 1977, AS AMENDED] *1

§6-15 Lists of Actions.

(a) **Type I. [See City Planning Rules §5-02(d).]** Type I actions enumerated in §617.12 of 6 NYCRR 617 are likely to, but will not necessarily, require the preparation of an EIS because they will in almost every instance significantly affect the environment. However, ministerial actions never require the preparation of an EIS except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of §617.12. In addition, for the purpose of defining paragraph (2) of said subdivision and section, the following thresholds shall apply:

(1) relating to public institutions:

(i) new correction or detention centers with an inmate capacity of at least 200 inmates; (ii) new sanitation facilities, including:

(A) incinerators of at least 250 tons per day capacity;

(B) garages with a capacity of more than 50 vehicles;

(C) marine transfer stations;

(iii) new hospital or health related facilities containing at least 100,000 sq. ft. of floor area;

(iv) new schools with seating capacity of at least 1,500 seats;

(v) any new community or public facility not otherwise specified herein, containing at least 100,000 sq. ft. of floor area, or the expansion of an existing facility by more than 50 percent of size or capacity, where the total size of an expanded facility exceeds 100,000 sq. ft. of floor area.

(2) relating to major office centers: any new office structure which has a minimum of 200,000 sq. ft. of floor area and exceeds permitted floor area under existing zoning by more than 20 percent, or the expansion of an existing facility by more than 50 percent of floor area, where the total size of an expanded facility exceeds 240,000 sq. ft. of floor area.

(b) **Type II.** (1) **[See City Planning Rules §5-02(d).]** Type II actions will never require the preparation of an EIS because they are determined not to have a significant effect on the environment, except where such actions may directly affect a critical area or an historic resource enumerated in paragraphs (22) and (23), respectively, of subdivision (a) of §617.12 of 6 NYCRR 617.

(2) **[Inapplicable. Replaced by State Type II list 6 NYCRR Part 617.13. See City Planning Rules §5-02(a) and §5-02(b)(2).]**Pursuant to SEQRA, as amended, a list of Type II actions shall be promulgated prior to July 1, 1978, to become effective on September 1, 1978.

Effective Date. **[See new City Planning transition Rules §5-08 and §5-11. New Rules effective Oct. 1, 1991.]**

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 5 of 62 RCNY superseded Executive Order No. 91. Changes made to Executive Order No. 91 by the aforementioned chapter are herein indicated.

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43 RCNY 7-01

RULES OF THE CITY OF NEW YORK

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CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-01 Purpose and General Description.

(a) The purpose of these regulations is to set forth the application process for the New York City Made In New York Film Production Tax Credit program established by Local Law Number 2 of the Year 2005, as amended by Local Law No. 24 of the Year 2006, pursuant to subdivision (b) of §1201-a of the Tax Law. The Mayor's Office of Film, Theatre and Broadcasting has authority to promulgate regulations to establish procedures for the allocation of such credits including, but not limited to, the application process, standards for application evaluations, and any other provisions deemed necessary and appropriate. The Mayor's Office of Film, Theatre and Broadcasting shall administer the program, including the issuance of tax credit certificates. These regulations do not govern the New York State film production tax credit program. Eligibility in and receipt of a tax credit in the New York State program does not guarantee eligibility in or receipt of a tax credit in the New York City Made In New York film production tax credit program. In addition, eligibility in and receipt of a tax credit in the New York City Made In New York film production tax credit program does not guarantee eligibility in or receipt of a tax credit in the New York State program.

(b) A taxpayer which has been issued a certificate of tax credit shall be allowed to claim a New York City Made in New York film production tax credit pursuant to §§11-503(m) or 11-604(20) of the Administrative Code of the City of New York, whichever is applicable.

(c) Such tax credit shall only be allowed with respect to a qualified film that is completed on or after January 1, 2005. For this purpose, a film will be considered completed upon substantial completion of post-production.

HISTORICAL NOTE

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

Subd. (a) amended City Record Sept. 22, 2006 §1, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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***** Current through December 2009 ****

43 RCNY 7-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-02 Definitions.

As used in this regulation, the following terms shall have the following meanings:

(a) Authorized applicant. "Authorized applicant" means a qualified film production company that is scheduled to begin principal and ongoing photography on the qualified film no more than ninety (90) days after submitting an initial application to the Office and intends to shoot a portion of principal and ongoing photography on a stage at a qualified film production facility on a set or sets.

(b) Approved applicant. "Approved applicant" means an authorized applicant that has been issued a certificate of conditional eligibility by the Office.

(c) Certificate of conditional eligibility. "Certificate of conditional eligibility" means a certificate issued by the Office which states that the authorized applicant has met the criteria set forth in §7-06(a) of this chapter and is being considered for the New York City Made In New York film production tax credit, pending successful completion of the final application and issuance of a certificate of tax credit. Such certificate of conditional eligibility shall include, but not be limited to, the following information: name and address of the authorized applicant, effective date, taxpayer identification number, a statement that the initial application meets the appropriate criteria for conditional eligibility under this regulation and a disclaimer stating that actual receipt of the tax credit is subject to availability of City funds for the program.

(d) Certificate of tax credit. "Certificate of tax credit" means a certificate issued by the Office which states the amount of the New York City Made In New York film production tax credit that the approved applicant has qualified

for, based on the Office's analysis under §§11-503(m) or 11-604(20) of the Administrative Code of the City of New York and the provisions of this chapter. Such certificate shall include, but not be limited to, the following information: name and address of the approved applicant, name of the qualified film the credit applies to, the amount of the tax credit to be received by the approved applicant and a disclaimer stating that actual receipt of the tax credit is subject to availability of City funds for the program.

(e) Completeness of the application. "Completeness of the application" means that all questions on the application itself were fully addressed by either the authorized or approved applicant and that any additional substantiating documents that were requested by the Office were provided in a manner sufficient to allow the Office to properly evaluate the application.

(f) Completion of production of a qualified film. "Completion of production of a qualified film" for purposes of paragraph (1) of subdivision (c) of §7-03 and paragraphs (4) and (5) of subdivision (b) of §7-06 and subdivision (k) of §7-02 of these rules, means that post-production of a qualified film has been finished and a cut negative, video master or other final locked form of the qualified film is ready for the striking of prints or electronic copies, and/or ready for broadcast or delivery to a distributor. All activities and expenses related to marketing and distribution, including the making of release prints, video dupes or other forms of copies, promotional images, and poster art are considered to occur after the production of a qualified film is completed.

(g) Commissioner. "Commissioner" means the Commissioner of the City of New York Mayor's Office of Film, Theatre and Broadcasting.

(h) Effective date. "Effective date" means the date the certificate of conditional eligibility becomes effective. Such date is determined by the date the initial application is received by the Office. In the event that the applicant's principal and ongoing photography on a qualified film does not actually begin within ninety (90) days of the submission of the initial application, the applicant's effective date will be recalculated to correspond to the date ninety (90) days prior to the date that the approved applicant submits, and the Office receives, a notification of actual commencement of principal and ongoing photography. If the actual commencement of principal and ongoing photography does not begin within one hundred eighty (180) days of submission of the initial application, the application shall no longer be deemed valid.

(i) Feature-length film. "Feature-length film" means a production intended for commercial distribution to a motion picture theater or directly to the home video market that has a running time of at least seventy-five (75) minutes in length.

(j) Film production facility. "Film production facility" means a building and/or complex of buildings and their improvements and associated back-lot facilities in which films are or are intended to be regularly produced and which contain at least one sound stage.

(k) Final application. "Final application" means a document created by the Office and submitted by an approved applicant after it has completed production of a qualified film which contains information concerning actual expenditures regarding a qualified film that could make it eligible for the New York City Made In New York film production tax credit under §§11-503(m) or 11-604(20) of the Administrative Code of the City of New York and the provisions of this chapter. Such application shall include, but not be limited to: actual data with regard to the qualified film's total budget, the total production costs at film production facilities in and outside of New York, and the total number of shooting days in and outside of New York and any other information the Office determines is necessary to properly evaluate the application.

(l) Initial application. "Initial application" means a document created by the Office and submitted by an authorized applicant which contains information concerning projected expenditures regarding a qualified film that could make it eligible for the New York City Made In New York film production tax credit under §§11-503(m) or 11-604(20) of the

Administrative Code of the City of New York and the provisions of this chapter. Such application shall include, but is not limited to, the following information: the estimated total budget for the qualified film, estimates of expenditures at a qualifying production facility, estimates of shooting days and expenditures in New York City and outside of New York City and any other information the Office determines is necessary to properly evaluate the application.

(m) Notification of actual commencement of principal and ongoing photography. "Notification of actual commencement of principal and ongoing photography" means the date the Office receives written notice from the approved applicant that the actual production of a qualified film, including the principal and ongoing photography, has commenced on a date specified in such notice, which date is on or before the date that the approved applicant has submitted such notice.

(n) Office. "Office" means the City of New York Mayor's Office of Film, Theatre and Broadcasting.

(o) Pre-production. "Pre-production" means the process of preparation for actual physical production which begins after a qualified film has received a firm agreement of financial commitment ("greenlit") with, for example, the establishment of a dedicated production office, the hiring of key crew members such as a Unit Production Manager, Line Producer and Location Manager, and includes, but is not limited to, activities such as location scouting, hiring of crew, and execution of contracts with vendors of equipment and stage space.

(p) Reserved.

(q) Priority number. "Priority number" means the number used by the Office to determine allocation of the New York City Made In New York film production tax credit. Priority number shall be based on the applicant's effective date; provided, however, that in the event that there is more than one initial application with the same effective date, priority shall be given to the authorized applicant with the earliest anticipated date of commencement of principal and ongoing photography. Provided further that if the principal and ongoing photography does not begin on the anticipated date, and the commencement date is within the one hundred eighty (180)-day limitation provided in subdivision (h) of this section, such priority number shall be recalculated based upon the date that the Office receives notification of actual commencement of principal and ongoing photography from the approved applicant.

(r) Post-production. "Post-production" means the final stage in a qualified film's production after principal and ongoing photography is completed, including, but not limited to, editing, Foley recording, Automatic Dialogue Replacement, sound editing, special effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, the addition of sound/visual effects, dubbing, and subtitling. Advertising and marketing activities and expenses are not included in post-production.

(s) Premature application. "Premature application" means an initial application in which the Office reasonably determines that the applicant cannot commence principal and ongoing photography within ninety (90) days of the date the initial application was submitted. Such determination may, but is not required to, be based on, among other things, vagueness of the applicant's answers on the initial application and during the initial interview and lack of documentation supporting an applicant's initial application.

(t) Principal and ongoing photography. "Principal and ongoing photography" means the filming of major and significant portions of a qualified film that involves the lead actors.

(u) Production costs. "Production costs" means any costs for tangible property used and services performed directly and predominantly (including pre-production and post-production) in the production of a qualified film. Production costs shall not include (i) costs for a story, script or scenario to be used for a qualified film and (ii) wages or salaries or other compensation for writers, directors, including music directors, producers, actors and performers (other than background actors or other performers with no scripted lines). Production costs generally include technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals.

(v) Qualified film. "Qualified film" means a feature-length film, television film, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed. Qualified film shall not include (i) a documentary film, news or current affairs program, interview or talk program, magazine program, variety or skit program, "how-to" (i.e., instructional) film or program, film or program consisting primarily of stock footage, sporting event or sporting program, game show, award ceremony, film or program intended primarily for industrial, corporate or institutional end-users, fundraising film or program, daytime drama (i.e., daytime "soap opera"), commercials, music videos or "reality" program or (ii) a production for which records are required under §2257 of Title 18, United States Code, to be maintained with respect to any performer in such production (reporting of books, films, etc. with respect to sexually explicit conduct).

(w) Qualified film production company. "Qualified film production company" means a corporation, partnership, limited partnership, or other entity or individual which or who is principally engaged in the production of a qualified film and controls the qualified film during production and is responsible for payment of the direct production expenses (including pre and post-production) and is a signatory to the qualified film's contracts with its payroll company and facility operators.

(x) Qualified film production facility. "Qualified film production facility" means a film production facility in New York City, which contains at least one sound stage having a minimum of seven thousand square feet of contiguous production space.

(y) Qualified production costs. "Qualified production costs" means production costs only to the extent such costs are incurred directly in New York City and are attributable to the use of tangible property or the performance of services within New York City directly and predominantly in the production (including pre-production and post-production) of a qualified film.

(z) Sound stage. "Sound stage" means a large interior room or space which provides a controlled environment in which filming takes place on sets built or assembled specifically for the production.

(aa) Television film. "Television film", which may also be known as "movie-of-the-week," "mow," "made for television movie," or "mini-series," means a production intended for broadcast on television, whether free or via a subscription-based service, that has a running time of at least ninety (90) minutes in length (inclusive of commercial advertisement and interstitial programming).

(bb) Television pilot. "Television pilot" means the initial episode produced for a proposed episodic television series. This category will include shorter formats which are known as "television presentation," a production of at least fifteen (15) minutes in length, produced for the purposes of selling a proposed television series, but not intended for broadcast.

(cc) Television series. "Television series", which may also be known as "episodic television series," means a regularly occurring production intended in its initial run for broadcast no more than once weekly, on television, whether free or via subscription-based service, that has a running time of at least thirty (30) minutes in length (inclusive of commercial advertisement and interstitial programming).

HISTORICAL NOTE

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

Subd. (a) amended City Record Sept. 22, 2006 §2, eff. Oct. 22, 2006. [See Note 1]

Subd. (h) amended City Record Sept. 22, 2006 §2, eff. Oct. 22, 2006. [See Note 1]

Subd. (q) amended City Record Sept. 22, 2006 §2, eff. Oct. 22, 2006. [See Note 1]

Subd. (s) amended City Record Sept. 22, 2006 §2, eff. Oct. 22, 2006. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 22, 2006:

These rules are promulgated in accordance with recent State and local law amendments to the "Made In New York Film Production Tax Credit" program. State legislation enacted in 2004 had provided for State tax credits under the new "Empire State Film Production Tax Credit" program, and authorized New York City to establish such a program by local law with respect to local tax credits, which was accomplished by the passage of Local Law No. 2 of 2005. Both such laws were recently amended by the State Legislature (Chapter 62 of the Laws of 2006) and the City Council (Local Law No. 24 of 2006), resulting in an extension of the program through 2011, pursuant to which funds have been increased to support the State and City tax credits through that year.

Local Law No. 24 of 2006 requires that the Mayor's Office of Film, Theatre & Broadcasting ("MOFTB") amend the rules previously promulgated (effective June 12, 2005) with respect to procedures for the allocation of tax credits allowed under the Administrative Code. In the time since the original rules were promulgated, MOFTB has gained considerable experience administering the program and has determined that changes should be made to certain of these procedures.

Specifically, the rule changes set forth herein decrease the time period applicable to submissions for film production tax credits, shortening the period of time from 180 to 90 days, within which principal and ongoing photography must be commenced. Failure to meet such deadlines will result in the postponement of the application's effective date to a date 90 days prior to such date of actual commencement.

Moreover, under these changes the failure to commence the principal and ongoing photography within 180 days of the date of submission of the application will render the application invalid. An application will now be deemed premature if it is submitted more than 90 prior to the commencement of the principal and ongoing photography. Final applications for the film production tax credits must be submitted within 90 (formerly 60) days after completion of the production. Applicants will be permitted to file a written request to extend such 90-day period to 150 days after completion of production.

The rules incorporate a new criterion for evaluating applications: whether an applicant agrees to include the MOFTB "Made In New York" logo in the screen credits of the qualified film, indicating receipt of the tax credit.

A new §7-09, "Applicability", provides that these new rules do not apply to initial or final applications submitted prior to the effective date of the amendments, with the exception of the amendments made to §7-05 which refer to the funds allocated to the film production tax credit program as provided by law.

Finally, the rules contain technical amendments that reference the enactment of the 2006 State legislation and the subsequent local law that was signed by the Mayor in July, 2006.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the

Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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RULES OF THE CITY OF NEW YORK

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CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-03 Application Process.

For the purposes of this Chapter, only an authorized applicant shall be eligible to apply for the New York City Made In New York film production tax credit.

(a) **Initial application.**

(1) An authorized applicant shall submit an initial application to the Office prior to the start of principal and ongoing photography.

(2) The authorized applicant shall have an interview with the Office to discuss the details of the initial application. A producer and either the line producer, unit production manager, production accountant or their designee, approved by the Office, shall attend such meeting.

(3) The Office shall approve or disapprove the initial application based upon criteria set forth in §7-06(a) of these rules.

(4) If the initial application is approved, the Office shall issue a certificate of conditional eligibility to the authorized applicant. The Office shall provide a copy of such certificate of conditional eligibility to the Department of Finance. If the initial application is disapproved, the Office shall provide the authorized applicant with a notice of disapproval which shall state the reasons therefor. Such disapproval shall be a rejection of the authorized applicant's initial application. If the initial application is disapproved as premature, an authorized applicant may resubmit the application.

(5) Applications shall be reviewed by the Office in the order they are received.

(b) **Notification.** The approved applicant shall notify the Office, in writing, on the date principal and ongoing photography begins on the qualified film. In addition, the approved applicant shall provide a sign off budget or its equivalent and other supporting documents requested by the Office on this date.

(c) **Final application.**

(1) Within ninety (90) days after the completion of production of a qualified film, or, if a written extension request is submitted, one hundred fifty (150) days after the completion of production, the approved applicant shall submit a final application to the Office.

(2) The Office shall approve or disapprove the final application based upon criteria set forth in §7-06(b) of this chapter. The Office may request additional documentation, including copies of receipts of qualified production costs, in connection with its consideration of the final application. If the final application is approved, the Office shall issue a certificate of tax credit to the approved applicant. The Office shall provide a copy of such certificate of tax credit to the Department of Finance. If the final application is disapproved, the Office shall provide the applicant with a notice of disapproval which shall state the reasons therefor. Such disapproval shall be a rejection of the applicant's final application.

HISTORICAL NOTE

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

Subd. (c) par (1) amended City Record Sept. 22, 2006 §3, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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§7-04 Reserved.

FOOTNOTES

1

[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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§7-05 Allocation of New York City Made In New York Film Production Tax Credit.

The Office shall allocate the amount of the credits allocated for each calendar year in order of priority based upon an applicant's effective date. In the event that an approved applicant's New York City Made In New York production tax credit would exceed the maximum amount of credits allowed for that given year, the approved applicant will be allocated credits on a priority basis in the immediately succeeding calendar year. A maximum of $12.5 million of credits may be allocated in 2004 and 2005, and $30 million in 2006 through 2011.

HISTORICAL NOTE

Section amended (catchline not laid out, erroneous (a) designation deleted) City Record Sept. 22, 2006

§4, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-06 Criteria for Evaluation of Applications.

(a) **Initial application.** In the event that any of the following criteria are not met, or in the event that the Office concludes that the authorized applicant knowingly submitted false or misleading information, the Office shall disapprove the initial application:

(1) the application is substantially complete;

(2) the application is not premature and is submitted prior to the start of principal and ongoing photography;

(3) the application is submitted within one hundred eighty (180) days of the start of the principal and ongoing photography;

(4) the authorized applicant is a qualified film production company;

(5) the authorized applicant intends to shoot a portion of principal and ongoing photography on a stage at a qualified film production facility on a set or sets;

(6) the authorized applicant is planning to produce a qualified film;

(7) the qualified film will be completed on or after January 1, 2005, within the meaning of subdivision (c) of §7-01 of these rules;

(8) the authorized applicant's projected qualified production costs (excluding post-production costs) paid or

incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of a qualified film are likely to equal or exceed seventy-five percent of the projected production costs (excluding post-production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the City in the production of the qualified film; and

(9) in the event that the projected qualified production costs (excluding post-production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of a qualified film are less than three million dollars, the shooting days spent in New York outside of a film production facility in the production of a qualified film are expected to equal or exceed seventy-five percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film.

(b) **Final application.** In the event that any of the following criteria are not met, or the Office determines that the approved applicant knowingly submitted false or misleading information, the Office shall disapprove the final application:

(1) the application is substantially complete;

(2) the approved applicant shot a portion of principal and ongoing photography on a stage at a qualified film production facility on a set or sets;

(3) the application is submitted with respect to a completed qualified film that was completed on or after January 1, 2005, within the meaning of subdivision (c) of §7-01 of these rules;

(4) the approved applicant's actual date of completion of production of the qualified film was within one year of its projected completion date;

(5) the final application was submitted within ninety (90) days after the completion of production of a qualified film, or, if a written extension request has been submitted, one hundred fifty (150) days after the completion of production;

(6) the approved applicant's actual qualified production costs paid or incurred (excluding post-production costs) which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of the qualified film equaled or exceeded seventy-five percent of the production costs (excluding post-production costs) paid or incurred that were attributable to the use of tangible property or the performance of services at any film production facility within and without the City in the production of the qualified film; and

(7) in the event that the actual qualified production costs (excluding post-production costs) paid or incurred that are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of a qualified film are less than three million dollars, the shooting days spent in New York outside of a film production facility in the production of a qualified film equaled or exceeded seventy five percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film. If the shooting days spent in New York equaled or exceeded the seventy five percent threshold, the Office shall include in their calculation of the New York City Made In New York film production tax credit the portion of qualified production costs attributable to the use of tangible property or the performance of services in the production of a qualified film outside of a qualified film production facility.

(c) For purposes of this section, the Office may consider whether an authorized applicant executes or has executed an agreement with the Office that obligates the authorized applicant to include the Office's "Made In New York" logo in the screen credits of the qualified film indicating receipt of the tax credit.

HISTORICAL NOTE

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

Subd. (a) par (3) added City Record Sept. 22, 2006 §5, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (a) par (4) renumb. (former par (3)) City Record Sept. 22, 2006 §6, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (a) par (5) renumb. (former par (4)) City Record Sept. 22, 2006 §6, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (a) par (6) renumb. (former par (5)) City Record Sept. 22, 2006 §6, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (a) par (7) renumb. (former par (6)) City Record Sept. 22, 2006 §6, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (a) par (8) renumb. (former par (7)) City Record Sept. 22, 2006 §6, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (a) par (9) renumb. (former par (8)) City Record Sept. 22, 2006 §6, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (b) par (5) amended City Record Sept. 22, 2006 §7, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

Subd. (c) added City Record Sept. 22, 2006 §8, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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43 RCNY 7-07

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CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-07 Record Retention.

Each authorized and approved applicant must maintain records, in paper or electronic form, of any qualified productions costs used to calculate its potential or actual benefit(s) under this program for a minimum of three years from the date of filing of the tax return on which the applicant claims the tax credit. The Office shall have the right to request such records upon reasonable notice.

HISTORICAL NOTE

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process,

due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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CHAPTER 7 NEW YORK CITY MADE IN NEW YORK FILM PRODUCTION TAX CREDIT PROGRAM*1

§7-08 Appeal Process.

If the authorized applicant's initial application or an approved applicant's final application is disapproved by the Office, or if the approved applicant disagrees with the amount of the tax credit granted by the Office, the applicant may appeal such determination. In the case of an appeal from a disapproval of an initial or final application, such appeal shall be made by sending a letter to the City of New York Mayor's Office of Film, Theatre and Broadcasting, Attn: Commissioner, 1697 Broadway, New York, NY 10019, within thirty (30) days from the date of the denial letter issued by the Office. In the case of an appeal from a determination of the amount of the tax credit, such appeal shall be made by sending a letter to the same address as listed above within thirty (30) days from the date of issuance of the certificate of tax credit. Failure to request an appeal within thirty (30) days will finalize the denial decision and/or the amount of the tax credit.

Upon receipt of a timely letter of appeal, the Commissioner will appoint an appeal officer within the Office to review. Such appeal officer will make a report on the appeal to the Commissioner. The Commissioner or his designee shall issue a final order within sixty (60) days of the report. A copy of the final order will be issued to the appellant within ten (10) days after the date the Commissioner or his designee renders the final order.

HISTORICAL NOTE

Section added City Record May 13, 2005 eff. June 12, 2005. [See Chapter 7 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to taxpayers to substantiate the amount of tax credits allocated to them.

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§7-09 Applicability.

The amendments made by the rules that added this section shall not apply to initial or final applications submitted prior to the effective date of such amendments, with the exception of the amendments made to §7-05 of this chapter by §4 of such rules.

HISTORICAL NOTE

Section added City Record Sept. 22, 2006 §9, eff. Oct. 22, 2006. [See T43 §7-02 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 7 added City Record May 13, 2005 eff. June 12, 2005. Note: Statement of Basis and Purpose of Rules:

These rules implement Local Law Number 2 of 2005, which, pursuant to subdivision (b) of §1201-a of the Tax Law, establishes the New York City Made In New York Film Production Tax Credit. Specifically, these rules govern the procedures for the allocation of tax credits including, but not limited to, the application process, due dates for applications, standards for evaluating applications and documentation that will be provided to

taxpayers to substantiate the amount of tax credits allocated to them.

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43 RCNY 8-01

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Title 43 Mayor

CHAPTER 8 PREMIERE PERMITS AND FEES*1

§8-01 Premiere Permits Relating to Certain Entertainment Events.

The Mayor's Office of Film, Theatre & Broadcasting ("MOFTB") shall issue Premiere Permits in connection with certain entertainment events held in New York City. These include special events associated with movie premieres, theatre openings, and other similar events held with respect to films, television commercials and radio productions. Premiere Permits for such events may, at the discretion of the Commissioner of MOFTB and, as indicated below, be issued to individuals or commercial entities.

HISTORICAL NOTE

Section amended City Record July 20, 2009 §1, eff. Aug. 19, 2009. [See Note 2]

Section added City Record June 10, 2005 eff. July 10, 2005. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 10, 2005:

This rule implements a decision to transfer certain of the functions that are currently administered by the Community Assistance Unit's ("CAU") Street Activity Permit Office ("SAPO"). It would add a new Chapter to Title 8 to Title 43 to authorize the Mayor's Office of Film, Theater and Broadcasting ("MOFTB"), in conjunction with CAU, to issue permits for special events that are held in New York City in the entertainment field. These include special events held in connection with movie premieres, theatre openings, and other events held with respect to films, television

commercials and radio.

Because MOFTB has been, for almost forty years, the office providing one-stop clearance and permit operations for film and television productions in the City, it is logical that MOFTB have a significant administrative role in this permitting function. Moreover, a primary mission of MOFTB is to attract business for the City in the entertainment industry, and thus as that industry's primary liaison to the City, this permitting function supports such mission.

The MOFTB received comments from other City agencies regarding the rule published for comment, which are now reflected in the text set forth above. The significant changes are as follows:

- The permit is to be denominated a Premiere Permit.

- In summary, the application process will be as follows: permit applications will be submitted to MOFTB, which will forward them to CAU. CAU will consult with the City agencies that might be affected by the activity, consider information submitted by such agencies and conduct any requisite discussions to resolve any outstanding issues. CAU will then provide its recommendation regarding the permit. MOFTB may thereafter issue the permit to the applicant and collect the requisite fee. However, such approval may not be inconsistent with CAU's recommendation.

2. Statement of Basis and Purpose in City Record July 20, 2009: This amendment constitutes revisions to Chapter 8 of Title 43, the rule promulgated in 2005 to implement the decision to transfer certain of the functions that had been administered by the Community Assistance Unit's ("CAU") Street Activity Permit Office ("SAPO") to the Mayor's Office of Film, Theatre and Broadcasting ("MOFTB"). These amendments to Chapter 8 include definitions, the addition of categories, and amendments to the fee schedule for certain Premiere Permits that are issued for special events held in connection with movie premieres, theatre openings, and other entertainment-related events held with respect to the film, television commercial, and radio industries. The amendments also acknowledge the role of the recently created Office of Citywide Events Coordination and Management ("CECM") in permitting activities of the City. The rule was initially published for comment in the **City Record** on November 14, 2008. Although no comments from the public were received prior to or at the hearing (held on December 15, 2008), MOFTB received comments from other City agencies regarding the proposal, and has thus revised its proposal to provide additional detail concerning the regulatory framework for issuance of such premiere permits with an approach that is more consistent with rules recently promulgated by CECM. Section 8-02 is a new section that defines events according to their size in two primary ways: first, according to the number of people who are likely to attend such event, a number that is predictable because the majority of such events are by invitation; and second, according to the level of impact on the community, traffic, and need for coordination among City agencies. As indicated in the publication on November 14, 2008, the amended rule contains increased fees, which are set forth in a new § 8-03: for large events, from up to $5,000.00 to $14,000; for medium events, from up to $3,100.00 to $5,000.00; and for small events, from up to $1,750.00 to $2,750.00. Two new permit categories are added: first, "extra small events", the fees for which will be $450.00; and second, "extra large events", the fees for which will be $24,000.00. The section addressing processing of premiere permits, now § 8-04, is revised to provide that CECM is involved in the approval process, in the former role that CAU played. In accordance with this Premiere Permit program administered since 2005, MOFTB is authorized to impose fees and conditions necessary to protect the interests of the City, the entertainment industry and the general public. After four years of experience in administering this permit program, MOFTB has developed expertise in assessing the extent to which such events require additional police presence involving increased overtime expenditures by the City. In order to effectively deploy such police and other City resources, MOFTB has exercised its discretion to approve permits for these "red carpet" events in accordance with a fee scale for such commercial entertainment events based on the cost the City incurs to process the permit application and ensure the safety of the event. Moreover, MOFTB has received feedback from other agencies regarding the need to create additional categories of permits to address the variety of the size and scope of these entertainment-related activities that are regulated by permits under Chapter 8, as well as the need to ensure that existing fees accurately reflect the high cost of overseeing the activities that are covered by such permits. The fee scale was created by analyzing the administrative and manpower costs incurred by the MOFTB, the NYPD and other agencies that work directly with MOFTB to review, evaluate and approve or deny an application and to oversee the

permitted activities. Establishment of the amended fee scale also ensures that event organizers will evaluate the components of the event prior to application submission to make certain that there will be sufficient City resources to cover the activities contemplated by the permit.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record July 20 2009 §1, eff. Aug. 19, 2009. [See §8-01 Note 2]; chapter added City Record June 10, 2005 eff. July 10, 2005 eff. July 10, 2005. [See §8-01 Note 1]

This rule implements a decision to transfer certain of the functions that are currently administered by the Community Assistance Unit's ("CAU") Street Activity Permit Office ("SAPO"). It would add a new Chapter 8 to Title 43 to authorize the Mayor's Office of Film, Theater and Broadcasting ("MOFTB"), in conjunction with CAU, to issue permits for special events that are held in New York City in the entertainment field. These include special events held in connection with movie premieres, theatre openings, and other events held with respect to films, television commercials and radio.

Because MOFTB has been, for almost forty years, the office providing one-stop clearance and permit operations for film and television productions in the City, it is logical that MOFTB have a significant administrative role in this permitting function. Moreover, a primary mission of MOFTB is to attract business for the City in the entertainment industry, and thus as that industry's primary liaison to the City, this permitting function supports such mission.

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- The permit is to be denominated a Premiere Permit.

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Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 8-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 8 PREMIERE PERMITS AND FEES*1

§8-02 Definitions.

For purposes of this chapter, the following terms shall have the following meanings:

(a) Sponsor or applicant. "Sponsor" or "applicant" shall mean the individual or commercial entity named in an application for a Premiere Permit, which application shall be submitted on forms prescribed by the Commissioner of MOFTB.

(b) Extra large event. "Extra large event" shall mean an event (1) for which there is an anticipated attendance of 5,000 or more people; and (2) that has an extensive impact on the surrounding community and/or on vehicular/pedestrian traffic, in that they include obstructions or structures such as any temporary platforms, bleachers, reviewing stands, outdoor bandstands or similar structures, or tents or canopies that require a Department of Buildings permit. This may involve, but is not limited to, significant coordination by other City agencies, including permitting agencies; a large and/or complicated permitting role by the Department of Buildings; full closure of streets and/or sidewalks; and extensive coordination between MOFTB, the Office of Citywide Events Coordination and Management ("CECM"), the Police Department, the Fire Department, and other City agencies as appropriate.

(c) Large event. "Large event" shall mean an event (1) for which there is an anticipated attendance of fewer than 5,000 people; and (2) that has an extensive impact on the surrounding community and/or on vehicular/pedestrian traffic, in that they include obstructions or structures such as any temporary platforms, bleachers, reviewing stands, outdoor bandstands or similar structures, or tents or canopies that require a Department of Buildings permit. This may involve, but is not limited to, coordination by other City agencies, including permitting agencies; full closure of streets and/or sidewalks; and coordination between MOFTB, CECM, and other City agencies as appropriate.

(d) Medium event. "Medium event" shall mean an event (1) for which there is an anticipated attendance of fewer than 1,500 people; and (2) that has an impact on pedestrian and/or vehicular traffic, and may include the presence of an obstruction such as a press riser, stage, table or other structure. Such events require coordination between MOFTB, CECM, the Police Department, and the Department of Transportation, but would require minimal involvement of the Department of Buildings or the Fire Department.

(e) Small event. "Small event" shall mean an event (1) for which there is an anticipated attendance of fewer than 1,000 people; and (2) that occupies a period of time that does not exceed four hours and has moderate impact on pedestrian and/or vehicular traffic. Such events require some degree of coordination between MOFTB, the Department of Transportation and the Police Department.

(f) Extra small event. "Extra small event" shall mean an event (1) for which there is an anticipated attendance of fewer than 500 people; and (2) that occupies a period of time that does not exceed four hours and has low or no impact on pedestrian and/or vehicular traffic. Such events require little or no coordination between MOFTB and other City agencies.

HISTORICAL NOTE

Section added City Record July 20, 2009 §1, eff. Aug. 19, 2009. [See §8-01 Note 2]

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record July 20 2009 §1, eff. Aug. 19, 2009. [See §8-01 Note 2]; chapter added City Record June 10, 2005 eff. July 10, 2005 eff. July 10, 2005. [See §8-01 Note 1]

This rule implements a decision to transfer certain of the functions that are currently administered by the Community Assistance Unit's ("CAU") Street Activity Permit Office ("SAPO"). It would add a new Chapter 8 to Title 43 to authorize the Mayor's Office of Film, Theater and Broadcasting ("MOFTB"), in conjunction with CAU, to issue permits for special events that are held in New York City in the entertainment field. These include special events held in connection with movie premieres, theatre openings, and other events held with respect to films, television commercials and radio.

Because MOFTB has been, for almost forty years, the office providing one-stop clearance and permit operations for film and television productions in the City, it is logical that MOFTB have a significant administrative role in this permitting function. Moreover, a primary mission of MOFTB is to attract business for the City in the entertainment industry, and thus as that industry's primary liaison to the City, this permitting function supports such mission.

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with CAU's recommendation.

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43 RCNY 8-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 8 PREMIERE PERMITS AND FEES*1

§8-03 Fees.

(a) MOFTB shall determine which fee category is appropriate for a proposed event. Fees are based on the City resources required as determined by the anticipated attendance at events to be held, and permits will authorize activities including, for example, the placement of a "red carpet", the setting aside of a "limousine lane", or the siting of a tent or other structure. Fees shall be paid in the form of a certified check or money order made payable to "New York City Department of Finance" or, if available as a payment method, through the use of a credit or debit card. Fees shall be non-refundable, and payment shall accompany each application for a Premiere Permit as follows:

(1) For an extra large event: $24,000.00.

(2) For a large event: $14,000.00.

(3) For a medium event: $5,000.00.

(4) For a small event: $2,750.00.

(5) For an extra small event: $450.00.

(b) Each fee described in subdivision (a) of this section includes permission to use the following:

(1) One curb lane closure.

(2) One red carpet.

(3) One press pen.

(4) One generator.

(5) One klieg light.

(6) One tent (10 feet by 20 feet).

HISTORICAL NOTE

Section redesignated and amended (former §8-02) City Record July 20, 2009 §1, eff. Aug. 19, 2009.

[See §8-01 Note 2]

Section added City Record June 10, 2005 eff. July 10, 2005. [See §8-01 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Chapter amended City Record July 20 2009 §1, eff. Aug. 19, 2009. [See §8-01 Note 2]; chapter added City Record June 10, 2005 eff. July 10, 2005 eff. July 10, 2005. [See §8-01 Note 1]

This rule implements a decision to transfer certain of the functions that are currently administered by the Community Assistance Unit's ("CAU") Street Activity Permit Office ("SAPO"). It would add a new Chapter 8 to Title 43 to authorize the Mayor's Office of Film, Theater and Broadcasting ("MOFTB"), in conjunction with CAU, to issue permits for special events that are held in New York City in the entertainment field. These include special events held in connection with movie premieres, theatre openings, and other events held with respect to films, television commercials and radio.

Because MOFTB has been, for almost forty years, the office providing one-stop clearance and permit operations for film and television productions in the City, it is logical that MOFTB have a significant administrative role in this permitting function. Moreover, a primary mission of MOFTB is to attract business for the City in the entertainment industry, and thus as that industry's primary liaison to the City, this permitting function supports such mission.

The MOFTB received comments from other City agencies regarding the rule published for comment, which are now reflected in the text set forth above. The significant changes are as follows:

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- In summary, the application process will be as follows: permit applications will be submitted to MOFTB, which will forward them to CAU. CAU will consult with the City agencies that might be affected by the activity, consider information submitted by such agencies and conduct any requisite discussions to resolve any outstanding issues. CAU will then provide its recommendation regarding the permit. MOFTB may thereafter issue the permit to the applicant and collect the requisite fee. However, such approval may not be inconsistent with CAU's recommendation.

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43 RCNY 8-04

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 8 PREMIERE PERMITS AND FEES*1

§8-04 Processing of Premiere Permits.

(a) Applications for Premiere Permits shall be submitted to the MOFTB no later than fourteen (14) days prior to the date of the event. Upon receipt of an application, MOFTB shall forward it to CECM, which shall notify and consult, as appropriate, with the Police Department, the Fire Department, the Department of Transportation, and the Department of Sanitation. CECM shall consider information, if any, submitted by any of the foregoing agencies in connection with such notification and shall attempt to resolve any issues in connection with the issuing of a permit.

(b) CECM shall review the Premiere Permit to determine if there are conflicting scheduled activities. Where such exist, CECM shall make recommendations regarding ways to resolve them, and shall forward such recommendations to MOFTB. Prior to issuing a Premiere Permit, MOFTB and CECM shall have resolved any outstanding scheduling issues.

(c) At any time during the review of an application for a Premiere Permit, the applicant or sponsor may be required to submit such additional information as is deemed necessary, during evaluation of the application or the particular facts surrounding the proposed event that is the subject of the permit request.

(d) MOFTB shall have the authority to deny an application, to condition the approval of an application, or to revoke a Premiere Permit, based on the past or present failure of the applicant or sponsor

(1) to make payment of the application fee; or

(2) to present proof that all necessary and proper licenses, permits or authorizations have been received; or

(3) to comply with applicable laws or rules; or

(4) to comply with a condition imposed on a permit issued previously to the applicant or sponsor.

(e) CECM shall have the authority to recommend denial of an application, the conditioning of approval of an application, or revocation of a Premiere Permit on any or all of the following grounds:

(1) any of the City or other government agencies which were notified of the Premiere Permit application had reason to raise objections regarding the permit request; or

(2) the proposed activity, when considered in conjunction with other proposed activities, would produce an excessive burden on the community, City services or City personnel; or

(3) approval of the application is not in the best interest of the community, the City or the general public for reasons that may include, but are not limited to, honesty, integrity or financial responsibility of the sponsor.

(f) Upon completing its review of a Premiere Permit application, CECM shall indicate its recommendation on the MOFTB permit application and shall return such form to MOFTB.

(g) Permits received pursuant to this section shall be non-transferable.

HISTORICAL NOTE

Section redesignated and amended (former §8-03) City Record July 20, 2009 §1, eff. Aug. 19, 2009.

[See Note 2]

Section added City Record June 10, 2005 eff. July 10, 2005. [See Note 1]

FOOTNOTES

1

[Footnote 1]: ** Chapter amended City Record July 20 2009 §1, eff. Aug. 19, 2009. [See §8-01 Note 2]; chapter added City Record June 10, 2005 eff. July 10, 2005 eff. July 10, 2005. [See §8-01 Note 1]

This rule implements a decision to transfer certain of the functions that are currently administered by the Community Assistance Unit's ("CAU") Street Activity Permit Office ("SAPO"). It would add a new Chapter 8 to Title 43 to authorize the Mayor's Office of Film, Theater and Broadcasting ("MOFTB"), in conjunction with CAU, to issue permits for special events that are held in New York City in the entertainment field. These include special events held in connection with movie premieres, theatre openings, and other events held with respect to films, television commercials and radio.

Because MOFTB has been, for almost forty years, the office providing one-stop clearance and permit operations for film and television productions in the City, it is logical that MOFTB have a significant administrative role in this permitting function. Moreover, a primary mission of MOFTB is to attract business for the City in the entertainment industry, and thus as that industry's primary liaison to the City, this permitting function supports such mission.

The MOFTB received comments from other City agencies regarding the rule published for comment, which are now reflected in the text set forth above. The significant changes are as follows:

- The permit is to be denominated a Premiere Permit.

- In summary, the application process will be as follows: permit applications will be submitted to MOFTB, which will forward them to CAU. CAU will consult with the City agencies that might be affected by the activity, consider information submitted by such agencies and conduct any requisite discussions to resolve any outstanding issues. CAU will then provide its recommendation regarding the permit. MOFTB may thereafter issue the permit to the applicant and collect the requisite fee. However, such approval may not be inconsistent with CAU's recommendation.

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43 RCNY 9-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 9 PERMITS ISSUED BY MAYOR'S OFFICE OF FILM, THEATRE AND BROADCASTING*1

§9-01 Permits for Scouting, Rigging and Production Activities.

(a) **Scope of Rules**. The Mayor's Office of Film Theatre and Broadcasting ("MOFTB") shall issue permits in connection with filming, including but not limited to the taking of motion pictures; the taking of photographs; the use and operation of television cameras, transmitting television equipment, or radio remotes in or about city property; load-ins or load-outs supporting indoor performances; or such activities in or about any street, park, marginal street, pier, wharf, dock, bridge or tunnel within the jurisdiction of any City department or agency, or involving the use of any City owned or maintained facilities or equipment. As defined herein, MOFTB will issue permits for scouting, rigging and shooting activities. Obtaining such a permit does not obviate the need to comply with other applicable laws, rules or case law also governing such activity.

(b) **Required and Optional Permits.** Unless a permit is designated in these rules as an "Optional Permit", the use of the term "permit" herein shall be deemed to be a "Required Permit".

(1) Required Permits.

a. The following activities require that a permit be obtained pursuant to this chapter: (i) Filming, photography, production, television or radio remotes occurring on City property, as described in subdivision (a) of this section, that uses vehicles or equipment.

(ii) Filming, photography, production, television or radio remotes occurring on City property, as described in subdivision (a) of this section, (A) if such activity involves the assertion by any means, including physical or verbal, of exclusive use of one or more lanes of a street or walkway of a bridge or (B) if such activity involves the assertion by

any means, including physical or verbal, of exclusive use of more than one-half of a sidewalk or other pedestrian passageway or, in a situation in which the sidewalk or pedestrian passageway is narrower than sixteen feet, if such activity involves the assertion by any means, including physical or verbal, of exclusive use of the sidewalk or pedestrian passageway such that less than eight feet is otherwise available for pedestrian use.

For purposes of this subparagraph, standing on a street, walkway of a bridge, sidewalk, or other pedestrian passageway while using a handheld device and not otherwise asserting exclusive use by any means, including physical or verbal, is not activity that requires a permit.

b. The following activities do not require that a permit be obtained pursuant to this chapter:

(i) Filming, photography, production, television or radio remotes occurring on City property, as described in subdivision (a) of this section, involving the use of handheld devices as defined in paragraph three of subdivision (a) of §9-02, (A) if such activity does not involve the assertion by any means, including physical or verbal, of exclusive use of one or more lanes of a street or walkway of a bridge or (B) if such activity does not involve the assertion by any means, including physical or verbal, of exclusive use of more than one-half of a sidewalk or other pedestrian passageway or, in a situation in which the sidewalk or pedestrian passageway is narrower than sixteen feet, does not involve the assertion by any means, including physical or verbal, of exclusive use of the sidewalk or pedestrian passageway such that less than eight feet is otherwise available for pedestrian use.

For purposes of this subparagraph, standing on a street, walkway of a bridge, sidewalk, or other pedestrian passageway while using a handheld device and not otherwise asserting exclusive use by any means, including physical or verbal, is not activity that requires a permit.

(ii) Filming or photography of a parade, rally, protest, or demonstration except when using vehicles or equipment.

(2) Optional Permits: Persons who are engaged in filming or still photography and are not otherwise required to obtain a permit pursuant to paragraph (1) of subdivision (b) of this section may be issued an Optional Permit.

a. Persons requesting such an Optional Permit shall provide accurate information concerning their postal address and, if available, e-mail address, telephone number and fax number; and accurate information as to the location(s) of such activities, the date(s) and time(s) during which such activities are proposed to take place.

b. MOFTB shall process Optional Permit requests in accordance with the provisions of paragraphs four, five, six, seven, eight, nine and ten of subdivision (b) of §9-02 of these rules.

(c) **Press passes.** The use of a press pass issued by the New York City Police Department ("NYPD") in accordance with Chapter 11 of Title 38 of the Rules of the City of New York ("Press Credentials"), where an individual is acting in furtherance of the activity authorized by such press pass, and is engaged in filming as defined in these rules, does not require that a permit be obtained pursuant to this chapter.

(d) **Authorization from other agencies:** Notwithstanding the provisions of subdivision (a) of this section, scouting, rigging or shooting activities within City parks or the interiors of City buildings, bridges or tunnels require, if applicable, separate authorization from the City agency with jurisdiction over the location. The use of certain items or activities, including but not limited to animals, firearms (actual or simulated), special effects, pyrotechnics, police uniforms, police vehicles, driving shots with tow or camera rigs, and conditions that require holding of traffic may require authorization and/or assistance from the relevant government agency.

HISTORICAL NOTE

Section added City Record July 14, 2008 §1, eff. Aug. 13, 2008. [See §9-03 Note 1]

FOOTNOTES

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[Footnote 1]: * Chapter added City Record July 14, 2008 §1, eff. Aug. 13, 2008. [See 9-03 Note 1]

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43 RCNY 9-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 9 PERMITS ISSUED BY MAYOR'S OFFICE OF FILM, THEATRE AND BROADCASTING*1

§9-02 Processing of Permit Applications.

(a) **Definitions.** For purposes of this chapter, the following terms shall have the following meanings:

(1) "Equipment" shall include, but is not limited to, television, photographic, film or videocameras or transmitting television equipment, including radio remotes, props, sets, lights, electric and grip equipment, dolly tracks, screens, or microphone devices, and any and all production related materials. "Equipment" shall not include (a) "hand-held devices," as defined in paragraph (3) of this subdivision, and (b) vehicles, as defined in section one hundred fifty-nine of the New York vehicle and traffic law, that are used solely to transport a person or persons while engaged in the activity of filming or photography from within such vehicle, operated in compliance with relevant traffic laws and rules.

(2) "Filming" shall mean the taking of motion pictures, the taking of still photography or the use and operation of television cameras or transmitting television equipment, including radio remotes and any preparatory activity associated therewith, and shall include events that include, but are not limited to, the making of feature or documentary films, television serials, webcasts, simulcasts or specials.

(3) "Hand-held devices" shall mean (a) film, still or television cameras, videocameras or other equipment which are held in the photographer's or filmmaker's hand and carried at all times with the photographer or filmmaker during the course of filming, or (b) tripods used to support film, still, television cameras or videocameras. Hand-held devices shall not include cables or any other item or equipment not carried by the photographer or filmmaker at all times during the course of photography, filming or transmission.

(4) "New Project Account application" shall mean a request submitted on an MOFTB form by an applicant

indicating that the applicant intends to request one or more permits for scouting, rigging and/or shooting activities.

(5) "Photography" shall mean the taking of moving or still images.

(6) "Pre-permit reserve" shall mean the designation by MOFTB, at the request of a permit applicant, of a location(s) where the applicant intends to conduct rigging or shooting activities.

(7) "Rigging/de-rigging" shall mean the loading in or loading out, loading or unloading, of any shooting or production related equipment, including but not limited to props, sets, electric and grip equipment, at any location, time and date where film or theatrical production is not occurring.

(8) "Same date" shall mean the same actual calendar date (numerical date and month) or the same day of the same week in a given month, as relevant. For example, "same date" shall encompass the date July 11 as well as the second Sunday in the month of July, as relevant.

(9) "Same location" shall mean the location identified in the rigging permit or the filming permit application.

(10) "Scouting" shall mean the act of viewing, assessing and photographing locations for filming or photography during pre-production or production for, including, but not limited to, still photography, feature films, television series, mini-series or specials.

(11) "Shooting" shall include (a) filming interiors or exteriors, and (b) theatrical productions whose performances are presented indoors.

(b) **New Project Account application and Permit application for scouting, rigging and/or shooting activities.**

(1) The following two steps shall be taken to obtain a scouting, rigging, and/or shooting permit:

a. Submission of a New Project Account application to MOFTB.

b. At the same time, or some time thereafter, an applicant shall seek a scouting, rigging, and/or shooting permit.

(2) New Project Account Application contents. Applicants shall complete an application, on a form prescribed by MOFTB, which shall contain detailed identifying information about the applicant and the project. In completing such form, applications shall provide the information set forth below.

a. A postal address (but not a post office box) and, if available, an e-mail address, a telephone number and a facsimile number for purposes of receiving notification from MOFTB.

b. Valid photo identification of the applicant or, if the applicant is not a natural person, a valid photo identification of the natural person authorized by the applicant to act on its behalf in connection with the application.

c. If known at the time of the application, the dates and times of scouting, rigging or shooting and location of such activity, and any special circumstances including, but not limited to, information regarding whether the activity involves special parking requests, traffic control issues or special effects.

d. Film school students shall provide a letter from the student's school confirming insurance coverage, and the student's current enrollment, subject to the provisions of §9-03.

(3) Scouting, Rigging and/or Shooting Permit Applications. When applicants submit a scouting, rigging and/or shooting permit application, on a form prescribed by MOFTB, they shall:

a. identify the date(s), time(s) and location(s) of such activity;

b. identify any special circumstances including, but not limited to, information regarding whether the activity involves special parking requests, traffic control issues or special effects;

c. for applicants requesting a scouting permit, provide a letter from the applicant's producing/financing entity verifying the project by name and identifying the natural person(s) on-site who will be performing scouting activities on behalf of the applicant;

d. for applicants requesting a scouting permit, provide documents of incorporation, financing documents for the project or grant or foundation award letter.

(4) Processing of Permits. All permit applications will be processed on a "first come, first served" basis. Upon request by an applicant for a Required Permit, MOFTB will place a pre-permit reserve on the location(s) identified in the New Project Account application or the rigging and/or shooting application. An applicant can request such pre-permit reserve no more than three weeks in advance of the activity, but upon a need demonstrated in writing by the applicant, MOFTB may grant a greater period of time. If two or more permit applicants request the same date and the same location, the New Project Account application request that was received first shall be first eligible for approval.

(5) MOFTB shall respond to the applicant with one of the responses enumerated in subparagraphs a through c of paragraph (6) of this section in accordance with the following schedule:

a. for applications filed 45 days or more prior to the date for which such permit is sought, MOFTB shall respond no later than 30 days after the receipt of such applications;

b. for applications filed less than 45 days but more than 15 days prior to the date for which such permit is sought, MOFTB shall respond no later than ten days after the receipt of such applications; or

c. for applications filed 15 days or less prior to the date for which such permit is sought, MOFTB shall respond as soon as is reasonably practicable.

d. No application may be filed more than sixty days prior to the date of the requested event, unless special circumstances are presented to the commissioner or her designee for approval.

(6) Determination upon review of application. Following receipt of an application, the MOFTB will make one or more of the following determinations:

a. issuance of the particular permit.

b. written notification that more information is needed before MOFTB can make a determination as to a particular permit application.

c. written notification that the particular permit application has been denied and a statement of the reason or reasons pursuant to paragraph (7) of this subdivision for such denial.

(7) Denial of new project account applications or scouting, rigging, and/or shooting permit application. MOFTB may deny a permit if any one or more of the following issues exists:

a. conditions exist that may pose a danger or a threat to participants, onlookers or the general public;

b. the location sought is not suitable because the proposed use cannot reasonably be accommodated in the proposed location;

c. the date and time requested for a particular location is not available because (i) a permit has previously been issued for such date and time, or (ii) the permit request is the subject of a new project account application, as provided

in paragraph (4) of this subdivision, or (iii) another City agency has issued a permit for such date or time;

d. MOFTB has concluded, based on specific information, that the applicant is unlikely to comply with the material terms of the requested permit;

e. use of the location or the proposed activity at the location would otherwise violate any law, ordinance, statute or regulation;

f. use of the location would interfere unreasonably with the operation of City functions.

(8) If the permit has been denied pursuant to subparagraphs a, b, c, e (with respect to location) or f of paragraph (7) of this subdivision, MOFTB shall employ reasonable efforts to offer the applicant suitable alternative locations and/or times and/or dates for the proposed rigging or shooting. If the permit has been denied pursuant to subparagraph d, the MOFTB may consider whether special conditions may be placed or whether additional steps can be taken to address its concern about potential non-compliance.

(9) The denial of a permit shall be in writing and shall contain information about the right to appeal such denial unless the applicant, in its application, authorizes MOFTB to issue an oral determination in connection with the filing of the application. Subsequent to the filing of such application, an applicant may request a written determination upon notifying MOFTB in writing that such applicant now seeks a written determination. Upon receiving such request for a written determination, MOFTB shall respond in accordance with the requirements of paragraph (5) of this subdivision, such time to respond commencing on the date of receipt by MOFTB of the notification.

(10) After a permit application is denied, the applicant may appeal a written determination by written request filed with the appeals officer who may reverse, affirm, or modify the original determination and provide a written explanation of his or her finding.

a. If a permit application is denied more than 30 days prior to the proposed scouting, rigging or shooting, the applicant shall have 10 days from the date that such denial is e-mailed or faxed to the applicant to appeal such denial. MOFTB shall render a decision on such appeal within 10 days of receipt of such appeal.

b. If a permit application is denied more than 10 days and less than 30 days prior to the proposed scouting, rigging or shooting, the applicant shall have 5 days from the date such denial is e-mailed or faxed to the applicant to appeal such denial. MOFTB shall render a decision on such appeal within 5 days of receipt of such appeal.

c. If a permit application is denied 10 days or less prior to the proposed scouting, rigging or shooting, the applicant shall have one day from the date such denial is e-mailed or faxed to the applicant to appeal such denial. MOFTB shall render a decision on such appeal as soon as is reasonably practicable.

(c) **Responsibilities of Holders of Required and Optional Permits.** (1) Rules: All permittees are subject to the rules of MOFTB, the specific terms and conditions of the permit, and all applicable city, state, and federal laws or rules. Nothing herein is intended to authorize activities that are illegal under any applicable city, state or federal law or rule, except that permittees may engage in such conduct as is expressly authorized by the permit issued to them.

(2) Display of permit: All permittees shall have the permit in their possession on location at the time and site of the scouting, rigging or shooting, as well as any other permits required by MOFTB or any other governmental agency, and shall make such permit available for inspection at the request of an employee of the Police Department or other government agency.

(3) Permit restrictions: All permittees shall confine their activities to the locations and times specified on their permit. MOFTB may establish specific guidelines to address conditions that exist at certain designated locations and the use of vehicles and equipment at locations based on, among other considerations, the time of day, weather conditions,

season, location, and day of the week.

(4) Non-transferability: Required Permits and Optional Permits are not transferable.

(5) Clean-up: All permittees are responsible for cleaning and restoring the site after the rigging or shooting. The cost of any City employee time incurred because of a permittee's failure to clean and/or restore the site following the rigging or shooting will be borne by the permittee.

(6) Accidents or injuries: Should there be any injuries, accidents, other health incidents or damage to private or City property at a permitted event, the permittee shall notify MOFTB immediately.

(7) Vehicle Parking: Only vehicles with permits issued by MOFTB will be allowed to park in areas designated for the rigging or shooting activity at the time(s) and location(s) described in the applicable permit.

(8) Dolly track or other equipment: No dolly track or other equipment may be laid across a street or block a fire lane without prior approval of MOFTB and NYPD.

(9) Pyrotechnics: The use of pyrotechnics, fire effects and explosions, including simulated smoke and smoke effects, shall be conducted only upon authorization by the New York City Fire Department and subsequent approval shall be obtained from MOFTB and the NYPD prior to shooting.

(10) Animals: The use of wild animals, as defined in Article 161, §161.02 of the New York City Health Code, shall be used only upon authorization by the Department of Health and Mental Hygiene, and subsequent approval shall be obtained from MOFTB prior to shooting.

(11) Potentially dangerous activities: Conduct or activities associated with rigging or shooting permits which are determined by MOFTB to cause a potential danger to persons or property will be referred by MOFTB for approval by the NYPD or other governmental agency having jurisdiction over such activity. Such activities shall include, but not be limited to, the use of stunts, helicopters, firearms or simulated firearms.

(12) Traffic control: Where a public street is closed in connection with rigging or production activities, a 13.5-foot lane shall be kept open. Such requirement may be waived by MOFTB upon an appropriate showing of need or at the discretion of the NYPD.

(13) Trees and plantings: Trimming, damaging, removing or cutting trees or vegetation on City property is prohibited without the prior approval of the New York City Department of Parks and Recreation.

(14) Street structures: No street signs, lights, postal boxes, parking meters or any other permanent street structure may be removed or altered without the prior approval of the New York City Department of Transportation or other agency charged with maintaining such structures.

(15) Production location access: If determined by MOFTB to be appropriate, permittees shall submit a mitigation plan for minimizing the potential inconvenience to residents and/or businesses caused by rigging or shooting activities.

(16) Food services: There shall be no sit-down catered meals permitted on public streets or sidewalks.

(17) Code of Conduct: MOFTB shall issue a location Code of Conduct that addresses the importance of considerate behavior on the set of all rigging and shooting activities. A copy of the Code of Conduct shall be given to holders of Required and Optional Permits under these rules. The permittee is responsible for providing a copy of the Code of Conduct to the cast and crew of each permitted rigging or shooting activity. Permittees shall be required to encourage participants in the permitted event to act in accordance with such code.

(d) **Modifications to or Suspension of Required or Optional Permit.** (1) If a permittee seeks to modify its

permit, it shall submit an addendum to its original request, which will be governed by the same timetable as provided in paragraph (5) of subdivision (b) of this section.

(2) If MOFTB determines that modifications should be made to the terms or conditions of any permit, or that a permit should be revoked, after notice and opportunity to be heard, MOFTB may do so, based upon reasons set forth in paragraph (7) of subdivision (b) of this section.

(3) If MOFTB revokes any permit prior to the date of the scouting, rigging or shooting, the permittee may appeal the revocation, subject to the time limitations set forth in paragraph (10) of subdivision (b) of this section.

(4) During the course of scouting, rigging or shooting, MOFTB or the NYPD may suspend any permit where public health or safety risks are found or where exigent circumstances warrant such action. Where a suspension lasting longer than six hours occurs, permittees shall be given notice and an opportunity to be heard within ten days after the suspension.

HISTORICAL NOTE

Section added City Record July 14, 2008 §1, eff. Aug. 13, 2008. [See §9-03 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 2008 §1, eff. Aug. 13, 2008. [See 9-03 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 9-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 9 PERMITS ISSUED BY MAYOR'S OFFICE OF FILM, THEATRE AND BROADCASTING*1

§9-03 Indemnification and Insurance.

(a) By accepting a permit, a permittee agrees to protect all persons and property from damage, loss or injury arising from any of the operations performed by or on behalf of the permittee, and to indemnify and hold harmless the City, to the fullest extent permitted by law, from all claims, losses and expenses, including attorneys' fees, that may result therefrom. This indemnification requirement does not apply to any person or entity acting with an Optional Permit in accordance with §9-01(b)(2).

(b) Every holder of a Required Permit shall maintain, during the entire course of its operations, liability insurance with a limit of at least one million dollars ($1,000,000) per occurrence. Such insurance shall include a policy endorsement naming the City of New York as an additional insured with coverage at least as broad as provided by Insurance Services Office (ISO) form CG 20 12 (07/98 ed.). The applicant shall provide proof of such insurance prior to the issuance of the permit in the form of an original certificate of insurance signed in ink to which a copy of the required endorsement is attached. For currently enrolled film students, proof of insurance through their school and the student's current attendance shall satisfy this requirement. This insurance requirement does not apply to any person or entity holding an Optional Permit issued in accordance with §9-01(b)(4).

(c) If MOFTB determines, in light of the activity for which a permit is sought, that such activity may increase the potential for injury to individuals and/or damage to property, and that the minimum limit of insurance should be higher than one million dollars ($1,000,000) per occurrence, MOFTB shall determine what higher minimum limit is to be required and inform the applicant of such higher limit. Factors to be considered by MOFTB may include, but shall not be limited to, the number of people involved, the location of the activity and the nature of the activity. The applicant shall thereafter provide proof of such insurance in accordance with subdivision (b) of this section. If MOFTB

determines in writing that a higher minimum limit is to be required, the applicant may appeal such determination by written request filed with the MOFTB appeals officer who may reverse, affirm, or modify the determination and provide a written explanation of his or her finding.

(d) MOFTB shall have the authority to waive the insurance required by subdivision (b) of this section where the applicant is able to demonstrate that such insurance cannot be obtained without imposing an unreasonable hardship on the applicant. Any request for a waiver of the insurance required by subdivision (b) of this section shall be included by the applicant in the application submitted to MOFTB under §9-02 of this chapter. The burden of demonstrating unreasonable hardship shall be on the applicant, and may be demonstrated by a showing, for example, that the cost of obtaining insurance for the permitted activity exceeds twenty-five percent (25%) of the applicant's budget for such activity that is the subject of the application. MOFTB shall take into consideration the applicant's projections of budget as well as the budget projections for comparable productions of similar size and duration in determining whether the cost of obtaining insurance exceeds twenty-five percent (25%) of the budget. MOFTB may also take into consideration its determination that the permitted activity may increase the potential for injury to individuals and/or damage to property. In the event that MOFTB denies a waiver of the insurance requirement, the applicant may thereafter respond to the denial and appeal such denial pursuant to the provisions of §9-02 of this chapter.

HISTORICAL NOTE

Section added City Record July 14, 2008 §1, eff. Aug. 13, 2008. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record July 14, 2008:

The Mayor's Office of Film Theatre & Broadcasting ("MOFTB") has for many years issued permits in connection with various film production activities. With the recent significant increase in filming activities by both amateurs and professionals, it has become necessary to codify the process that has been followed over time. Such codification is also consistent with the City Charter requirement that agencies whose procedures or requirements affect the general public shall promulgate rules governing such activities. The purpose of these rules is thus to provide clear guidance to the persons and entities engaged in filming activities as to when they need permits, and when they do not.

MOFTB published proposed rules in the City Record on May 25, 2007, held a public hearing regarding the rules on June 28, 2007, and received extensive comments through August 3, 2007. MOFTB then republished the rules for comment on October 30, 2007, received additional extensive comments, and held another public hearing on December 13, 2007.

The adopted rules that are set forth herein include changes made as a result of this second public comment period and public hearing in recognition of the comments that have been received. Of significance is the change with respect to §9-01(b) ("Required and Optional Permits"). MOFTB has considered comments received-including from amateur and professional people involved in a variety of film-related endeavors-and has clarified the definitions set forth in subdivision (b) regarding the use of public space requiring (or not requiring) a permit. In particular, where the rules describe the need for a permit for filming with a handheld device on either a street or sidewalk, the test for whether it is required is whether he/she would "assert exclusive use by any means, including physical or verbal" in various contexts. First is the situation where someone asserts such exclusive use on one or more lanes of a street or walkway of a bridge, and thus needs to obtain a permit. Second, with respect to a sidewalk or other pedestrian passageway, that person will need a permit if he/she asserts such exclusive use of more than one half of that sidewalk/pedestrian passageway. If that sidewalk/pedestrian passageway is narrower than sixteen feet, the person asserting such exclusive use in a way that leaves less than eight feet for other people's pedestrian use must get a permit.

In connection with the "exclusive use" test, the adopted rules also clarify that the activity of "standing on a street, walkway of a bridge, sidewalk, or other pedestrian passageway while using a handheld device and not asserting

exclusive use" is not activity that requires a permit.

Minor changes have been made to other provisions of the rules:

· In §9-02(a) ("Definitions") the definition of equipment has been revised with respect to vehicles that are transporting people who are engaged in filming from within such vehicles, to clarify that such vehicles do not need a permit if they are being operated in compliance with relevant traffic laws and rules.

· In §9-02 (b) ("New Account Project Application and Permit Application . . .") paragraphs (7)(d) and (8) have been revised to provide that one of the reasons a permit can be denied is if the MOFTB concludes, based on specific information, that an applicant is unlikely to comply with the material terms of a requested permit, but that the MOFTB can consider whether special conditions may be placed on the permit, or whether other steps might be taken to address its concerns.

· In §9-02(c) ("Responsibilities of Holders of Required and Optional Permits") paragraph (1) (Rules) has been revised to reiterate that permittees, as well as those engaged in filming that does not require a permit, are subject to all applicable laws and rules; that permittees are subject to the terms of their permits; and that these rules do not authorize activities that are illegal under any law or rule, except for the conduct of permittees that is expressly authorized in the permits issued to them. Paragraph (2) ("Display of permit") is amended to make explicit the requirement that permittees not only have their MOFTB permit in their possession on location, but also must make it available for inspection by an employee of the NYPD or other government agency.

· In §9-02(d) (Modifications to or Suspension of Required or Optional Permit) paragraph (4) has been rewritten to indicate that if there are public health or safety risks found that warrant the temporary suspension of a permit by the MOFTB or NYPD, the provisions already requiring notice and an opportunity to be heard will apply if such suspension lasts longer than six hours.

FOOTNOTES

1

[Footnote 1]: * Chapter added City Record July 14, 2008 §1, eff. Aug. 13, 2008. [See 9-03 Note 1]

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43 RCNY 10-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 10 GREEN BUILDING STANDARDS*

§10-01 Definitions.

(a) Definitions of the terms "capital project", "city agency", "green building standards", "LEED energy and atmosphere credit 1", "LEED green building rating system", and "not less stringent" set forth in subdivision (a) of §224.1 of the Charter shall apply to such terms as they appear in this chapter.1

(b) As used in this chapter, the following terms shall have the following meanings:

Construction cost. The term "construction cost" means capital dollars allocated to construction as defined in the Certificate to Proceed for Construction or Certificate to Proceed for Design and Construction or with respect to entities that are not City agencies, cost allocated to construction of a project intended to achieve a public purpose of the City as such project is described in supporting documentation submitted to the Office of Management and Budget for the issuance of a Certificate to Proceed for Construction or Certificate to Proceed for Design and Construction.

Estimated project cost. The term "estimated project cost" means all costs of a project that is intended to achieve a public purpose of the City, as such project is described in supporting documentation submitted to the Office of Management and Budget for the issuance of a Certificate to Proceed for Construction or a Certificate to Proceed for Design and Construction, including but not limited to the cost of site acquisition, preparation, design and construction.

Floor area. The term "floor area" means all occupied and unoccupied space including, but not limited to, cellars, basements, interior shafts, penthouses and wall thickness. It shall be measured from the outside surface of exterior walls or from the centerline of walls shared by adjacent buildings.

HVAC comfort controls. The term "HVAC comfort controls" means control systems and components, including, but not limited to, building management systems and related devices such as thermostats, actuators, and sensors used to regulate the equipment that provide, either collectively or individually, the processes of heating, ventilating, or air-conditioning to a building or portion of a building.

Phased project. The term "phased project" means a project of a City agency undertaken in phases for which the Office of Management and Budget issues a separate Certificate to Proceed for Construction or Certificate to Proceed for Design and Construction for each phase.

Plumbing fixture. The term "plumbing fixture" means all toilets, urinals, lavatories, showers, and kitchen sinks that form part of a plumbing system.

Plumbing system. The term "plumbing system" means a domestic plumbing system, including all plumbing fixtures and piping and fittings associated with such fixtures.

Rehabilitation work. The term "rehabilitation work" in relation to major systems means the partial or total reconstruction of the system. Such term shall include all construction work on such systems except minor alterations or ordinary repairs as described in chapter 1 of title 27 of the Administrative Code.

Reporting form. The term "reporting form" means the Local Law 86 reporting database, reporting worksheet and reporting instructions.

Substantial reconstruction. The term "substantial reconstruction" means a capital project in which the scope of work includes rehabilitation work in at least two of the three major systems-electrical, HVAC (heating, ventilating and air conditioning) and plumbing-of a building and reconstruction work affects at least fifty percent (50%) of the entire building's floor area. For purposes of this definition, only work that does not constitute minor alterations or ordinary repairs as described in chapter 1 of title 27 of the Administrative Code shall be considered in determining the amount of affected floor area.

HISTORICAL NOTE

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 10 added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. Note: Statement of Basis and Purpose in City Record Apr. 2, 2007:

Local Law No. 86 for the year 2005 amended the New York City Charter by adding a new §224.1 (green building standards). The local law, which became effective on January 1, 2007, provides that the "mayor shall promulgate rules to carry out the provisions of this section."

Executive Order No. 97 of 2006 authorizes the Director of the Office of Environmental Coordination to exercise the powers and duties granted to the Mayor in connection with the implementation of Local Law 86. Such powers and duties include: (1) promulgating rules pursuant to Charter Chapter 45, known as the City Administrative Procedure Act; (2) administering exemptions from the requirements of the law; (3) working with other City agencies to monitor compliance with the law; (4) publishing findings, where necessary, on whether proposed green buildings standards are not less stringent than the applicable Leadership in Energy and

Environmental Design ("LEED") standard; and (5) taking all other actions necessary to implement and administer the law.

The green building standards rules define the selected green building rating system, add clarifying definitions, outline the occupancy groups, project types, and City and City-funded capital projects to which green buildings requirements apply, summarize the required green building standards, set targets for energy cost savings and water use reduction, provide the method for calculating energy cost savings, list thresholds for City agencies to apply for USGBC certification, establish reporting procedures, and set forth the process for applying for a mayoral exemption.

The rules define the terms construction costs, estimated project costs, floor area, HVAC comfort controls, phased project, plumbing fixture, plumbing system, rehabilitation work, reporting form and substantial reconstruction.

The selected green building rating system is defined as New Construction version 2.2, Existing Buildings version 2.0, or Commercial Interiors version 2.0 of the Leadership in Energy and Environmental Design (LEED) building rating system published by the United States Green Building Council, whichever is most appropriate for the project under United States Green Building Council guidelines. The LEED green building rating system shall apply to capital projects subject to subdivision b of §224.1 of the Charter unless an alternative, not less stringent, green building standard has been specifically approved by the Director of the Office of Environmental Coordination as set forth in such section.

Projects in occupancy groups B-1, B-2, C, E, F-1a, F-1b, F-3, F-4, G, H-1 and H-2 having one or more of the following characteristics are subject to green building requirements under §224.1 of the Charter: (i) capital projects for or in new buildings, additions to buildings and the substantial reconstruction of existing buildings, including fit-outs of condominium units or leased space, at an estimated construction cost of two million dollars or more; (ii) installation or replacement of plumbing systems that include the replacement of plumbing fixtures at an estimated construction cost for such plumbing system of $500,000 or more; (iii) installation or replacement of boilers at an estimated construction cost of two million dollars or more; (iv) installation or replacement of lighting systems at an estimated construction cost of one million dollars or more; and (v) installation or replacement of HVAC comfort controls at an estimated construction cost of two million dollars or more.

Capital projects of entities that are not City agencies are not subject to the requirements of §224.1 of the Charter and the rules unless at any time: (1) 50% or more of the estimated project costs are paid out of the City treasury; or (2) the project receives ten million dollars or more of the estimated project cost from the City treasury. When determining whether the City contribution exceeds one of these thresholds, the cost of the entire project, as described in relevant documentation submitted to the Office of Management and Budget, including acquisition and subsequent construction or rehabilitation costs, shall be considered. Entities shall act in good faith in describing their capital projects to the Office of Management and Budget.

The rules clarify that stand-alone parking garages are not covered by the law, as there is no LEED certification that would apply to them at the present time.

For the purposes of determining the required energy cost reduction of capital projects subject to paragraph (2) of subdivision b and subdivision c of §224.1 of the Charter, the methodology prescribed under LEED atmosphere and energy credit 1 of LEED NC v.2.1 or the New York State Energy Conservation Code, whichever is more stringent, shall be utilized.

The requirement for application for USGBC certification pursuant to subdivision k of §224.1 of the Charter does not apply where the agency is utilizing an approved green building rating system other than the LEED green building rating system, nor does it apply to the projects of entities that are not City agencies. City and

non-City agencies responsible for a capital project subject to §224.1 of the Charter must complete the applicable reporting forms for each capital project. The Director of the Office of Environmental Coordination will prepare an Annual Report in accordance with §3 of Local Law 86 for the year 2005.

Pursuant to subdivision f of §224.1 of the Charter, the Mayor may exempt capital projects from one or more of the green building requirements if, in his or her sole discretion, such exemption is necessary in the public interest. Executive Order No. 97 of 2006 delegated this power to administer exemptions to the Director of the Office of Environmental Coordination, which is reflected in the rules. The total value of the exemptions granted may not exceed 20% of the capital dollars in each fiscal year accounting for capital projects subject to each of subdivisions b, c and d of §224.1 of the Charter. Request for exemption, including an explanation of the reason for such request and supporting documentation, shall be submitted to the Director of the Office of Environmental Coordination as soon as is practicable after the City agency becomes aware of the necessity for such exemption.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043(e)(1)(c) of the New York City Charter, that there is a substantial need for the implementation of the rules governing green building standards immediately upon the publication of the final rules in the City Record.

Local Law No. 86 for the year 2005 amended the New York City Charter, in relation to green building standards for certain capital projects. This local law, which became effective on January 1, 2007, requires that the Mayor promulgate rules to carry out the provisions of the law. Executive Order No. 97 of 2006 further provides that the Director of the Office of Environmental Coordination shall promulgate rules pursuant to Chapter 45 of the City Charter, known as the City Administrative Procedure Act.

Immediate implementation of the rules governing green building standards is necessary because Local Law 86 of 2005 has already taken effect and such rules provide needed clarification and guidance to City and non-City agencies affected by the law, regarding the law's applicability to capital projects in which they are engaged or will soon be engaged. The rules define the selected green building rating system, provide clarifying definitions of terms used in the law, provide the method for calculating energy cost savings, establish reporting procedures, and set forth the process for applying for a mayoral exemption. Affected agencies need this information to effectively carry out the law's provisions. Immediate implementation will ensure that affected agencies receive such information in a timely manner and are able to effectively comply with the law.

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43 RCNY 10-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 10 GREEN BUILDING STANDARDS*

§10-02 Selected Green Building Rating System.

Pursuant to paragraph (11) of subdivision (a) of §224.1 of the Charter, on and after June 26, 2009 the "selected green building rating system" is the Leadership in Energy and Environmental Design (LEED) 2009 New Construction and Major Renovations Rating System, LEED 2009 for Commercial Interiors Rating System, LEED 2009 for Schools New Construction and Major Renovations Rating System, LEED 2009 for Core and Shell Development Rating System, and LEED 2009 for Existing Buildings: Operations and Maintenance Rating System published by the United States Green Building Council, whichever is most appropriate for the project under United States Green Building Council guidelines except that for projects that either received funding from the city treasury or received design approval prior to June 26, 2009 or that applied to the United States Green Building Council for certification prior to June 26, 2009, the selected green building rating system may be New Construction version 2.2, Existing Buildings version 2.0, or Commercial Interiors version 2.0 of the Leadership in Energy and Environmental Design (LEED) building rating system published by the United States Green Building Council, whichever is most appropriate for the project under United States Green Building Council guidelines. Except as otherwise provided in subdivision (a) of §10-05 of this chapter for calculation of required reductions in energy cost, the selected green building rating system shall apply to capital projects subject to subdivision (b) of §224.1 of the Charter unless an alternative, not less stringent, green building standard has been specifically approved by the Director of the Office of Environmental Coordination as set forth in such subdivision.

HISTORICAL NOTE

Section amended City Record May 22, 2009 §1, eff. June 21, 2009. [See Note 1]

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

NOTE

1. Statement of Basis and Purpose in City Record May 22, 2009:

Local Law No. 86 for the year 2005 amended the New York City Charter by adding a new §224.1 (green building standards). The local law, which became effective on January 1, 2007, provides that the "mayor shall promulgate rules to carry out the provisions of this section."

Executive Order No. 97 of 2006 authorizes the Director of the Mayor's Office of Environmental Coordination to exercise the powers and duties granted to the Mayor in connection with the implementation of Local Law 86. Such powers and duties include: (1) promulgating rules pursuant to Charter Chapter 45, known as the City Administrative Procedure Act; (2) administering exemptions from the requirements of the law; (3) working with other City agencies to monitor compliance with the law; (4) publishing findings, where necessary, on whether proposed green buildings standards are not less stringent than the applicable Leadership in Energy and Environmental Design ("LEED;rm") standard; and (5) taking all other actions necessary to implement and administer the law.

The green building standards rules previously promulgated define the selected green building rating system as New Construction version 2.2, Existing Buildings version 2.0, or Commercial Interiors version 2.0 of the Leadership in Energy and Environmental Design (LEED;rm) building rating system published by the United States Green Building Council (USGBC), whichever is most appropriate for the project under USGBC guidelines. This amendment to the Rules redefines the selected green building rating system as the Leadership in Energy and Environmental Design (LEED;rm) 2009 green building standards for New Construction, Commercial Interiors, Schools, Core and Shell, and Existing Buildings published by the USGBC. This selected green building rating system shall apply to capital projects subject to subdivision b of §224.1 of the Charter unless an alternative, not less stringent, green building standard has been specifically approved by the Director of the Mayor's Office of Environmental Coordination as previously set forth in such section.

The purpose of updating the selected green building rating system is to allow agencies to continue to apply to the USGBC for certification of their projects in accordance with the provision in the law that requires capital projects to aply to the USGBC for certification that such projects have achieved a Silver or higher rating under the LEED;rm green building rating system or, with respect to projects involving buildings classified in occupancy groups G or H-2, a certified or higher rating under such system. Applying to the USGBC for certification of a rating under each of the LEED;rm 2009 rating systems also allows projects to utilize version 3 of USGBC LEED;rm Online, a tool that will expedite administration of the certification process for each project, thereby reducing costs to the City.

Another purpose for updating to LEED;rm 2009 rating systems is to ensure that the City will continue to utilize green building standards that are recognized by New York State and federal authorities considering the allocation of funds for the upgrade of city projects to meet green building standards.

The LEED;rm 2009 systems also offer a number of improvements that further streamline the certification process, further reducing cost to the City. As the USGBC has stated, the systems consolidate and align the credits and prerequisites from previous LEED;rm systems, so that credits and prerequisites covered by the LEED;rm 2009 green building standards are consistent across project types. Necessary precedent-setting and clarifying information from Credit Interpretation Rulings are also incorporated. In addition, the LEED;rm 2009 credits have different weightings depending on their ability to impact different environmental and human health concerns. With revised credit weightings, the credits award more points for strategies that will have greater positive impacts on environmental issues of greater concern, such as energy efficiency and CO_2 reduction. Specific environmental issues are also prioritized by region in the LEED;rm 2009 rating systems, thereby allowing capital projects to receive more points for addressing environmental issues that are most important to the region in which the City is located.

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RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 10 GREEN BUILDING STANDARDS*

§10-03 Applicability.

(a) Except as otherwise provided in subdivision (b) of this section, capital projects within spaces classified in the occupancy groups listed in paragraph (1) of this subdivision having one or more of the six characteristics listed in paragraph (2) of this subdivision, are subject to this chapter and the green building requirements of §224.1 of the Charter, summarized in §10-04 of this chapter.

(1) **Occupancy Groups.**

B-1 Storage (moderate hazard) F-3 Assembly (museums, etc.)

B-2 Storage (low hazard) F-4 Assembly (restaurants, etc.)

C Mercantile G Education

E Business H-1 Institutional (restrained)

F-1a Assembly (theaters, etc.) H-2 Institutional (incapacitated)

F-1b Assembly (churches, concert halls, etc.)

(2) **Project Characteristics.**

(i) Capital projects for or in new buildings and additions to existing buildings, including fit-outs of condominium

units and leased space. A capital project for or in a new building or an addition to an existing building is covered by subdivision b of §224.1 of the Charter if the construction cost of the capital project is two million dollars or more. With respect to projects involving the fit-out of condominium units and leased space, only space and components under the exclusive control of the tenant or unit owner are subject to the design and construction requirements of such subdivision. With respect to phased projects of City agencies, each phase shall be covered only if the estimated construction cost of such phase is two million dollars or more.

(ii) Capital projects in existing buildings subject to substantial reconstruction, including fit-outs of condominium units and leased space. A capital project in a building in which 50% of the entire building's floor area is subject to reconstruction work is covered by subdivision b of §224.1 of the Charter if the construction cost of the capital project is two million dollars or more and the scope of work of the project includes rehabilitation work in at least two of the three major systems-electrical, HVAC (heating, ventilating and air conditioning) and plumbing-of the building. With respect to the fit-out of condominium units and leased space, only space and components under the exclusive control of the tenant or unit owner are subject to the design and construction requirements of such subdivision. With respect to phased projects of City agencies, each phase shall be covered only if the estimated construction cost of such phase is two million dollars or more.

(iii) Installation or replacement of plumbing systems that includes the installation or replacement of plumbing fixtures. A capital project that includes the installation or replacement of a plumbing system is covered by subdivision d of §224.1 of the Charter if it includes the installation or replacement of plumbing fixtures and the estimated construction cost of the installation or replacement of the plumbing system is $500,000 dollars or more.

(iv) Installation or replacement of boilers. A capital project that is not subject to subdivision b of §224.1 of the Charter involving the installation or replacement of boilers at an estimated construction cost of two million dollars or more is covered by subdivision c (1) of §224.1 of the Charter.

(v) Installation or replacement of lighting systems. A capital project that is not subject to subdivision b of §224.1 of the Charter and that includes the installation or replacement of lighting systems at an estimated construction cost of one million dollars or more is covered by subdivision c (1) of §224.1 of the Charter.

(vi) Installation or replacement of HVAC comfort controls. A capital project that is not subject to subdivision b or paragraph (1) of subdivision c of §224.1 of the Charter and that includes the installation or replacement of HVAC comfort controls at an estimated construction cost for such installation or replacement of two million dollars or more is covered by paragraph (2) of subdivision c of §224.1 of the Charter.

(b) **Entities that are not City agencies.** (1) Notwithstanding subdivision (a) of this section, a capital project of an entity that is not a City agency is not subject to the requirements of §224.1 of the Charter and this chapter unless:

(i) 50% or more of the estimated project cost is paid out of the City treasury; or

(ii) the project receives ten million dollars or more of the estimated project cost from the City treasury.

(2) Entities that are not City agencies and that receive capital dollars from the City treasury shall be on notice that a project, as such project is described in supporting documentation submitted to the Office of Management and Budget for the issuance of a Certificate to Proceed for Construction or Certificate to Proceed for Design and Construction, shall be subject to all applicable provisions of Local Law 86 of 2005 at any time that the City capital contribution to such project equals or exceeds one of the amounts set forth in paragraph 1 of this subdivision. All City funding agreements shall contain notice of this requirement.

(3) When determining whether the City contribution is 50% or more or $10 million or more of the estimated project cost, the cost of the entire project, as described in supporting documentation submitted to the Office of Management and Budget for the issuance of a Certificate to Proceed for Construction or Certificate to Proceed for

Design and Construction, including land or other property acquisition and subsequent construction or rehabilitation costs, shall be considered.

(4) Entities that are not City agencies shall act in good faith in describing capital projects in supporting documentation submitted to the Office of Management and Budget for the issuance of a Certificate to Proceed for Construction or Certificate to Proceed for Design and Construction, and shall not seek to do so in a manner so as to circumvent the requirements of §224.1 of the Charter and this chapter.

(c) **Stand-alone parking garages.** Notwithstanding any inconsistent provision of this chapter, stand-alone parking garages are not covered by §224.1 of the Charter and this chapter.

HISTORICAL NOTE

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 10-04

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 10 GREEN BUILDING STANDARDS*

§10-04 Table Summaries of Green Building Standards.

The following tables summarize the requirements of §224.1 of the Charter as they apply to the capital projects described in §10-03 of this chapter:

(a) **Requirements for capital projects for or in new buildings, additions to existing buildings and capital projects in existing buildings subject to substantial reconstruction:**

Table A

EstimatedConstructionCost Occupancy Group Green BuildingStandard Required Additional EnergyCost ReductionRequired (See§10-05(a) for methodof calculation)

$2M andlower than$12M B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE Business LEED Silver or higher N/A

F-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)H-1 Institutional (restrained)

G EducationH-2 Institutional (incapacitated) LEED-certified orhigher N/A

$12M or more G Education LEED-certified or higher Minimum 20% reduction in energy costs. Additional 5% or 10% (whichever is achievable) reduction required if payback within 7 years.

Greater than $12M and lower than $30M B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE BusinessF-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)H-1 Institutional (restrained) LEED Silver or higher Minimum 20% reduction in energy costs. Additional 5% reduction required if payback within 7 years.

H-2 Institutional (incapacitated) LEED-certified or higher Minimum 20% reduction in energy costs. Additional 5% reduction required if payback within 7 years.

$30M or more B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE BusinessF-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)H-1 Institutional (restrained) LEED Silver or higher Minimum 25% reduction in energy costs. Additional 5% reduction required if payback within 7 years.

H-2 Institutional (incapacitated) LEED-certified or higher Minimum 25% reduction in energy costs. Additional 5% reduction required if payback within 7 years.

(b) **Requirements for capital projects involving the installation or replacement of boilers, lighting systems and HVAC comfort controls:**

Table B

EstimatedConstructionCost Occupancy Group Energy Cost Reduction Required (See §10-05(a) for method of calculation)

Boiler-$2M or more B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE BusinessF-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)G EducationH-1 Institutional (restrained)H-2 Institutional (incapacitated) Minimum 10% reduction in energy costs.

Lighting systems-$1M or more B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE BusinessF-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)G EducationH-1 Institutional (restrained)H-2 Institutional (incapacitated) Minimum 10% reduction in energy costs.

HVAC comfort controls-$2M or more B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE BusinessF-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)G EducationH-1 Institutional (restrained)H-2 Institutional (incapacitated) Minimum 5% reduction in energy costs.

Notes to Table B: (i) Capital projects required to comply with subdivision (a) of this section are not required to also comply with the energy cost reduction requirements summarized in this table. (ii) Capital projects for the installation of boilers at an estimated construction cost of two million dollars or more are not required to also comply with the energy cost reduction requirements summarized in this table for the installation of HVAC comfort controls.

(c) **Requirements for capital projects involving the installation or replacement of plumbing systems that includes the installation or replacement of plumbing fixtures:**

Table C

EstimatedConstructionCost for Plumbing Systems Occupancy Group Water Use Reduction Required (See §10-05(b) for method of calculation)

$500,000 or more B-1 Storage (moderate hazard)B-2 Storage (low hazard)C MercantileE Business Minimum 30%

reduction in water use or 20% if the Department of Buildings rejects an application for the use of waterless urinals.

F-1a Assembly (theaters, etc.)F-1b Assembly (churches, concert halls, etc.)F-3 Assembly (museums, etc.)F-4 Assembly (restaurants, etc.)G EducationH-1 Institutional (restrained)H-2 Institutional (incapacitated)

Note to Table C: Capital projects required to comply with the provisions of subdivision (a) or (b) of this section are also subject to any applicable water use reduction requirements, summarized in this table.

HISTORICAL NOTE

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

Rules of the City of New York

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43 RCNY 10-05

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 10 GREEN BUILDING STANDARDS*

§10-05 Calculation of Required Energy Cost Reduction and Potable Water Use Reduction.

(a) The required energy cost reduction, summarized in the tables set forth in subdivisions (a) and (b) of §10-04 of this chapter, shall be calculated in accordance with the methodology prescribed under LEED Energy and Atmosphere Credit 1 of LEED NC v.2.1 or the New York State Energy Conservation Construction Code, whichever is more stringent.

(b) The required potable water use reduction, summarized in the table set forth in subdivision (c) of §10-04 of this chapter, shall be determined by a methodology not less stringent than that prescribed in the LEED water efficiency credit 3.2 of LEED NC v.2.1 or v.2.2.

HISTORICAL NOTE

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

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***** Current through December 2009 ****

43 RCNY 10-06

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 10 GREEN BUILDING STANDARDS*

§10-06 Procedures.

(a) **Application for USGBC certification.** In accordance with subdivision (k) of §224.1 of the Charter and this chapter, a City agency must apply to the U.S. Green Building Council for certification of projects accounting for at least 50% of the amount of capital dollars allocated for capital projects of such agency unless the agency is utilizing an approved green building rating system other than the LEED green building rating system. This subdivision does not apply to the projects of entities that are not City agencies.

(b) **Reporting requirements.** (1) Each agency responsible for the expenditure of City funds on a capital project, whether it is a project of a City agency or a project of an entity that is not a City agency for which City capital funds will be expended, shall complete and submit applicable reporting forms for each capital project subject to §224.1 of the Charter in accordance with guidelines issued by the Director of the Office of Environmental Coordination.

(2) The Director of the Office of Environmental Coordination will prepare an Annual Report in accordance with §3 of local law 86 for the year 2005.

(c) **Indexation of construction costs to inflation.** The construction costs listed in subdivisions (b), (c), (d) and (g) of §224.1 of the Charter shall be indexed to inflation. The Director of the Office of Environmental Coordination shall publish such costs at the start of each calendar year, beginning January 1, 2008.

HISTORICAL NOTE

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

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***** Current through December 2009 ****

43 RCNY 10-07

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 10 GREEN BUILDING STANDARDS*

§10-07 Exemptions.

(a) The Director of the Office of Environmental Coordination may, on behalf of the Mayor, administer exemptions for capital projects from one or more of the requirements outlined in §10-04 of this chapter if, in his or her sole discretion, such exemption is necessary in the public interest.

(b) The total value of the exemptions granted pursuant to subdivision (a) of this section may not exceed 20% of the capital dollars in each fiscal year accounting for capital projects subject to each of subdivisions (b), (c) and (d) of §224.1 of the Charter.

(c) Requests for exemption, including an explanation of the reason for such request and supporting documentation, shall be submitted to the Director of the Office of Environmental Coordination as soon as is practicable after the agency becomes aware of the necessity for such exemption.

HISTORICAL NOTE

Section added City Record Apr. 2, 2007 §1, eff. Apr. 2, 2007. [See Chapter 10 footnote]

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43 RCNY 11-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 11 ENVIRONMENTAL PREFERABLE PURCHASING PROGRAM*1

SUBCHAPTER 1 GENERAL PROVISIONS

§11-01 Definitions.

(a) For the purposes of this chapter only, the following terms shall have the following meaning:

(1) "Architectural coatings" means any coating to be applied to stationary structures and their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. This term shall not include the following: marine-based paints and coatings; coatings or materials to be applied to metal structures, such as bridges; or coatings or materials labeled and formulated for application in roadway maintenance activities.

(2) "Cadmium plating" means any deposit or coating of metallic cadmium on a metallic surface.

(3) "Carpet" means any fabric used as a floor covering, but such term shall not include artificial turf.

(4) "Carpet adhesive" means any substance used to adhere carpet to a floor by surface attachment, including any latex multi-purpose floor adhesive, pressure-sensitive floor adhesive, vinyl-backed floor adhesive, latex seam adhesive, vinyl-backed seam sealer, cove base adhesive, tackless cushion adhesive and contact adhesive.

(5) "Carpet cushion" means any kind of material placed under carpet to provide softness when it is walked upon.

(6) "Cathode ray tube" means any vacuum tube, typically found in computer monitors, televisions and oscilloscopes, in which a beam of electrons is projected on a phosphorescent screen.

(7) "Clear brushing lacquer" means any clear wood finish, excluding any clear lacquer sanding sealer, formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film, that is intended exclusively for application by brush.

(8) "Coating" means any material that is applied to a surface in order to beautify, protect, or provide a barrier to such surface.

(9) "Director" means the director of citywide environmental purchasing.

(10) "Emission factor" means the mass of a volatile organic compound emitted from a specific unit area, mass or length, as appropriate, of product surface per unit of time.

(11) "Flat paint" means any coating that registers a gloss of less than 15 on an 85-degree meter or less than 5 on a 60-degree meter.

(12) "Floor coating" means any opaque coating that is formulated for or applied to flooring, including but not limited to decks, porches, gymnasiums, and bowling alleys, but does not include any industrial maintenance coating.

(13) "Homogeneous" means of uniform composition throughout, such as plastics, ceramics, glass, metals, alloys, paper, board, resins and coatings.

(14) "Homogeneous material" means a material that cannot be mechanically disjointed into different materials through actions such as unscrewing, cutting, crushing, grinding and abrasive processes.

(15) "Lacquer" means any clear or pigmented wood finish, including clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by evaporation without chemical reaction and to provide a solid, protective film.

(16) "Lamp" means any glass envelope with a gas, coating, or filament that produces visible light when electricity is applied, but such term shall not include automotive light bulbs.

(17) "Lamp life" means the rated hours of output for a fluorescent tube lamp measured using instant-start ballasts at 3 hours per start, except for T5 lamps, which shall be measured using program start ballasts.

(18) "Maximum mercury" means the total weight of mercury in a lamp.

(19) "Medical device" means any equipment for fertilization testing, laboratory equipment for in-vitro diagnosis, medical analyzer, medical freezer, pulmonary ventilator, cardiology, dialysis, radiotherapy or nuclear medicine equipment and any other appliance for detecting, preventing, monitoring, treating, alleviating illness, injury or disability.

(20) "Monitoring and control instrument" means any heating regulator, smoke detector, thermostat, device for measuring, weighing or adjusting any device for use in a household or laboratory and any other monitoring and control instrument used in industrial installations.

(21) "Multi-function device" means any physically integrated device or a combination of functionally integrated components that performs the function of a copier as well as the functions*2 at least one of the following devices: printer, facsimile machine or scanner.

(22) "Nonflat paint" means any coating that registers a gloss of 5 or greater on a 60 degree meter and a gloss of 15 or greater on an 85 degree meter.

(23) "Primer" means any coating applied to a substrate to provide a firm bond between the substrate and subsequent coats.

(24) "Rust preventative/anti-corrosive paint" means any coating formulated exclusively for nonindustrial use to prevent the corrosion of metal surfaces.

(25) "Sanding sealer" means any clear or semi-transparent wood coating formulated for or applied to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings. A sanding sealer that also meets the definition of a lacquer is not included in this category, but it is included in the lacquer category.

(26) "Selected test method" means the American Society for Testing and Materials test method D 5116 (guide for small-scale environmental chamber determinations of organic emissions from indoor materials/products).

(27) "Varnish" means any clear or semi-transparent wood coating, excluding lacquers and shellacs, formulated to dry by chemical reaction on exposure to air. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.

(28) "Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, as specified in part 51.100 of chapter 40 of the United States code of federal regulations.

(b) Reserved.

HISTORICAL NOTE

Section added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 11 added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. Note: Statement of Basis and Purpose in City Record Jan. 29, 2007:

The Director of Citywide Environmental Purchasing is authorized by §6-304 of the Administrative Code of the City of New York to promulgate rules on environmentally preferable purchasing standards.

These rules add a new Chapter 11 of Title 43 of the Rules of the City of New York which provides:

· Standards on the maximum volatile organic compounds in carpeting products and architectural coatings, as required under §6-313 of the Administrative Code;

· Standards on the minimum energy efficiency of and maximum amount of mercury in mercury-added light bulbs, as required under §6-314 of the Administrative Code; and

· Exceptions to §6-312 of the Administrative Code on restrictions to hazardous materials in electronic devices in order to harmonize this section with European standards and to take into account the availability of compliant products in the United States.

2

[Footnote 2]: * "of" missing.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 11-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 11 ENVIRONMENTAL PREFERABLE PURCHASING PROGRAM*1

SUBCHAPTER 1 GENERAL PROVISIONS

§11-02 Applicability, Exemptions and Waivers.

These rules shall apply to products according to §6-302 of the administrative code of the city of New York on the applicability of the environmentally preferable purchasing program contained in chapter three of title six of such code. These rules shall be subject to any exemption or waiver contained in §6-303 of such code or contained in any other provision of such chapter.

HISTORICAL NOTE

Section added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 11 added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. Note: Statement of Basis and Purpose in City Record Jan. 29, 2007:

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· Standards on the maximum volatile organic compounds in carpeting products and architectural coatings, as required under §6-313 of the Administrative Code;

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· Exceptions to §6-312 of the Administrative Code on restrictions to hazardous materials in electronic devices in order to harmonize this section with European standards and to take into account the availability of compliant products in the United States.

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43 RCNY 11-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 11 ENVIRONMENTAL PREFERABLE PURCHASING PROGRAM*1

SUBCHAPTER 2 HAZARDOUS SUBSTANCES

§11-03 Hazardous Content of Electronic Devices.

(a) No new cathode ray tube, product containing a cathode ray tube, liquid crystal display (LCD), plasma screen or other flat panel television or computer monitor or similar video display product, desktop computer or laptop computer, computer peripheral including, but not limited to, a keyboard, mouse and other pointing device, printer, scanner, facsimile machine and card reader, copier, and multi-function device purchased or leased by any agency shall contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers, except that this section shall not apply to:

(1) Any battery, medical device or monitoring and control instrument.

(2) Any display device with a diagonal screen size of four inches or less.

(3) Any electronic device that is functionally or physically a part of any larger piece of equipment designed and intended for use in an industrial, commercial or medical setting, including diagnostic, monitoring or control equipment.

(4) Any remanufactured, refurbished or reused electronic device; any electronic device containing any reused component, assembly or part; and any reused part, component or assembly for the repair of any electronic device.

(5) Any electronic device used in homeland security, police, military or emergency response activities, and/or by

personnel engaged in those activities.

(6) Mercury in the following circumstances:

(i) In compact fluorescent lamps not exceeding 5 mg per lamp;

(ii) In straight fluorescent lamps for general purposes not exceeding:

-halophosphate 10 mg

-triphosphate with normal lifetime 5 mg

-triphosphate with long lifetime 8 mg;

(iii) In straight fluorescent lamps for special purposes; and

(iv) In other lamps not specifically mentioned in this section.

(7) Lead in the following circumstances:

(i) 0.1% by weight in homogeneous materials;

(ii) As a constituent in the glass used in cathode ray tubes, electronic components or fluorescent tubes;

(iii) As an alloying element in steel containing up to 0.35% lead by weight, aluminum containing up to 0.4% lead by weight and as a copper alloy containing up to 4% lead by weight;

(iv) In high melting temperature type solders (i.e. lead-based alloys containing 85% by weight or more lead);

(v) In solders for servers, storage and storage array systems, network infrastructure equipment for switching, signaling, transmission as well as network management for telecommunications;

(vi) In electronic ceramic parts (e.g. piezoelectronic devices);

(vii) In lead-bronze bearing shells and bushes;

(viii) Used in compliant pin connector systems;

(ix) As a coating material for the thermal conduction module c-ring;

(x) In solders consisting of more than two elements for the connection between the pins and the package of microprocessors with a lead content of more than 80% and less than 85% by weight;

(xi) In solders to complete a viable electrical connection between semiconductor die and carrier within integrated circuit flip chip packages;

(xii) In linear incandescent lamps with silicate coated tubes;

(xiii) Lead halide as radiant agent in High Intensity Discharge (HID) lamps used for professional reprography applications;

(xiv) As activator in the fluorescent powder (1% lead by weight or less) of discharge lamps when used as sun tanning lamps containing phosphors such as BSP (BaSi2O5:Pb) as well as when used as speciality lamps for diazoprinting reprography, lithography, insect traps, photochemical and curing processes containing phosphors such as

SMS ((Sr,Ba)2MgSi2O7:Pb);

(xv) With PbBiSn-Hg and PbInSn-Hg in specific compositions as main amalgam and with PbSn-Hg as auxiliary amalgam in very compact Energy Saving Lamps (ESL);

(xvi) Lead oxide in glass used for bonding front and rear substances of flat fluorescent lamps used for Liquid Crystal Displays (LCD);

(xvii) As an impurity in RIG (rare earth iron garnet) Faraday rotators used for fiber-optic communications systems;

(xviii) In finishes of fine pitch components other than connectors with a pitch of 0.65 mm or less with NiFe lead frames and lead in finishes of fine pitch components other than connectors with a pitch of 0.65 mm or less with copper lead frames;

(xix) In solders for the soldering to machined through hole discoidial and planar array ceramic multilayer capacitors;

(xx) Lead oxide in plasma display panels (PDP) and surface conduction electron emitter displays (SED) used in structural elements; notably in the front and rear glass dielectric layer, the bus electrode, the black stripe, the address electrode, the barrier ribs, the seal frit and frit ring as well as in print pastes;

(xxi) Lead oxide in the glass envelope of Black Light Blue (BLB) lamps;

(xxii) Lead alloys as solder for transducers used in high-powered (designated to operate for several hours at acoustic power levels of 125 dB SPL and above) loudspeakers; and

(xxiii) Lead bound in crystal glass as defined in Annex I (Categories 1, 2, 3 and 4) of Council of the European Union Directive 69/493/EEC, as amended.

(8) Cadmium in the following circumstances:

(i) 0.01% by weight in homogeneous materials; and

(ii) Cadmium and its compounds in electrical contacts and cadmium plating.

(9) Lead and cadmium in the following circumstances:

(i) In optical and filter glass; and

(ii) In printing inks for the application of enamels on borosilicate glass.

(10) Hexavalent chromium in the following circumstances:

(i) As an anti-corrosion of the carbon steel cooling system in absorption refrigerators; and

(ii) Until July 1, 2007, in corrosion preventive coatings of unpainted metal sheetings and fasteners used for corrosion protection and Electromagnetic Interference Shielding in equipment falling under category three of European Union Directive 2002/96/EC (IT and telecommunications equipment).

(11) The following materials in the following concentrations:

(i) 0.1% by weight in homogeneous materials for mercury;

(ii) 0.1% by weight in homogeneous materials for hexavalent chromium;

(iii) 0.1% by weight in homogeneous materials for polybrominated biphenyls; and

(iv) 0.1% by weight in homogeneous materials for polybrominated diphenyl ethers.

(12) DecaBDE in polymeric applications.

(b) Reserved.

HISTORICAL NOTE

Section added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 11 added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. Note: Statement of Basis and Purpose in City Record Jan. 29, 2007:

The Director of Citywide Environmental Purchasing is authorized by §6-304 of the Administrative Code of the City of New York to promulgate rules on environmentally preferable purchasing standards.

These rules add a new Chapter 11 of Title 43 of the Rules of the City of New York which provides:

· Standards on the maximum volatile organic compounds in carpeting products and architectural coatings, as required under §6-313 of the Administrative Code;

· Standards on the minimum energy efficiency of and maximum amount of mercury in mercury-added light bulbs, as required under §6-314 of the Administrative Code; and

· Exceptions to §6-312 of the Administrative Code on restrictions to hazardous materials in electronic devices in order to harmonize this section with European standards and to take into account the availability of compliant products in the United States.

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RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 11 ENVIRONMENTAL PREFERABLE PURCHASING PROGRAM*1

SUBCHAPTER 2 HAZARDOUS SUBSTANCES

§11-04 Volatile Organic Compounds and Other Airborne Hazards.

(a) (1) No carpet or carpet adhesive purchased or leased by any agency shall contain any volatile organic compound in any concentration exceeding that specified below, according to the selected test method.

Product Volatile Organic Compound 24-Hour Testing Maximum Emission Factor (mg/m^2·hr) 14-Day Testing Maximum Emission Factor (mg/m^2·hr)

Formaldehyde 50 30

4-Phenylcyclohexene 50 17

Carpet Styrene 410 410

Total Volatile Organic Compounds 500 -

Product Volatile Organic Compound 24-Hour Testing Maximum Emission Factor (mg/m^2·hr) 14-Day Testing Maximum Emission Factor (mg/m^2·hr)

Formaldehyde 50 31

Carpet 2-ethyl-1-hexanol 300 300

Adhesive Total Volatile Organic Compounds 8000 -

(2) No carpet cushion purchased or leased by any agency shall contain any volatile organic compound in any concentration exceeding that specified below, according to the selected test method.

Product Volatile Organic Compound 24-Hour Testing Maximum Emission Factor (EF) ($mg/m^2 \cdot hr$)

Butylated Hydroxytoluene 300

Carpet Formaldehyde 50

Cushion 4-Phenylcyclohexene (4PCH) 50

Total Volatile Organic Compounds 1000

(b) (1) No architectural coating regulated under part 205 of title six of the New York codes, rules and regulations and purchased or leased by any agency shall contain any volatile organic compound in any concentration exceeding that permitted under such part.

(2) None of the following architectural coatings purchased or leased by any agency shall contain any volatile organic compound in any concentration exceeding that specified below, according to the selected test method.

Product Maximum Concentration of Volatile Organic Compounds in Grams per Liter

Sanding Sealers 275

Varnish 275

Floor Coatings 100

Clear Brushing Lacquer 275

Pigmented Lacquers 275

Rust-Preventative/Anti-Corrosive Paint 250

Primer For Flat Paint 100

Primer For Non-Flat Paint 150

Any other architectural coating not listed above but regulated under part 205 of title six of the New York codes, rules and regulations shall not contain any volatile organic compound in any concentration exceeding that permitted under such part.

HISTORICAL NOTE

Section added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 11 added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. Note: Statement of Basis and Purpose in City Record Jan. 29, 2007:

The Director of Citywide Environmental Purchasing is authorized by §6-304 of the Administrative Code of the City of New York to promulgate rules on environmentally preferable purchasing standards.

These rules add a new Chapter 11 of Title 43 of the Rules of the City of New York which provides:

· Standards on the maximum volatile organic compounds in carpeting products and architectural coatings, as required under §6-313 of the Administrative Code;

· Standards on the minimum energy efficiency of and maximum amount of mercury in mercury-added light bulbs, as required under §6-314 of the Administrative Code; and

· Exceptions to §6-312 of the Administrative Code on restrictions to hazardous materials in electronic devices in order to harmonize this section with European standards and to take into account the availability of compliant products in the United States.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 11-05

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 11 ENVIRONMENTAL PREFERABLE PURCHASING PROGRAM*1

SUBCHAPTER 2 HAZARDOUS SUBSTANCES

§11-05 Mercury-Added Lamps.

Any of the following mercury-added lamps purchased or leased by any agency shall comply with the standards specified below:

Fluorescent Tube Lamps

Lamp Characteristics Standard

Lamp Type Length (Inches) Watts Minimum Mean Lumens Minimum Lamp Life (Rated Hours) Maximum Mercury (mg.)

T5 46-48 28 2700 20,000 5

T5 High Output 45-46 54 4600 20,000 5

T8 24 17 1300 24,000 6

T8 36 25 2000 24,000 6

T8 48 32 2800 24,000 6

T8 Instant Start 96 59 5400 18,000 10

T8 High Output 96 86 7300 18,000 10

U-Bent, 6" Spacing Any 32 2325 18,000 8

T8 Rapid Start 60 40 3200 18,000 8

T8 Preheat 18 15 740 7,500 6

T8 Preheat 36 30 1800 7,500 6

T12 24 30 1870 18,000 10

T12 48 34 2520 20,000 10

T12 48 40 2660 20,000 10

T12 Instant Start 48 39 2400 9,000 10

T12 Instant Start 72 56 3900 12,000 10

T12 Instant Start 96 60 4950 12,000 10

T12 Instant Start 96 75 5900 12,000 10

T12 High Output 48 60 3200 15,000 15

T12 High Output 72 85 5500 12,000 25

T12 High Output 96 95 6900 12,000 15

T12 High Output 96 110 8100 12,000 15

T12 U-Bent, 6" Spacing Any 31-32/34 2000 18,000 8

T12 U-Bent, 6" Spacing Any 40 2700 18,000 8

T12 Preheat 18 15 650 9,000 16

T12 Preheat 24 20 1040 9,000 9.5

T9 Circline Any 22 675 12,000 20

T9 Circline Any 32 1300 12,000 20

T9 Circline Any 40 1975 12,000 20

Compact Fluorescent Lamps

Lamp Type Minimum Lamp Life (Rated Hours) Maximum Mercury (mg.)

4-Pin 12,000 5

2-Pin 10,000 5

Twist/Spiral or Loop (Self-Ballasted) 8,000 5

Other Self-Ballasted 6,000 5

HISTORICAL NOTE

Section added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. [See Chapter 11 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 11 added City Record Jan. 29, 2007 §1, eff. Mar. 1, 2007. Note: Statement of Basis and Purpose in City Record Jan. 29, 2007:

The Director of Citywide Environmental Purchasing is authorized by §6-304 of the Administrative Code of the City of New York to promulgate rules on environmentally preferable purchasing standards.

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· Standards on the minimum energy efficiency of and maximum amount of mercury in mercury-added light bulbs, as required under §6-314 of the Administrative Code; and

· Exceptions to §6-312 of the Administrative Code on restrictions to hazardous materials in electronic devices in order to harmonize this section with European standards and to take into account the availability of compliant products in the United States.

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Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 12-01

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-01 Purpose.

The purpose of this chapter is to set forth the procedure for persons to seek waivers from inclusion in the doing business database as described in paragraph (c) of subdivision 18 of section 3-702 of the administrative code.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated

with entities that do business with the city of New York. The doing business database includes the names of persons that have business dealings with the City as defined by the law.

The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 12-02

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-02 Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

(a) Agency. "Agency" shall mean the city of New York or any agency or entity affiliated with the city of New York as defined in paragraph (a) of subdivision 18 of section 3-702 of the administrative code.

(b) Business dealings with the city. "Business dealings with the city" shall have the same meaning as in paragraph (a) of subdivision 18 of section 3-702 of the administrative code.

(c) City chief procurement officer or CCPO. "City chief procurement officer" or "CCPO" shall mean the person to whom the mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agency staff, including the agency chief contracting officers.

(d) Doing business database. "Doing business database" shall mean the database established pursuant to subdivision 20 of section 3-702 of the administrative code.

(e) Person. "Person" shall have the same meaning as in subdivision 20 of section 3-702 of the administrative code.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated with entities that do business with the city of New York. The doing business database includes the names of persons that have business dealings with the City as defined by the law.

The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 12-03

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-03 Applicability.

A waiver may be requested by any person having business dealings with the city in such instances in which such person is providing essential goods, services or construction such as those necessary for security or other essential government operations. Notwithstanding the foregoing, if the transaction is a bid or proposal, a waiver may only be requested if the notice included in the solicitation specifies that a waiver may be applied for.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated with entities that do business with the city of New York. The doing business database includes the names of persons that have business dealings with the City as defined by the law.

The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 12-04

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-04 Procedure for Requesting Waiver.

(a) Any person seeking a waiver from the doing business database in connection with a transaction considered a business dealing with the city shall obtain a waiver application form from the CCPO as described in section 12-07 of this chapter. The waiver applicant shall provide all information that is required of waiver applicants and submit the application to the agency involved with the transaction.

(b) Within ten (10) business days of receipt of the waiver application from the applicant, the agency shall provide all information that is required of agencies and submit the completed application to the CCPO. The CCPO shall notify the waiver applicant when the waiver application is received from the agency.

(c) If the agency fails to complete its portion of the waiver application and/or fails to submit the application to the CCPO within ten (10) business days, the waiver applicant may submit the application directly to the CCPO. The CCPO shall then contact the agency in order to obtain the agency's portion of the waiver application.

(d) Upon receipt of a waiver application pursuant to paragraph (b) or (c) of this section, the CCPO shall forward the application to the campaign finance board. The waiver application may not be acted on by the CCPO for ten (10) days from the date of receipt of the application by the campaign finance board.

(e) Upon action on a waiver application by the CCPO, both the applicant and agency shall be notified. If the waiver is granted, the applicant shall not be required to provide the data covered by the waiver. If the CCPO determines that a waiver should be denied, in full or in part, to an applicant doing business with an independently elected official other than the Mayor (or with an agency under the control of such an official), the CCPO shall notify such agency at

least five (5) days prior to issuance of any such denial determination, and shall consider the agency's written response, if any, before making the final determination.

(f) Determinations by the CCPO are final.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated with entities that do business with the city of New York. The doing business database includes the names of persons that have business dealings with the City as defined by the law.

The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 12-05

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-05 Public Notice of Waiver Approvals.

All approved waivers shall be posted on the websites of both the CCPO and the campaign finance board in locations that are accessible by the public. In the event that an independently elected official (or an agency under the control of such an official), submits a written response for consideration by the CCPO pursuant to section 12-04(e), a copy of such response shall be included in the CCPO's public posting.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated with entities that do business with the city of New York. The doing business database includes the names of persons that have business dealings with the City as defined by the law.

The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

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43 RCNY 12-06

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-06 Scope of Waiver.

Waivers granted under these rules apply only to the requirement that information about covered persons be included in the doing business database.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

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This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated

with entities that do business with the city of New York. The doing business database includes the names of persons that have business dealings with the City as defined by the law.

The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

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43 RCNY 12-07

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-07 Form of Waiver Application.

(a) The CCPO shall create a waiver application form that shall be completed by waiver applicants and agencies. The information required on the form shall include all information required by the CCPO in order to determine whether a waiver should be granted, including but not limited to the information set forth below.

(b) The information required from waiver applicants shall include the following, in addition to any other information that the CCPO shall require:

(i) a description of the information that the waiver applicant seeks to have excluded from the doing business database; and

(ii) an explanation of the applicant's reason or reasons for seeking a waiver from including this information in the doing business database.

(c) The information required from agencies shall include the following, in addition to any other information that the CCPO may require:

(i) whether there is a compelling need to obtain essential goods, services or construction from the person seeking the exemption;

(ii) whether no other reasonable alternative exists in light of such considerations as cost, uniqueness and the critical nature of such goods, services or construction to the accomplishment of the agency's mission;

(iii) the efforts undertaken by the agency to obtain from the waiver applicant the information required to establish the doing business database in accordance with subdivision 20 of section 3-702 of the administrative code; and

(iv) whether the agency believes that it would be in the best interests of the city for the waiver application to be granted.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

This rule is being promulgated in accordance with paragraph (c) of subdivision 18 of section 3-702 of the administrative code, which allows the CCPO to create a process to allow persons required to be listed in the doing business database to seek a waiver from that requirement.

Local Laws 34 and 67 of 2007 amended the administrative code to establish a doing business database in order to enforce limits on contributions to municipal campaigns for elective office from certain people affiliated with entities that do business with the city of New York. The doing business database includes the names of persons that have business dealings with the City as defined by the law.

The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 12-08

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-08 Basis for Waiver.

A waiver may be granted in the following circumstances:

(a) When the CCPO finds that a waiver would be in the best interests of the city. Such a finding shall only be made upon a determination that:

(i) there is a compelling need to obtain such essential goods, services or construction from the person seeking the exemption; and

(ii) no other reasonable alternative exists in light of such considerations as cost, uniqueness and the critical nature of such goods, services or construction to the accomplishment of the agency's mission.

(b) When a person is doing business with the city by virtue of the city's exercise of its powers of eminent domain.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

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The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 12-09

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 12 WAIVERS FROM INCLUSION IN THE DOING BUSINESS DATABASE*1

§12-09 Efforts to Obtain Data.

A waiver shall be granted only after substantial efforts have been made by the CCPO to obtain the information. Such efforts may include any efforts made by the agency at the direction of the CCPO.

HISTORICAL NOTE

Section added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. [See Chapter 12 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 12 added City Record Oct. 27, 2008 §1, eff. Nov. 26, 2008. Note Statement of Basis and Purpose:

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The law allows the creation of a waiver process to allow persons covered by the law that provide essential goods, services or construction such as those necessary for security or other essential government operations to request a waiver from inclusion in the doing business database. The proposed rule lays out the process for applying for such a waiver and the criteria to be used to determine whether such waiver should be granted.

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 1428

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1428 Purpose.

The New York city green property certification program is established to acknowledge the benefits to public health and the environment of remedial action to property in New York city performed by enrollees in the New York city local brownfield cleanup program and in other government remediation programs that achieve equivalent property remediation.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Dec. 2, 2009:

Local Law No. 27 of 2009 amended the New York City Charter to create an Office of Environmental Remediation, led by a director. The office oversees all aspects of the city's brownfield policy and administers the E-designation program, as defined in the zoning resolution.

Local Law No. 27 also amended the Administrative Code of the City of New York to establish the local brownfield cleanup program. In particular, §24-903(h) of the Administrative Code requires the director to promulgate

rules for the issuance of a green property certification to properties that have successfully completed the local brownfield cleanup program or other remedial programs equivalent to the local brownfield cleanup program.

The Office now promulgates the following rules to implement §24-903(h) of the Administrative Code. The rules provide that the Office will issue a green property certification to properties in the City of New York that have obtained a certificate of completion under the local brownfield cleanup program or equivalent remedial programs, including the New York State brownfield cleanup program. The rules set forth the eligibility requirements for the green property certification and an application process for properties in other state or city remediation programs that attain equivalent levels of remediation. The rules also provide that the Office of Environmental Remediation may rescind the certification if it determines that a party has failed to maintain the property in compliance with requirements established under the respective remediation programs.

FOOTNOTES

1

[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 1429

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1429 Definitions.

For the purposes of this subchapter, the following terms shall have the following meanings:

a. Agreement. "Agreement" means (1) for the New York city local brownfield cleanup program, the local brownfield cleanup agreement, (2) for the New York state brownfield cleanup program, an agreement between the enrollee and the New York state department of environmental conservation setting forth the enrollee's remedial obligations, or (3) for any other governmental remediation program, the agreements, stipulations, statutory requirements or regulations that govern management of such program.

b. Green property certification. "Green property certification" means formal recognition by the office that a property in New York city under the New York city local brownfield cleanup program or the New York state brownfield cleanup program, or that a property in New York city that is an equivalent remediation property, has been successfully remediated and that such remediation protects public health and the environment.

c. Enrollee. "Enrollee" means an enrollee in the New York city local brownfield cleanup program, as defined in §43-1402 of this chapter, an applicant in the New York state brownfield cleanup program, pursuant to §27-1405 of the environmental conservation law, or a party who has submitted an application for admission into the New York city green property certification program as an equivalent remediation property.

d. Equivalent remediation property. "Equivalent remediation property" means a property that the office has determined to have met the requirements of §43-1430(a)(2).

e. Office. "Office" means the office of environmental remediation.

f. Recipient. "Recipient" means an enrollee who is eligible for and has been issued green property certification, as well as such enrollee's successors and assigns.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

FOOTNOTES

1

[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 1430

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1430 Eligibility.

a. To be eligible for green property certification, a property shall be located in the city of New York and (1) be admitted to the New York city local brownfield cleanup program or the New York state brownfield cleanup program or (2) be an equivalent remediation property.

1. A property admitted to the New York city local brownfield cleanup program or the New York state brownfield cleanup program shall be eligible if the enrollee has completed the requirements of the local brownfield cleanup agreement or the state brownfield cleanup agreement and received a certificate of completion from such program.

2. A property shall be eligible as an equivalent remediation property if the office determines that:

A. the property has been the subject of a governmental remediation program, including the New York state voluntary cleanup program, the New York state petroleum spills remediation program, and the New York city e-designation hazardous materials program;

B. the enrollee has successfully completed the requirements of such governmental remediation program and received a certificate of completion or equivalent notification of completion from the appropriate city or state office or agency;

C. for a property where residual contamination will remain after the completion of the remediation, the remedial action required pursuant to such governmental remediation program includes establishment of institutional and engineering controls for the property that are equivalent to those required pursuant to the New York city local brownfield cleanup program, as provided in subchapter one of this chapter, including the maintenance of a site management plan to ensure compliance with institutional and engineering controls;

D. the property is in compliance with such requirements for institutional and engineering controls; and

E. the remedial action required pursuant to such governmental remediation program includes the investigation and remediation of the entire property for which a green property certification is sought and addresses all media, including soil, soil vapor and groundwater, to an equivalent extent as required pursuant to the New York city local brownfield cleanup program, as provided in subchapter one of this chapter.

3. The office may determine that one or more sub-parcels of a property are eligible as an equivalent remediation property and that one or more other sub-parcels are not eligible as an equivalent remediation property.

b. Properties that have fulfilled the eligibility requirements for green property certification pursuant to this section prior to the effective date of this section shall be eligible for such certification.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

FOOTNOTES

1

[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 1431

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1431 Applications.

a. No application is required for properties admitted to the New York city local brownfield cleanup program.

b. An application is required for all other properties, including those that have completed the New York state brownfield cleanup program and those for which eligibility under an equivalent remediation property is sought. The office may require information and documentation sufficient for the office to determine whether a property is an equivalent remediation property.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

FOOTNOTES

1

[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 1432

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1432 Records.

a. The office shall maintain a public record of all properties certified under the New York city green property certification program. The office shall provide confirmation of such certification to any member of the public upon request.

b. The office shall provide a certificate and/or make available other symbols of green property certification to the recipient.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

FOOTNOTES

1

[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 1433

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1433 Rescission and termination.

a. The office may rescind a green property certification if it determines that a certified property is no longer in compliance with the agreement, the certificate of completion or equivalent notice of completion, or the site management plan governing institutional and/or engineering controls established within the respective remediation program to which the property is admitted. Compliance for the purpose of this subdivision includes compliance with reporting requirements. The office may reinstate a green property certification if it determines that the recipient has cured the non-compliance.

1. If the office seeks to rescind a green property certification, it shall provide notice to the recipient by certified mail specifying the basis for the office's proposed action and facts in support of that action.

2. The recipient shall have thirty days after the effective date of the notice to cure the non-compliance and submit proof of cure to the office or to seek a hearing.

3. If the recipient does not seek a hearing within such thirty day period, the green property certification shall be rescinded on the thirty-first day.

4. If the office determines that the non-compliance has been cured, the proposed rescission shall be withdrawn.

5. If the office determines that the recipient has not proven that the non-compliance has been cured, the office shall provide notice to the recipient by certified mail. The recipient shall have thirty days after the effective date of the notice to seek a hearing. If the recipient does not seek a hearing within such thirty day period, the green property certification shall be rescinded on the thirty-first day.

6. A hearing pursuant to paragraph two or five of this subdivision shall be held before the director of the office of environmental remediation or his or her designee, or in the director's discretion, by the office of administrative trials and hearings. If the matter is referred to the office of administrative trials and hearings, the hearing officer shall submit findings of fact and a recommended decision to the director. The director or his or her designee shall make a final determination and shall notify the recipient within a reasonable period of time of such determination.

7. For purposes of this subdivision, the effective date of notice shall be two business days after the office mails such notice by certified mail.

b. The recipient of a green property certification may terminate the certification upon written request to the office.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

FOOTNOTES

1

[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

43 RCNY 1434

RULES OF THE CITY OF NEW YORK

Title 43 Mayor

CHAPTER 14 [UNTITLED]

SUBCHAPTER 3 NEW YORK CITY GREEN PROPERTY CERTIFICATION PROGRAM*1

§43-1434 Miscellaneous.

a. **Certification categories.** The office may establish certification categories, including categories that recognize a cleanup for unrestricted use of the property and categories that recognize the use of sustainable methods for remediation and redevelopment of the property.

HISTORICAL NOTE

Section added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

FOOTNOTES

1

[Footnote 1]: * Subchapter 3 added City Record Dec. 2, 2009 §1, eff. Jan. 1, 2010. [See §43-1428 Note 1]

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 1 BOND TRANSFERS

§1-01 Issuance of New Bond.

Upon registration of the transfer of a registered bond, the transferee may be provided with a new bond.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 1 BOND TRANSFERS

§1-02 Form of New Bond.

The new bond shall be of substantially the same form and tenor as the bond presented, except as provided below.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 1 BOND TRANSFERS

§1-03 Signing and Attesting of New Bond.

The new bond shall be signed and attested, either:

(a) by manual or facsimile signature by the appropriate persons in office at the time of delivery to the transferee, or

(b) by facsimile signature of the appropriate persons in office at the time of issuance, provided, however, that in the event the new bond is not authenticated by the fiscal agent, as defined in or designated pursuant to §70.00 of the New York Local Finance Law, as the case may be, it shall be attested by the manual signature of the City Clerk, or the deputy of the City Clerk, in office at the time of delivery to the transferee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 1 BOND TRANSFERS

§1-04 Execution and Authentication of New Bond.

The new bond shall be executed as of the date of the bond presented and shall be authenticated as of the date of delivery of the new bond.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 1 BOND TRANSFERS

§1-05 Destruction of Old Bond.

The bond presented shall be destroyed in such manner as is set forth in any agreement between the City and its fiscal agent and a certificate of destruction shall be prepared as set forth in such agreement.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 1 BOND TRANSFERS

§1-06 Effectiveness.

These Rules and Regulations shall be effective immmediately; provided, however, that neither delivery of new bonds prior to the effective date hereof nor the application of procedures inconsistent with the requirements of these Rules and Regulations shall affect the validity of new bonds.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 2 COMPTROLLER'S LABOR LAW HEARING PRACTICE AND PROCEDURE

§2-01 Applicability.

These Rules shall apply to hearings conducted pursuant to the provisions of New York State Labor Law §§220 et seq. and 230 et seq.

HISTORICAL NOTE

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Under Labor Law section 220(8-d), the City and the union representing prevailing wage employees must negotiate in good faith to reach a collective bargaining agreement. If the parties cannot reach agreement, the union is authorized to file a verified complaint on behalf of the employees with the New York City Comptroller. The Comptroller, after a hearing on those issues, must make a determination of the wages and supplemental benefits due the employees. Under the Comptroller's rules, Labor Law section 220 hearings are conducted by the Office of Administrative Trials and Hearings. **Comptroller v. Office of Labor Relations,** OATH Index No. 616/98 (May 18, 1998), **aff'd sub nom. Local 237 v. Comptroller of the City of New York,** 259 A.D.2d 314, 686 N.Y.S.2d 420 (1st Dep't 1999).

¶ 2. Comptroller brought a proceeding against plumbing contractor pursuant to section 220 of the Labor Law (prevailing wage law) seeking to debar the contractor for intentionally filing false payroll records. The Comptroller was unable to perform an audit so the contractor was not charged with underpaying any workers. The administrative law

judge recommended dismissal of the proceeding, finding petitioner did not prove the contractor filed false records. The Comptroller found the false filing charge was proven, but dismissed the proceeding, finding proof of underpayments to be a jurisdictional requirement for imposing a sanction pursuant to the prevailing wage law. **Office of the Comptroller v. Stivan Plumbing & Heating, Inc.,** OATH Index No. 1980/01 (June 28, 2002), **aff'd on other grounds,** Comptroller's Determination (Oct. 8, 2002).

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 2-02

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 2 COMPTROLLER'S LABOR LAW HEARING PRACTICE AND PROCEDURE

§2-02 Hearing Procedure.

(a) **Commencement of hearing.** A hearing shall be commenced by service of a notice of hearing by the Comptroller's Labor Law Division.

(b) **Notice of hearing.** (1) All persons or corporations affected thereby shall receive a notice of hearing at least five (5) days before the date of the hearing. If service is by mail, five (5) days shall be added to the prescribed period of notice, pursuant to CPLR 2103.

(2) The notice of hearing shall state:

(i) the date, time and place of the hearing;

(ii) the nature or purpose of the hearing and the alleged violations;

(iii) the legal authority under which the hearing is to be held; and

(iv) a reference to the particular sections of the law and rules involved.

(c) **Representation by counsel.** All parties to a hearing shall have the right to be represented by counsel. After a notice of appearance has been filed by counsel with the Office of Administrative Trials and Hearings ("OATH"), all subsequent notices, documents or other communications shall be sent to such counsel and shall be deemed service upon the party.

(d) **Hearing officer.** (1) An administrative law judge assigned to OATH shall conduct hearings pursuant to Labor Law §§220 and 235.

(2) No administrative law judge shall participate in any hearing in which (s)he has an interest.

(3) Any party may challenge an administrative law judge's impartiality by filing an affidavit of his or her personal bias or other grounds for disqualification. The Chief Administrative Law Judge or his or her designee shall issue a written decision to the challenge which shall be reviewable only at the conclusion of the hearing through an Article 78 proceeding.

(4) Whenever an administrative law judge is disqualified or otherwise unable to continue the hearing, the proceeding may be transferred to another administrative law judge designated by the Chief Administrative Law Judge to continue with the case.

(e) **Disclosure.** Except as provided in the Labor Law, there shall be no pre-hearing discovery or depositions.

(f) **Conduct of hearing.** (1) The administrative law judge shall conduct the hearing in such order and manner and with such methods of proof and interrogation, consistent with due process, as (s)he deems best suited to ascertain the substantial rights of the parties. The administrative law judge shall set the time and place for continued hearings.

(2) The administrative law judge shall not be bound by formal rules of evidence or technical or formal rules of procedure. Official notice of facts may be taken only in situations in which judicial notice might be taken.

(3) The administrative law judge is authorized to:

(i) administer oaths and affirmations;

(ii) sign and issue subpoenas for the appearance and relevant testimony of witnesses and the production of relevant documents, as regulated by the CPLR; attorneys for any party shall also have the right to issue subpoenas pursuant to the CPLR;

(iii) examine the parties and their witnesses and require such appearances as deemed necessary;

(iv) hear and decide issues not specifically included in the notice of hearing provided such intention is noted on the record together with the reason therefor and the parties are given the opportunity to request an adjournment for the purpose of adequately preparing to address such issues;

(v) sever or consolidate cases in the interest of justice so long as there is no prejudice to the substantial rights of any party;

(vi) direct such further investigation, inquiry, audit, examination or report as may be necessary to enable the hearing officer to adequately resolve the proceeding and issue findings and recommendations.

(4) All parties shall be accorded the opportunity to present such testimony or introduce such documentary or other evidence as may be pertinent. All parties shall have the right to call, examine and cross-examine parties and witnesses and to present oral and written arguments on the law and facts. The administrative law judge shall fix the time for presenting oral and written argument and shall establish reasonable limits thereon.

(5) The hearing shall be transcribed and a copy of the transcript shall be made available to any party upon request at a reasonable cost.

(g) **Adjournments.** (1) Any party may request an adjournment upon establishing good cause for the adjournment. The administrative law judge shall rule on all requests for adjournments and may on his or her own initiative adjourn

the hearing for good cause.

(2) If a request for an adjournment is not made at least 24 hours before the scheduled hearing, the party making the request shall, as a condition to being granted the adjournment, agree to pay any charges assessed by the stenographic service for late cancellation of the scheduled hearing.

(3) Any adjourned hearing shall be rescheduled by the administrative law judge at the convenience of the other parties. Notice of the rescheduled hearing shall be given to all parties by telephone or mail at least 24 hours before the rescheduled date and time.

(4) Upon an adjournment for failure of one or more parties to appear, the failure of any such party to appear at the rescheduled hearing may result in their being declared in default, in which case the hearing may continue in their absence and the decision rendered based upon the record created without their participation.

HISTORICAL NOTE

Section amended City Record Aug. 13, 1991 eff. Sept. 12, 1991.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. At a prevailing wage enforcement hearing where respondents defaulted, petitioner proved proper service of notice of petition and hearing date by certified and regular mail to address on file with the Secretary of State, as required by statute and this section. **Office of the Comptroller v. Manshul Construction, Inc.,** OATH Index No. 1631/99 (May 21, 1999), **modified on penalty,** Comptroller's Determination (June 14, 1999).

¶ 2. Default hearing held where petitioner proved proper service of notice of petition and hearing date, as required by paragraph (b) of this section, by certified and regular mail to last address of record and to address on file with Secretary of State. **Office of the Comptroller v. A & R Paterno Construction, Inc.,** OATH Index No. 2248/00 (Oct. 19, 2000).

¶ 3. Defaulting contractor was found to have failed to pay prevailing wages and supplemental benefits to four roofers and to have submitted falsified certified payroll reports. Willful violation and falsification of records merited a 25% civil penalty. **Office of the Comptroller v. Kornas Construction Corp.,** OATH Index No. 628/01 (Jan. 4, 2001).

¶ 4. A bankruptcy order of settlement did not bar adjudication of claims pursuant to the Labor Law or the issuance of penalties or willfulness findings under the Labor Law, even though two of the claims were discharged by a bankruptcy order of settlement. A worker's complaint and detailed diary notes of his work assignments were sufficient to establish that the worker was employed on a City contract. Violations were willful under section 220(3) of the Labor Law because records were intentionally fabricated to conceal contractor's failure to pay the prevailing wage to its cleaners. **Office of the Comptroller v. Navarro Special Cleaning Services,** OATH Index No. 2247/00 (Jan. 30, 2001).

¶ 5. Section 2-02(e) of the Comptroller's rules (44 RCNY §2-02(e)) prohibits discovery "except as provided in the Labor Law". Request for documents and subpoena was denied where the ALJ found that the items sought were not relevant to the proceeding and that the request was untimely made. **Comptroller v. Office of Labor Relations**, OATH Index No. 254/05 (Feb. 28, 2005).

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 2-03

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 2 COMPTROLLER'S LABOR LAW HEARING PRACTICE AND PROCEDURE

§2-03 Decision.

(a) Within a reasonable time after the conclusion of the hearings, the administrative law judge shall issue a written report, including proposed findings of fact and conclusions of law, and recommendations as to decisions, determinations and orders which shall be forwarded to the Comptroller or his or her designee for consideration; a copy shall also be mailed to each party.

(b) The findings of fact shall be based exclusively upon the record as a whole, including facts of which official notice has been taken.

(c) The Comptroller or his or her designee may adopt, reject or modify the administrative law judge's findings and recommendation when issuing a decision, order and determination; such decision, order and determination shall be based exclusively upon the record as a whole, including facts of which official notice has been taken.

(d) An administrative law judge may, on his or her own initiative or on application duly made, revise the findings and decision, order and determination for the purpose of correcting clerical, arithmetical or typographical errors.

(e) Copies of decisions, orders and determinations and revisions thereof shall be filed in the Comptroller's Labor Law Division and shall be mailed to every party.

HISTORICAL NOTE

Section amended City Record Aug. 13, 1991 eff. Sept. 12, 1991.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 2-04

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 2 COMPTROLLER'S LABOR LAW HEARING PRACTICE AND PROCEDURE

§2-04 Appeals.

There shall be no right to an administrative appeal of any decision, order and determination. Any review thereof is restricted to that provided by statute.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 2-05

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 2 COMPTROLLER'S LABOR LAW HEARING PRACTICE AND PROCEDURE

§2-05 Reopening.

(a) Upon written application of a party, the administrative law judge may reopen the proceeding.

(b) An application for reopening must be served upon the administrative law judge and all other parties within 30 days of the receipt of the order and determination by the moving party.

(c) Any party may file written opposition to an application for reopening by serving a copy upon the administrative law judge and all other parties within 14 days of receipt of the application.

(d) An application for reopening must contain the following:

(1) a statement that the decision, order and determination was issued after the party had defaulted and a demonstration that good cause existed for the default; or

(2) a demonstration that new and additional facts occurred or were discovered after issuance of the decision, order and determination; or

(3) a determination that in issuing the decision, order and determination, the administrative law judge, Comptroller or his or her designee overlooked or misapprehended some controlling fact or legal authority.

(e) The administrative law judge, on his or her own initiative, or at the direction of the Comptroller or his or her designee, may reopen the hearing when it is deemed appropriate in order to arrive at an equitable determination.

HISTORICAL NOTE

Section amended City Record Aug. 13, 1991 eff. Sept. 12, 1991.

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-01 Final Audit Report.

(a) After the receipt of the hospital's objections to the draft audit report, or if no objections have been received within 30 days after mailing the draft audit report to the hospital, a final report shall be issued. In preparing the final audit report, the Bureau of Financial Audit (BFA) of the New York City Comptroller's Office (Comptroller) shall consider the objections, any supporting documents and materials submitted therewith, the draft audit report, and any additional material which may become available.

(b) The final audit report and/or the cover letter accompanying it shall clearly advise the hospital:

(1) of the nature and amount of the audit findings, the basis for the action and the statutory, regulatory or other legal basis therefore;

(2) of the action which will be taken;

(3) that the withholding action will occur 35 days from the date of the final audit report unless an appeal is taken;

(4) of the right to appeal the administrative action by requesting a hearing;

(5) the name, title, address and telephone number of the BFA's Director whom the hospital must contact to request a hearing;

(6) that a request for a hearing must be made in writing and postmarked or delivered within 30 days of receipt of the final audit report which shall be presumed to be five days from the date of mailing; and

(7) that the request may not address issues regarding the:

(i) statistical sampling and extrapolation methodologies used to determine the disallowances;

(ii) disallowances where patient account records to substantiate billings were missing at the time of the audit; or

(iii) any issue that could have been raised, but was not, in a written response to the draft report.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-02 Request for Hearing.

(a) A hospital has the right to an administrative hearing to challenge the final audit report and may request such a hearing within 30 days of receipt of the final audit report which shall be presumed to be five days from the date of mailing.

(b) The request for hearing shall be in writing and shall be delivered or mailed to the BFA's Director, who will forward such request to the New York City Office of Administrative Trials and Hearings (OATH) for scheduling on the calendar. It shall be accompanied by a copy of the final audit report which is to be the subject of the hearing and shall include the following additional information:

(1) the specific item or items to which objections are made;

(2) the factual basis for the objections; and

(3) any legal authority for the objections.

(c) When a timely request for a hearing has been made, a hearing shall be held, except when the request has been withdrawn or abandoned by the hospital.

(1) A request for a hearing shall be considered withdrawn only upon receipt of a written statement or by the making of a statement on the record at the hearing by the hospital or by the hospital's attorney or representative.

(2) A request for a hearing shall be considered abandoned if, without good cause, neither the hospital nor the

hospital's attorney or representative appears at the time and place designated for the hearing.

(d) Upon receipt of a request for a hearing, the BFA's Director shall:

(1) have OATH designate an Administrative Law Judge to hear, report and recommend; and establish a time and place for such hearing;

(2) notify the hospital of the time and place of such hearing at least 15 days before the commencement of the hearing;

(3) include in a notice of hearing a statement:

(i) of those issues which are controverted and to be determined at the hearing;

(ii) of the legal authority and jurisdiction under which the hearing is to be held, and a reference to the particular sections of the law and rules involved;

(iii) of the hospital's right to be represented by an attorney or other representative, to cross-examination, to present evidence and produce witnesses on the hospital's own behalf; and

(iv) that the burden of proof at the hearing shall be on the hospital.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-03 The Hearing Officer.

The hearing shall be conducted by an Administrative Law Judge employed by OATH for that purpose. The judge shall have all the powers conferred by law to administer oaths, issue subpoenas, require the attendance of witnesses and production of records, rule upon requests for adjournment, rule upon evidentiary matters and to otherwise regulate the hearing, observe requirements of due process and effectuate the purposes and provisions of applicable law.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-04 Authorization of Representative.

An individual, other than an attorney, representing the hospital, shall have written authorization signed by an officer or director of the hospital.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-05 Conduct of Hearings; Rights of Hospital.

(a) The judge shall preside over the hearing, make all procedural rulings, and make a statement on the record describing the nature of the proceedings, the issues, and the manner in which the hearing will be conducted.

(b) The issues and documentation presented at the hearing shall be limited to issues relating to determinations made in the final audit report. A hospital may not raise issues regarding the:

(1) statistical sampling and extrapolation methodologies used to determine the disallowances;

(2) disallowances where patient account records to substantiate billings were missing at the time of the audit; or

(3) any issue that could have been raised, but was not, in a written response to the draft report.

(c) The rules of evidence observed by a court of law need not apply.

(d) Computer-generated documents prepared by the New York State Department of Social Services (NYSDSS) or its fiscal agent to show the nature and amount of payments made under the Medicaid program shall be presumed, in the absence of evidence to the contrary, to constitute an accurate reflection of NYSDSS' records as to the amount and type of payment made to a hospital as well as the basis for such payment.

(e) An extrapolation based upon a Comptroller's Office audit utilizing a valid statistical sampling method shall be presumed, in the absence of evidence to the contrary, to be accurate.

(f) An audit report of the Comptroller's Office shall be presumed to be correct and the burden of proof shall be upon the hospital to show by a preponderance of the evidence that any item of such report is incorrect.

(g) All testimony shall be given under oath or affirmation administered by the judge.

(h) The hospital shall be entitled to be represented, to have witnesses give testimony and to otherwise present relevant and material evidence on the hospital's behalf, to cross-examine witnesses and to examine any document or other item offered into evidence.

(i) A typed or recorded copy of the record of the hearing will be prepared by OATH; a copy shall be provided upon request for a reasonable cost.

(j) At the discretion of the judge, the hearing may be adjourned for good cause upon the request of either party or upon the judge's own motion.

(k) The hearing shall be conducted in conformity with procedural requirements of applicable law and the rules of procedure adopted by OATH which are not inconsistent with these rules.

(l) After the conclusion of the hearing, the presiding Administrative Law Judge will prepare a report and recommendation.

(m) The report will summarize the evidence presented and contain an analysis of the legal and factual issues, with recommended findings of fact and recommended dis- position.

(n) The report will be sent to the Comptroller for a final decision.

(o) A copy of the report will also be delivered or mailed to the hospital.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-06 Decision After Hearing.

(a) The hearing decision shall be made and issued by the Comptroller and shall be based exclusively on the record and transcript of the hearing. In reaching a decision, the Comptroller may review the memoranda of law of the parties, if any. The Comptroller shall not be bound by the judge's recommendation but may adopt, reject or modify such recommendation, in whole or in part, as may be appropriate. The decision shall be in writing and shall state reasons for the determinations and, when appropriate, direct specific action.

(b) A copy of such decision shall be mailed by the Comptroller to the hospital and the hospital's attorney or representative, if any, and to NYSDSS.

(c) In the event that a decision is adverse to the hospital, in whole or in part, the hospital has the right to judicial review in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 3-07

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 3 HOSPITAL AUDITS

§3-07 Recoupment of Overpayments.

Upon determination that overpayments have been made, the BFA shall transmit a "Withholding Request for Provider Recoupment Initiated by the Local District" to NYSDSS. NYSDSS' fiscal agent shall recover overpayments by withholding against the hospital's current or future payments on claims submitted or a percentage of payments otherwise payable on such claims, at the option of NYSDSS. Such withholding may be made at any time after the issuance of a decision after hearing or, if a hearing has not been requested in accordance with this chapter, at any time after expiration of the time period allowed (30 days) for the making of such request.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 4 RULES FOR PETITIONING

§4-01 Scope.

These Rules and Regulations shall govern the procedures by which the public may submit petitions for rulemaking to the Comptroller pursuant to §1043(f) of the New York City Charter (City Administrative Procedures Act).

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 4 RULES FOR PETITIONING

§4-02 Definitions.

Person. "Person" shall mean an individual, partnership, corporation or other legal entity, and any individual or entity acting in a fiduciary or representative capacity.

Petition. "Petition" shall mean a request or application for any agency to adopt a rule.

Petitioner. "Petitioner" shall mean the person who files a petition.

Rule. "Rule" shall have the meaning set forth in §1041(5) of the City Administrative Procedure Act and shall mean generally any statement or communication of general applicability that

(i) implements or applies law or policy or

(ii) prescribes the procedural requirements of an agency, including an amendment, suspension, or repeal of any such statement or communication.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 4 RULES FOR PETITIONING

§4-03 Procedures for Submitting Petitions; Responses to Petitions.

(a) Any person may petition the Comptroller to consider the adoption of a rule. The petition must contain the following information:

(1) The rule to be considered, with proposed language for adoption;

(2) A statement of the Comptroller's authority to promulgate the rule and its purpose; (3) Petitioner's argument(s) in support of adoption of the rule;

(4) The period of time the rule should be in effect;

(5) The name, address and telephone number of the petitioner or his or her authorized representative;

(6) The signature of petitioner or his or her representative.

(b) Any change in the information provided pursuant §4-03(a)(5) must be communicated promptly in writing to the Comptroller.

(c) All petitions should be typewritten, if possible, but handwritten petitions will be accepted, provided they are legible.

(d) The petition shall be filed in duplicate on plain white paper.

(e) Petitions shall be mailed or delivered to the agency's Deputy General Counsel, Sue Ellen Dodell, at 1 Centre Street, Room 518, New York, NY 10007.

(f) Upon receipt of a petition submitted in the proper form, the Deputy General Counsel will stamp the petition with the date it was received and will assign the petition a number.

(g) Within sixty days from the date the petition was received by the Comptroller, the Comptroller shall either deny such petition in a written statement containing the reasons for denial, or shall state in writing the Comptroller's intention to grant the petition and to initiate rulemaking by a specified date. In proceeding with such rulemaking, the Comptroller shall not be bound by the language proposed by petitioner, but may amend or modify such proposed language at the Comptroller's discretion. The Comptroller's decision to grant or deny a petition is final.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 4 RULES FOR PETITIONING

§4-04 Public Notice; Promulgation of Rules and Regulations.

(a) The Comptroller shall publicize by posting in a conspicuous location:

(1) these procedures for submitting petitions for rulemaking and

(2) the name, title, business address and telephone number of the officer designated to receive petitions, who shall be Sue Ellen Dodell, Deputy General Counsel, 1 Centre Street, Room 518, New York, NY 10007, (212) 669-7778.

(b) The Comptroller shall forthwith submit for publication in The City Record notice of the name, title, business address and telephone number of the officer designated to receive petitions. Notice of any change in the above information shall be published as soon as practicable in The City Record. Such notice shall not constitute a rule as defined in the City Charter, §1041, subd. 5.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

44 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 44 Comptroller

CHAPTER 4 RULES FOR PETITIONING

§4-05 Severability.

If any provision of these Rules and Regulations or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of these Rules and Regulations or the application thereof to other persons and circumstances.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 1 PRESIDENT OF THE BOROUGH OF THE BRONX

SUBCHAPTER A HOUSE NUMBERS

§1-01 Procedure for Issuance of House Numbers.

The architect, builder, owner or his or her agent must provide to the office of the Borough President, Bureau of Topography, a completed Department of Buildings "New Buildings Application" form which includes a description and the location of the property and building involved, the signature of the owner and the signature and seal of the registered architect, and a diagram indicating the filed grades and their relationship to the rest of the block, including street corners. The form certified, along with a street status report, which reflect ownership of the street, and the official house number is the issued.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 1 PRESIDENT OF THE BOROUGH OF THE BRONX

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§1-02 Definitions.

Whenever used in this subchapter, the following terms shall be deemed to mean and include:

(a) "Alteration Map" means a map which shows proposed changes to the City Map and is prepared by the Topographical Bureau or a qualified consultant who is a licensed professional engineer or registered architect.

(b) "Alteration Map Review" mean the review, processing and approval by the Topographical Bureau of an Alteration Map prepared by a person other than the staff of the Topographical Bureau.

(c) "Alteration Map Preparation" means preparation and processing of Alteration Maps by the Bronx Borough President's Topographical staff from inception through final review.

(d) "Street Address Application" means the filing of an application or a request with the Topographical Bureau requesting:

(i) the issuance of a new street address for an existing or proposed building (or portion thereof); or

(ii) the review and confirmation of whether a specific street address is correct for an existing or proposed building (or a portion thereof).

(e) "Street Status Review and Report" means work performed by the Topographical Bureau in response to an application or request that it research, review and advise as to the legal dimensions and ownership of a portion of a street (including the sidewalk) as indicated in the records of the Topographical Bureau and other relevant information.

(f) "Topographical Bureau" means the Topographical Bureau maintained by the Office of the President of the Borough of The Bronx.

HISTORICAL NOTE

Section added City Record Apr. 29, 2004 eff. May 29, 2004. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record Apr. 29, 2004 eff. May 29, 2004. Note: Statement of Basis and Purpose. The Amendment to the Borough President's Rules creates a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. The Borough President is responsible for maintaining the official City Map for the borough, for assigning street addresses to buildings located in the borough, and for related services which include maintaining various records, maps, surveys, topographical data, the preparation and review of alteration maps, damage and acquisition maps, and other street maps. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public and to comply with Section 82 of the Charter, the Office of the Bronx Borough President will charge the fees set forth in this rule.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 1 PRESIDENT OF THE BOROUGH OF THE BRONX

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§1-03 Schedule of Fees, Charges and Limitations.

(a) The fees for the processing of the below listed applications and requests submitted to the Topographical Bureau shall be as follows:

Fee

(1) street address application $100.00 per street number

(2) street status review and report $250.00 per block face

(3) alteration map review $3,000.00 per map sheet

(4) alteration map preparation $4,500 for up to two sheets and$1,500 for each additional sheet, not toexceed a total charge of $9,000.

HISTORICAL NOTE

Section added City Record Apr. 29, 2004 eff. May 29, 2004. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record Apr. 29, 2004 eff. May 29, 2004. Note: Statement of Basis and Purpose. The Amendment to the Borough President's Rules creates a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. The Borough President is responsible for maintaining the official City Map for the borough, for assigning street addresses to buildings located in the borough, and for related services which include maintaining various records, maps, surveys, topographical data, the preparation and review of alteration maps, damage and acquisition maps, and other street maps. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public and to comply with Section 82 of the Charter, the Office of the Bronx Borough President will charge the fees set forth in this rule.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 1-04

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 1 PRESIDENT OF THE BOROUGH OF THE BRONX

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§1-04 Payment Method.

Except as specifically provided in this section, every application for the preparation of an alteration map, review of an alteration map, issuance of a street address or review and report of street status made after July 1, 2004 shall include a non-returnable fee which shall be paid by certified check or money order made payable to the New York City Department of Finance. Fees shall be paid when the application is filed, and no application will be processed by the Borough President's Office until the fee is paid in full.

HISTORICAL NOTE

Section added City Record Apr. 29, 2004 eff. May 29, 2004. [See Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record Apr. 29, 2004 eff. May 29, 2004. Note: Statement of Basis and Purpose. The Amendment to the Borough President's Rules creates a new Fee Schedule for providing

certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. The Borough President is responsible for maintaining the official City Map for the borough, for assigning street addresses to buildings located in the borough, and for related services which include maintaining various records, maps, surveys, topographical data, the preparation and review of alteration maps, damage and acquisition maps, and other street maps. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public and to comply with Section 82 of the Charter, the Office of the Bronx Borough President will charge the fees set forth in this rule.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER A HOUSE NUMBERS

§2-01 Procedure for Issuance of House Numbers.

The following Regulations are established pursuant to Chapter 5, §3-505 of the Administrative Code of the City of New York.

(a) All house numbers shall be at least five (5) inches in height and may be metal, metal foil, glass, plastic, wood, paint, or other suitable material; where such numbers are displayed in paint, they shall bear an even and uniform brush stroke at least 5/8" in width.

(b) All house numbers shall be located at one of the following locations:

(1) on the front wall of the building within two (2) feet of the knob side of the door and not less than four (4) feet from the bottom thereof nor at a height greater than the height of the door; or

(2) on the front wall of the building above the door at the centerline of the opening and within two (2) feet of the top of the door; or

(3) such other locations as may be authorized by the Office of the Borough President. For the purposes of these Regulations, the term "front wall" shall mean the side of the building facing the street on which house numbers have been assigned.

(c) All house numbers shall be plainly legible at all times from the sidewalk in front of the building.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 2-11

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER B RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§2-11 Applicability.

These Rules apply to the public hearings conducted pursuant to the New York City Charter or other applicable law or rule by the President of the Borough of Brooklyn ("Borough President") or his or her designee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 2-12

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER B RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§2-12 Notice of Public Hearing and Agenda.

Notice of the date, day, time, place and subject of a public hearing shall be by publication in the City Record for the five days of publication immediately preceding and including the date of the public hearing. An agenda for the public hearing shall be available at the public hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 2-13

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER B RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§2-13 Conduct of Public Hearings.

(a) **Locations.** Public hearings shall be held in the Community Room at the Brooklyn Borough Hall, 209 Joralemon Street, Brooklyn, New York, or such other place as may be determined by the Borough President and listed in the notice.

(b) **General Character.** Public hearings shall be legislative type hearings, without sworn testimony or strict rules of evidence. The Borough President or his or her designee shall preside and only he or she may question a speaker.

(c) **Testimony.** Persons seeking to testify on any matter on the agenda shall request an opportunity to testify by completing the form provided by the Borough President at the hearing. Persons testifying shall be called in the order determined by the Borough President. Testimony generally is limited to three minutes, unless extended by the Borough President.

(d) **Written Comments.** Any person may submit a written statement or comments on any matter on the agenda. Written statements or comments shall be submitted to the Borough President at the public hearing or by two days after the hearing to receive full consideration.

(e) **Record.** The record of a public hearing shall consist of a tape recording, or when determined by the Borough President, a stenographic transcript of the hearing, a list of the names of the persons who testified and their affiliation, if

any, and any timely submitted written statements or comments. The record shall be available for public inspection at the Brooklyn Borough Hall, Room 230, within sixty days after the hearing. A copy of a transcript or any pages requested is available at a fee of twenty-five cents a page, plus mailing costs, payable in advance.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 2-14

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER B RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§2-14 Borough President's Actions.

The Borough President may adjourn, continue or close any public hearing. The Borough President may make no recommendation, or may approve, approve with modification, disapprove or conditionally disapprove any matter on the agenda of a public hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

45 RCNY 2-15

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER C TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§2-15 Definitions.

Whenever used in this subchapter, the following terms shall be deemed to mean and include:

(a) "Alteration Map" means a map which shows proposed changes to a city map and is prepared by the Topographical Bureau or a qualified consultant who is a licensed professional engineer or registered architect.

(b) "Alteration Map Review" means the review, processing and approval by the Topographical Bureau of an Alteration Map prepared by a person other than the staff of the Topographical Bureau.

(c) "Street number application" means the filing of an application or a request with the Topographical Bureau requesting;

(i) the issuance of a new street number for an existing or proposed building (or a portion thereof); or

(ii) the review and confirmation of whether a specific street number is correct for an existing or proposed building (or a portion thereof).

(d) "Street Status Review and Report" means work performed by the Topographical Bureau in response to an application or request that it research, review and advise as to the legal dimensions and ownership of a portion of a street (including the sidewalk) as indicated in the records of the Topographical Bureau and other relevant information.

(e) "Topographical Bureau" means the topographical bureau maintained by the Office of the President of the Borough of Brooklyn.

(f) "Vanity Address Assignment" means an address that is not a sequential house number, but instead refers to a geographical destination, e.g. One Metro Tech. or a new designation not including a street name, e.g. Bartel Pritchard Square.

(g) "Vanity Address Application" means the filing of an application or a request with the Topographical Bureau requesting:

(i) the review of the appropriateness of a proposed address that is not a sequential house number, but instead refers to a geographical destination, e.g. One Metro Tech. or a new designation not including a street name, e.g. Bartel Pritchard Square; and

(ii) issuance of a Vanity Address Assignment for an existing or proposed building (or a portion thereof);

HISTORICAL NOTE

Section amended City Record Dec. 16, 2004 eff. Jan. 15, 2005. [See T45 Chapter 2 Subchapter C

footnote]

Section added City Record May 30, 2003 eff. June 29, 2003. [See T45 Chapter 2 Subchapter C footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C amended City Record Dec. 16, 2004 eff. Jan. 15, 2005. Note: Statement of Basis and Purpose. The Topographical Bureau of the Office of the Borough President of Brooklyn is responsible for maintaining the official City Map for the borough and for assigning street addresses and vanity addresses to buildings located in the borough. This responsibility includes detailed review and analysis of drawings, maps, surveys, and other information maintained by the Topographical Bureau, other City, State, and Federal agencies and submitted by applicants. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public, the Office of the Brooklyn Borough President proposes to charge the fees set forth in this rule. Subchapter C added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose. The Topographical Bureau of the Office of the Borough President of Brooklyn is responsible for maintaining the official City Map for the borough and for assigning street numbers to buildings located in the borough. This responsibility includes detailed review and analysis of drawings, maps, surveys and other information maintained by the Topographical Bureau and submitted by applicants. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public, the Office of the Brooklyn Borough President will charge the fees set forth in this rule.

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Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 2-16

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 2 PRESIDENT OF THE BOROUGH OF BROOKLYN

SUBCHAPTER C TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§2-16 Schedule of Fees, Charges and Limitations.

(a) The fees for the processing of the below listed applications and requests submitted to the Topographical Bureau shall be as follows:

(1) street number application $100.00 per street number

(2) street status review and report $250.00 per block face

(3) alteration map review $3,000.00 per map (A separate additional fee of $3,000 is required if a proposed alteration of the City Map will also require the discontinuance and closing of a portion of a street.)

(4) vanity address application $5,500.00

HISTORICAL NOTE

Section amended City Record Dec. 16, 2004 eff. Jan. 15, 2005. [See T45 Chapter 2 Subchapter C footnote]

Section added City Record May 30, 2003 eff. June 29, 2003. [See T45 Chapter 2 Subchapter C footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter C amended City Record Dec. 16, 2004 eff. Jan. 15, 2005. Note: Statement of Basis and Purpose. The Topographical Bureau of the Office of the Borough President of Brooklyn is responsible for maintaining the official City Map for the borough and for assigning street addresses and vanity addresses to buildings located in the borough. This responsibility includes detailed review and analysis of drawings, maps, surveys, and other information maintained by the Topographical Bureau, other City, State, and Federal agencies and submitted by applicants. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public, the Office of the Brooklyn Borough President proposes to charge the fees set forth in this rule. Subchapter C added City Record May 30, 2003 eff. June 29, 2003. Note: Statement of Basis and Purpose. The Topographical Bureau of the Office of the Borough President of Brooklyn is responsible for maintaining the official City Map for the borough and for assigning street numbers to buildings located in the borough. This responsibility includes detailed review and analysis of drawings, maps, surveys and other information maintained by the Topographical Bureau and submitted by applicants. These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to members of the public, the Office of the Brooklyn Borough President will charge the fees set forth in this rule.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 3 PRESIDENT OF THE BOROUGH OF MANHATTAN

SUBCHAPTER A HOUSE NUMBERS

§3-01 House Number Specifications.

(a) **Power of the Borough President.** The Borough President is empowered to establish and enforce rules and regulations relating to the size, form, visibility and location of house numbers.

(b) **Specifications.** All house numbers shall be at least 5 inches in height and may be metal, metal foil, glass, plastic, wood or paint in composition; where such house numbers are displayed in paint, such numbers shall bear an even and uniform 5/8" stroke.

(c) **Location.** All house numbers shall be located at either of the following locations:

(1) On the front wall of the building, within two (2) feet of the knob side of the door and not less than four (4) feet from the bottom thereof nor at a height greater than the height of the door; or

(2) On the front wall of the building above the door, at the center line of the opening and within two (2) feet of the height of the door. All transoms shall be considered part of the building wall for purposes of these Rules and Regulations; or

(3) Where an entrance door is recessed in excess of three (3) feet from the building line, the house numbers shall be placed on the front wall of the building nearest the front entrance in accordance with either subdivision (b) or

paragraph (2) above; and

(4) Such other locations on the front of the building as may be approved by the Office of the Borough President.

(5) The term "front" shall mean the side of the building which faces the street on which numbers have been assigned.

(d) **Responsibility for display and illumination.** All owners, agents, lessees or other persons in charge of buildings to which house numbers have been assigned by the Office of the Borough President shall be responsible for the conspicuous display of such numbers, so that they may at all times be plainly legible from the sidewalk in front of such buildings. Proper illumination for house numbers shall be provided for all buildings to be constructed, modernized or renovated.

(e) **Penalties for violations.** Failure to comply with these Rules and Regulations and the Administrative Code applicable thereto, shall subject the owner, lessee, agent or other person in charge of any building to the penalties provided for in the Administrative Code.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 3 PRESIDENT OF THE BOROUGH OF MANHATTAN

SUBCHAPTER A HOUSE NUMBERS

§3-02 Directional Sign-Display of House Numbers.

These Rules and Regulations shall apply in addition to the "House Numbers" regulations in all cases where the Borough President of Manhattan determines that house numbers may not be clearly visible from the street upon which the address is assigned.

Note: This situation usually arises with respect to buildings which are set back from the street, where the entrances are rotated out of a parallel plane to the building line or in cases where buildings do not front on City street.

(a) **Sign facing city streets.** A directional sign shall be installed in the proximity of the building line, facing the street upon which the address is assigned. The sign shall display all the assigned house numbers, in addition to the name of the street, and shall include arrows or other approved symbols to direct pedestrians toward the building entrance.

(b) **Additional signs.** (1) **Based on Distance of Building Entrance to Street.** One additional directional sign shall be posted for each two hundred feet of distance between the building entrance and the street upon which the address is given.

(2) **Based on Changes of Direction between Building Enterance and Street.** One additional directional sign shall be posed at each change in direction to be travelled between the building entrance and the street upon which the address is assigned.

(c) **Posting of address on door.** The complete address, which shall include the house number and the name of the street upon which the address is assigned, shall be placed upon the entrance door in conformance with the "house numbers" regulations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 3 PRESIDENT OF THE BOROUGH OF MANHATTAN

SUBCHAPTER A HOUSE NUMBERS

§3-03 Interior Directional Signs.

(a) These Rules and Regulations shall apply, in all cases where the Borough President of Manhattan determines that house numbers may not clearly direct the public to their designated location within the building(s) assigned.

Note: This situation usually arises with respect to developments where two or more buildings have a common entrance; or in cases where specific building towers or sections of a building require separate house number designations.

(b) **Interior directional sign(s) to be posted within lobby.** An interior directional sign shall be installed within the immediate lobby area of the main entrance, which clearly directs the public to the appropriate tower(s) or section(s) of the building. The sign shall display all the assigned house numbers, in addition to the name of the street, and shall include arrows or other symbols as approved by the Manhattan Borough President's Office.

(c) **Additional interior directional sign required.** (1) One additional interior directional sign shall be posted for each 100 feet of distance between the lobby and the appropriate tower or section of the building to which the address is assigned.

(2) One additional interior directional sign shall be posted at each change in direction to be travelled between the lobby and appropriate tower or section of the building to which the address is assigned.

(d) **Address to be posted at base of each tower.** The complete address, which shall include the house number and the name of the street upon which the address is assigned, shall be placed within the entry area of the assigned portion of the building, or at the base of the appropriate tower.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 3 PRESIDENT OF THE BOROUGH OF MANHATTAN

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§3-04 Definitions.

(a) "Alteration Map" means a map which shows the proposed changes to the City Map and is prepared by the Topographical Bureau or a qualified consultant who is a licensed professional engineer or registered architect.

(b) "Alteration Map Preparation" means preparation and processing of Alteration Maps by the Manhattan Borough President's Topographical staff from inception through final review.

(c) "Alteration Map Review" means the review and processing of Alteration Maps prepared by a person other than the Manhattan Borough President's Topographical staff, including consulting engineers and developers.

(d) "Address Assignment" means the issuance and recording of house number(s) for specific lot or lots.

(e) "Address Verification" means the issuance and verification of a new house number and certification of the relationship of a lot to mapped streets, as well as the verification of an existing house number and the certification of the relationship of a lot to mapped streets.

(f) "Vanity Address Assignment" means a request and assignment of an address that is not a regular sequential house number, but instead refers to a geographical designation, e.g., Times Square, or a new designation not including a street name, e.g., Penn Plaza, Morton Square.

HISTORICAL NOTE

Section added City Record Feb. 11, 2004 eff. Mar. 12, 2004. [See T45 Chapter 3 Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record Feb. 11, 2004 eff. Mar. 12, 2004. Note: Statement of Basis and Purpose. The proposed Amendment to the Borough President's Rules would create a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, assignment of addresses, preparation and review of alteration maps, vanity address requests, damage and acquisition maps, and other related street maps. In order to provide these services to the general public and comply with Section 82 of the City Charter, it is necessary for the Manhattan Borough President's office to implement the above fee schedule.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 3 PRESIDENT OF THE BOROUGH OF MANHATTAN

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§3-05 Schedule of Fees.

(a) The fees for the processing of the below-listed applications and requests submitted to the Topographical Bureau shall be as follows:

(1) Alteration Map Preparation $12,000.00 for up to two map sheets and $2,500.00 for each additional map sheet, not to exceed a total charge of $18,000.00.

(2) Alteration Map Review $6,000.00 for up to two map sheets and $1,500.00 for each additional map sheet, not to exceed a total of $9,000.

(3) Address Assignment $300.00

(4) Address Verification $250.00

(5) Vanity Address Request $11,00.00

(b) Reserved.

HISTORICAL NOTE

Section amended City Record Nov. 13, 2009 §1, eff. Dec. 13, 2009. [See Note 1]

Section added City Record Feb. 11, 2004 eff. Mar. 12, 2004. [See T45 Chapter 3 Subchapter B footnote]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 13, 2009:

The Amendment to the Borough President's Rules amends the Fee Schedule for providing certain services pursuant to §82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, topographical data, assignments of addresses, preparation and review of alteration maps, vanity address requests and assignments, damage and acquisition maps, and other related street maps. In order to continue to provide these services to the general public and comply with §82 of the Charter, it is necessary for the Manhattan Borough President's office to implement the above fee schedule, as it takes into account the cumulative rate of inflation and the cost of professional staff time in maintaining a Topographical Bureau.

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record Feb. 11, 2004 eff. Mar. 12, 2004. Note: Statement of Basis and Purpose. The proposed Amendment to the Borough President's Rules would create a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, assignment of addresses, preparation and review of alteration maps, vanity address requests, damage and acquisition maps, and other related street maps. In order to provide these services to the general public and comply with Section 82 of the City Charter, it is necessary for the Manhattan Borough President's office to implement the above fee schedule.

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***** Current through December 2009 ****

45 RCNY 3-06

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 3 PRESIDENT OF THE BOROUGH OF MANHATTAN

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§3-06 Payment Method.

Except as specifically provided in this section, every application for the preparation of an alteration map, review of an alteration map, address assignment, address verification, or vanity address request shall include a non-returnable fee, which shall be paid by certified check or money order made payable to the Office of the Manhattan Borough President. Fees shall be paid when the application is filed, and no application will be processed by the Borough President's office until the fee is paid in full.

HISTORICAL NOTE

Section amended City Record Nov. 13, 2009 §1, eff. Dec. 13, 2009. [See Note 1]

Section added City Record Feb. 11, 2004 eff. Mar. 12, 2004. [See T45 Chapter 3 Subchapter B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record Feb. 11, 2004 eff. Mar. 12, 2004. Note: Statement of Basis

and Purpose. The proposed Amendment to the Borough President's Rules would create a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, assignment of addresses, preparation and review of alteration maps, vanity address requests, damage and acquisition maps, and other related street maps. In order to provide these services to the general public and comply with Section 82 of the City Charter, it is necessary for the Manhattan Borough President's office to implement the above fee schedule.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 4-01

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§4-01 Applicability.

These rules apply to public hearings conducted pursuant to the New York City Charter or other applicable law or rule by the President of the Borough of Queens ("Borough President") or his or her designee.

HISTORICAL NOTE

Section added City Record May 29, 1991 eff. June 28, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 4-02

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§4-02 Notice of Public Hearing and Agenda.

Notice of the date, day, time, place and subject of a public hearing shall be by publication in the City Record for the five days of publication immediately preceding and including the date of the public hearing. An agenda for the public hearing shall be available at the public hearing.

HISTORICAL NOTE

Section added City Record May 29, 1991 eff. June 28, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 4-03

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§4-03 Conduct of Public Hearings.

(a) **Location.** Public hearings shall be held in Room 213 at Queens Borough Hall, 120-55 Queens Boulevard, Kew Gardens, New York, or other such place as may be determined by the Borough President and listed in the notice.

(b) **General Character.** Public hearings shall be legislative type hearings, without sworn testimony or strict rules of evidence. The Borough President or her or his designee shall preside and only she or he may question a speaker.

(c) **Testimony.** Persons seeking to testify on any matter on the agenda shall request an opportunity to testify by completing the form provided by the Borough President at the hearing. Persons testifying shall be called in the order determined by the Borough President. Testimony generally is limited to three minutes, unless extended by the Borough President.

(d) **Written Comments.** Any person may submit a written statement or comments on any matter on the agenda. Written statements or comments shall be submitted to the Borough President at the public hearing or by two days after the hearing to receive full consideration.

(e) **Record.** The record of a public hearing shall consist of a tape recording, or when determined by the Borough President, a stenographic transcript of the hearing, a list of the names of the persons who testified and their affiliation, if any, and any timely submitted written statements or comments. The record shall be available for public inspection at the

Queens Borough Hall, Room 213 within sixty days after the hearing. A copy of the transcript, if any, or any pages requested is available at a fee of twenty-five cents a page, plus mailing costs, payable in advance.

HISTORICAL NOTE

Section added City Record May 29, 1991 eff. June 28, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 4-04

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§4-04 Borough President's Actions.

The Borough President may adjourn, continue or close any public hearing. The Borough President may make no recommendation, or may approve, approve with modification, disapprove or conditionally disapprove any matter on the agenda of a public hearing.

HISTORICAL NOTE

Section added City Record May 29, 1991 eff. June 28, 1991.

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Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 4-05

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§4-05 Definitions.

(a) "Alteration Map" means a map which shows the proposed changes to a City Map and is prepared by the Topographical Bureau or a qualified consultant who is a licensed professional engineer or registered architect.

(b) "Alteration Map Preparation" means preparation and processing of Alteration Maps by the Queens Borough President's Topographical staff from inception through final review.

(c) "Alteration Map Review" means the review and processing of Alteration Maps prepared by a person other than the Queens Borough President's Topographical staff, including consulting engineers and developers.

(d) "New Building Certification" means the issuance and certification of a new house number, verification of legal grade and certification of the relationship of a lot to mapped streets.

(e) "Building Alteration Certification" means the verification and certification of an existing house number and certification of the relationship of a lot to mapped streets.

(f) "Detailed Grade Study" means the calculation and determination of top of curb elevations in conformance with established legal grades.

(g) "House Number Issuance" means the issuance and recording of house number(s) for a specific lot or lots.

(h) "Topographical Bureau" means the Topographical Bureau maintained by the Office of the Queens Borough President.

HISTORICAL NOTE

Section added City Record May 23, 2003 eff. June 22, 2003. [See T45 Chap. 4 Subchap. B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record May 23, 2003 eff. June 22, 2003. Note: Statement of Basis and Purpose. The Amendment to the Borough President's Rules establishes a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, topographical data, issuance of house numbers, the preparation and review of alteration maps, damage and acquisition maps, and other related street maps. In order to continue to provide these services to the general public and comply with §82 of the Charter, it is necessary for the Queens Borough President's Office to implement the above fee schedule, as it takes into account the cumulative rate of inflation and the cost of professional staff time in maintaining a Topographical Bureau.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 4-06

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§4-06 Schedule of Fees.

(a) The fees for the processing of the below-listed applications and requests submitted to the Topographical Bureau shall be as follows:

(1) Alteration Map Preparation $12,000.00 for up to two map sheets and $2,500.00 for each additional map sheet, not to exceed a total charge of $18,000.00

(2) Alteration Map Review $6,000.00 for up to two map sheets and $1,500.00 for each additional map sheet, not to exceed a total charge of $9,000.00

(3) New Building Certification $100.00

(4) Building Alteration Certification $75.00

(5) Detailed Grade Study $40.00

(6) House Number Issuance $50.00

HISTORICAL NOTE

Section amended City Record Sept. 9, 2009 §1, eff. Oct. 9, 2009. [See Note 1]

Section added City Record May 23, 2003 eff. June 22, 2003. [See T45 Chap. 4 Subchap. B footnote]

NOTE

1. Statement of Basis and Purpose in City Record Sept. 9, 2009:

The Amendment to the Borough President's Rules creates a new Fee Schedule for providing certain services pursuant to §82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, topographical data, issuance of house numbers, the preparation and review of alteration maps, damage and acquisition maps, and other related street maps. In order to continue to provide these services to the general public and comply with §82 of the Charter, it is necessary for the Queens Borough President's Office to implement the above fee schedule, as it takes into account the cumulative rate of inflation and the cost of professional staff time in maintaining a Topographical Bureau.

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record May 23, 2003 eff. June 22, 2003. Note: Statement of Basis and Purpose. The Amendment to the Borough President's Rules establishes a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, topographical data, issuance of house numbers, the preparation and review of alteration maps, damage and acquisition maps, and other related street maps. In order to continue to provide these services to the general public and comply with §82 of the Charter, it is necessary for the Queens Borough President's Office to implement the above fee schedule, as it takes into account the cumulative rate of inflation and the cost of professional staff time in maintaining a Topographical Bureau.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 4-07

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 4 PRESIDENT OF THE BOROUGH OF QUEENS

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES FOR CERTAIN SERVICES*1

§4-07 Payment Method.

Except as specifically provided in this section, every application for the preparation of an alteration map, review of an alteration map, new building certification, building alteration, to conduct a detailed grade study or issue house numbers, shall include a non-returnable fee, which shall be paid by certified check, money order, bank check or credit card, made payable to the Office of the Queens Borough President. Fees shall be paid when the application is filed, and no application will be processed by the Borough President's Office until the fee is paid in full.

HISTORICAL NOTE

Section amended City Record Sept. 9, 2009 §1, eff. Oct. 9, 2009. [See T45 §4-06 Note 1]

Section added City Record May 23, 2003 eff. June 22, 2003. [See T45 Chap. 4 Subchap. B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Record May 23, 2003 eff. June 22, 2003. Note: Statement of Basis

and Purpose. The Amendment to the Borough President's Rules establishes a new Fee Schedule for providing certain services pursuant to Section 82 of the New York City Charter, which specifies that the Borough President shall maintain a Topographical Bureau. These services include maintaining various records, maps, surveys, topographical data, issuance of house numbers, the preparation and review of alteration maps, damage and acquisition maps, and other related street maps. In order to continue to provide these services to the general public and comply with §82 of the Charter, it is necessary for the Queens Borough President's Office to implement the above fee schedule, as it takes into account the cumulative rate of inflation and the cost of professional staff time in maintaining a Topographical Bureau.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-01

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§5-01 Applicability.

These Rules apply to public hearings conducted pursuant to the New York City Charter or other applicable law or rule by the President of the Borough of Staten Island ("Borough President") or his or her designee.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-02

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§5-02 Notice of Public Hearing and Agenda.

Notice of the date, day, time, place and subject of a public hearing shall be by publication in the City Record for the five days of publication immediately preceding and including the date of the public hearing. An agenda for the public hearing shall be available at the public hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-03

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§5-03 Conduct of Public Hearings.

(a) **Location.** Public hearings shall be held in Room 122 at Staten Island Borough Hall, Saint George, Staten Island, New York, or such other place as may be determined by the Borough President and listed in the notice.

(b) **General Character.** Public hearings shall be legislative type hearings, without sworn testimony or strict rules of evidence. The Borough President or her or his designee shall preside and only she or he may question a speaker.

(c) **Testimony.** Persons seeking to testify on any matter on the agenda shall request an opportunity to testify by completing the form provided by the Borough President at the hearing. Persons testifying shall be called in the order determined by the Borough President. Testimony generally is limited to three minutes, unless extended by the Borough President.

(d) **Written Comments.** Any person may submit a written statement or comments on any matter on the agenda. Written statements or comments shall be submitted to the Borough President at the public hearing or by two days after the hearing to receive full consideration.

(e) **Record.** The record of a public hearing shall consist of a tape recording, or when determined by the Borough President, a stenographic transcript of the hearing, a list of the names of the persons who testified and their affiliation, if any, and any timely submitted written statements or comments. The record shall be available for public inspection at the

Staten Island Borough Hall, Room 100 within sixty (60) days after the hearing. A copy of the transcript, if any, or any pages requested is available at a fee of twenty-five cents a page, plus mailing costs, payable in advance.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-04

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER A RULES FOR THE CONDUCT OF PUBLIC HEARINGS

§5-04 Borough President's Actions.

The Borough President may adjourn, continue or close any public hearing. The Borough President may make no recommendation, or may approve, approve with modification, disapprove or conditionally disapprove any matter on the agenda of a public hearing.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-05

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES*1

§5-05 Definitions.

(a) "House or building number issuance" means the issuance and recording of a house or building number(s) for a specific lot or lots including:

(i) The issuance of a new street number for an existing house or building or proposed house or building (or a portion thereof); and

(ii) The review and confirmation of whether a specific street number is correct for an existing house or building or proposed house or building (or a portion thereof).

(b) "Topographical Bureau" means the topographical bureau maintained by the Office of the Borough President of the Borough of Staten Island.

HISTORICAL NOTE

Section added City Record July 7-18, 2003 eff. Aug. 6, 2003. [See T45 Chap. 5 Subchap. B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Records July 7-18, 2003 eff. Aug. 6, 2003. Note: Statement of Basis and Purpose. The Topographical Bureau of the Staten Island Borough President's office is responsible for maintaining various records, maps, surveys, topographical data, house and building street number data and other related materials.

These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to the public it is necessary for the Office of the Staten Island Borough President to implement the above fee schedule.

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Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-06

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES*1

§5-06 Fee Schedule.

(a) The fee for the processing of the below listed application and request submitted to the Topographical Bureau shall be as follows:

(1) House or building number application: $100.00 per house or building number.

HISTORICAL NOTE

Section added City Record July 7-18, 2003 eff. Aug. 6, 2003. [See T45 Chap. 5 Subchap. B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Records July 7-18, 2003 eff. Aug. 6, 2003. Note: Statement of Basis and Purpose. The Topographical Bureau of the Staten Island Borough President's office is responsible for maintaining various records, maps, surveys, topographical data, house and building street number data and other related materials.

These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to the public it is necessary for the Office of the Staten Island Borough President to implement the above fee schedule.

Rules of the City of New York

***** Current through December 2009 ****

45 RCNY 5-07

RULES OF THE CITY OF NEW YORK

Title 45 Borough Presidents

CHAPTER 5 PRESIDENT OF THE BOROUGH OF STATEN ISLAND

SUBCHAPTER B TOPOGRAPHICAL BUREAU FEES*1

§5-07 Method of Payments.

Every application for a house or building number issuance made after August 25, 2003 shall include a non-returnable fee which shall be paid by certified check or money order made payable to the Office of the Staten Island Borough President. Fees shall be paid when an application is filed, and no application will be processed by the Office of the Borough President until the fee is paid in full.

HISTORICAL NOTE

Section added City Record July 7-18, 2003 eff. Aug. 6, 2003. [See T45 Chap. 5 Subchap. B footnote]

FOOTNOTES

1

[Footnote 1]: * Subchapter B added City Records July 7-18, 2003 eff. Aug. 6, 2003. Note: Statement of Basis and Purpose. The Topographical Bureau of the Staten Island Borough President's office is responsible for maintaining various records, maps, surveys, topographical data, house and building street number data and other

related materials.

These Charter mandated activities require the dedication of substantial resources by the Topographical Bureau. In order to continue to provide these essential services to the public it is necessary for the Office of the Staten Island Borough President to implement the above fee schedule.

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Rules of the City of New York

***** Current through December 2009 ****

46 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 46 Law Department

CHAPTER 1 ADJUDICATIONS

§1-01 Fitness and Discipline Adjudications of Law Department Employees.

New York City Law Department adjudications regarding the fitness and discipline of agency employees will be conducted by the Office of Administrative Trials and Hearings. After conducting an adjudication and analyzing all testimony and other evidence, the hearing officer shall make written proposed findings of fact and recommend decisions, which shall be reviewed and finally determined by the Corporation Counsel.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

46 RCNY 2-01

RULES OF THE CITY OF NEW YORK

Title 46 Law Department

CHAPTER 2 ESCROW AGREEMENTS

§2-01 Escrow Agreements Entered into with the New York City Law Department.

(a) The Corporation Counsel, or a named representative, when acting as escrow agent for agreements entered into with the New York City Law Department, will deposit any money received pursuant to such escrow agreement into an Attorney Trust Account maintained by the Law Department.

(b) When the Corporation Counsel, or a named representative, receives -documentation that the conditions set forth in the escrow agreement have been met, the monies in the escrow account will be paid to the party fulfilling the conditions along with any interest that has accrued but less the escrow agent's fee.

(c) The escrow agent's fee shall be 2 percent per annum on the escrow principal deposit prorated monthly; provided, however, that the minimum monthly fee shall be $5.00 and the maximum monthly fee shall be $25.00, and provided further that there is no fee on escrow deposits of $750.00 or less except when multiple disbursements are requested. Multiple disbursements on a single escrow deposit will be subject to a $25.00 fee per disbursements.

(d) If the conditions set forth in the agreement are not satisfied by the date specified in such agreement, the monies in the account, less the escrow agent's fee, shall be paid with interest to the party specified in such agreement.

(e) Where the monies have been escrowed to have properties repaired or for similar purposes, if the conditions specified in the agreement are not met by the date set forth in such agreement, the escrow fund shall become the property of the City of New York and the escrow agent shall be authorized to transfer the fund, less the escrow agent's fee, to the General Fund of the City of New York after giving the depositor thirty days notice. However, if the depositor has already expended sums in partial compliance with the conditions set forth in the agreement, he or she may issue a

request to the escrow agent for reimbursement from the escrow fund, without interest, before the balance of the fund is transferred to the City of New York General Fund. Such request must be in writing accompanied by an accounting and appropriate documentation. The escrow agent may pay the requested amount to the depositor if reimbursement appears appropriate under the circumstances. If the depositor and escrow agent are unable to agree on disposition of the requested amount within sixty days of the date such request is received, the escrow agent shall resign as escrow agent and deposit the escrow fund into the appropriate court.

(f) In the event of a dispute between the parties with respect to the escrow fund or the underlying transaction, the Corporation Counsel, or a named representative, has the right, at his or her sole discretion, to resign as escrow agent and represent the City of New York in the dispute. Upon his or her resignation as escrow agent, the escrow fund will be transferred either to another escrow agent selected by mutual agreement of all parties or to the appropriate court.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Rules of the City of New York

***** Current through December 2009 ****

46 RCNY 3-01

RULES OF THE CITY OF NEW YORK

Title 46 Law Department

CHAPTER 3*1 FALSE CLAIMS

§3-01 Submission of Proposed Civil Complaints to the City.

(a) Any person may submit a proposed civil complaint alleging a violation of §7-803 of Chapter 8 of Title 7 of the Administrative Code of the City of New York on behalf of the City of New York. Such submission shall include the person's name, address, telephone numbers and e-mail address (if available), and shall enclose all material evidence and information possessed by such person in support of the allegations of the proposed civil complaint. Information and materials submitted in support of the proposed complaint shall include, but not be limited to (1) identification of the person or entity alleged to have submitted a false or fraudulent claim to the City; (2) a description of the nature of the allegedly fraudulent claim; (3) the dollar amount alleged to have been falsely or fraudulently submitted to the City; (4) the date(s) on which the allegedly false or fraudulent claims were made; (5) the City agency(ies) to which the allegedly false or fraudulent claims were made.

(b) The proposed civil complaint shall be signed and verified as follows: "The proposed civil complaint is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters (he) (she) believes them to be true." Such verification shall be notarized.

(c) The proposed civil complaint shall be sent by certified U.S. mail, return receipt requested, in a sealed envelope addressed to the New York City Department of Investigation, 80 Maiden Lane, New York, New York 10038, Attention: Complaint Bureau.

(d) The Department of Investigation ("DOI") shall send an acknowledgement to each person who has submitted a proposed civil complaint indicating that their proposed civil complaint has been received.

HISTORICAL NOTE

Section added City Record Aug. 8, 2005 eff. Aug. 8, 2005. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 3 added City Record Aug. 8, 2005 eff. Aug. 8, 2005: Note Statement of Basis and Purpose:

On May 19, 2005, the Mayor signed into law Intro. 630, the New York City False Claims Act. Section 7-804(b)(2) of the law requires the Corporation Counsel and the Commissioner of Investigation to promulgate rules establishing a protocol which details the procedures by which the City will address proposed civil complaints after they have been submitted. This proposed rule implements the directive set forth in the new law.

Statement of Need for Immediate Implementation: I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for the implementation of the rule governing the protocol for processing proposed civil complaints pursuant to the New York City False Claims Act, upon the publication in the City Record of its Notice of Adoption.

On May 19, 2005, the Mayor signed into law Intro. 630 (Local Law No. 53 of 2005), the New York City False Claims Act. This new law requires, inter alia, that the Corporation Counsel and the Commissioner of Investigation promulgate rules establishing a protocol detailing the procedures by which the City will address proposed civil complaints after they have been submitted. Local Law 53 takes effect on August 17, 2005. It is therefore essential that this rule-an important component for the success of the False Claims Act's implementation-be in effect at approximately the same time as the local law.

Michael A. Cardozo

Corporation Counsel

Approved: Michael R. Bloomberg

Mayor

Date: _____

Rules of the City of New York

***** Current through December 2009 ****

46 RCNY 3-02

RULES OF THE CITY OF NEW YORK

Title 46 Law Department

CHAPTER 3*1 FALSE CLAIMS

§3-02 Review of Proposed Civil Complaints.

(a) Within thirty days of receipt of the proposed civil complaint, DOI shall forward a copy of each proposed civil complaint and all documentation submitted in support thereof to the Law Department, addressed to "Chief, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, NY 10007," and marked "CONFIDENTIAL-TO BE OPENED ONLY BY ADDRESSEE." DOI shall at that time notify the Law Department in writing whether the proposed civil complaint alleges wrongdoing that is already the subject of an ongoing investigation, or may warrant the opening of a new investigation by DOI.

(b) Following receipt of notification from DOI that the subject of a proposed civil complaint is the subject of an ongoing investigation or that a new investigation may be warranted, the Law Department and DOI will promptly and thereafter, as necessary, discuss the necessity of and the appropriate level of confidentiality to be given to such proposed complaints; the preparation for and/or commencement of a civil action and the timing of such civil action; and the status of the investigation or prosecution.

(c)(1) Within 60 days of receipt of a proposed civil complaint, DOI shall notify the Law Department in writing as to whether the Commissioner of Investigation has determined that a civil enforcement action may interfere with or jeopardize an investigation by a governmental agency. DOI shall promptly notify the Law Department in writing when the Commissioner of Investigation has determined that such civil enforcement action would no longer interfere with or jeopardize a governmental investigation.

(2) Upon the determination by the Commissioner of Investigation that a civil enforcement action shall not interfere with or jeopardize a governmental investigation, DOI will share with the Law Department relevant documents in its

possession. DOI will also share material developed during the course of the investigation, to the extent permitted by law and to the extent that the sharing of such information will not compromise a criminal investigation.

(d) DOI shall make the determination as to if and when a referral of a potential criminal case shall be made to the appropriate prosecutorial agency, based on its investigation of allegations submitted pursuant to Administrative Code §7-804.

(e) Nothing in these rules shall be deemed to supersede or interfere with the authority and practices of DOI with respect to its conduct of investigations and cooperation with and referral of matters to other law enforcement or other government agencies pursuant to the City Charter or other law, nor shall the Corporation Counsel commence or authorize the commencement of any civil enforcement action pursuant to Administrative Code §7-804 if the Commissioner of Investigation has determined that such an action may interfere with or jeopardize an investigation by a governmental agency.

HISTORICAL NOTE

Section added City Record Aug. 8, 2005 eff. Aug. 8, 2005. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 3 added City Record Aug. 8, 2005 eff. Aug. 8, 2005: Note Statement of Basis and Purpose:

On May 19, 2005, the Mayor signed into law Intro. 630, the New York City False Claims Act. Section 7-804(b)(2) of the law requires the Corporation Counsel and the Commissioner of Investigation to promulgate rules establishing a protocol which details the procedures by which the City will address proposed civil complaints after they have been submitted. This proposed rule implements the directive set forth in the new law.

Statement of Need for Immediate Implementation: I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for the implementation of the rule governing the protocol for processing proposed civil complaints pursuant to the New York City False Claims Act, upon the publication in the City Record of its Notice of Adoption.

On May 19, 2005, the Mayor signed into law Intro. 630 (Local Law No. 53 of 2005), the New York City False Claims Act. This new law requires, inter alia, that the Corporation Counsel and the Commissioner of Investigation promulgate rules establishing a protocol detailing the procedures by which the City will address proposed civil complaints after they have been submitted. Local Law 53 takes effect on August 17, 2005. It is therefore essential that this rule-an important component for the success of the False Claims Act's implementation-be in effect at approximately the same time as the local law.

Michael A. Cardozo

Corporation Counsel

Approved: Michael R. Bloomberg

Mayor

Date: _____

Rules of the City of New York

***** Current through December 2009 ****

46 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 46 Law Department

CHAPTER 3*1 FALSE CLAIMS

§3-03 Processing of Proposed Civil Complaints.

(a) In accordance with Administrative Code §7-804(b)(2), within one hundred eighty days of the receipt of a proposed civil complaint by the Department of Investigation, the Law Department shall in writing notify the person who has submitted the proposed complaint of its intention to commence a civil enforcement action, or to designate the person or his or her attorney to commence a civil enforcement action, or to decline to commence such action, in which case it shall provide its reasons for so declining. If the Commissioner of Investigation has determined that a civil enforcement action may interfere with or jeopardize an investigation by a governmental agency, the Law Department shall notify the complainant of such fact within ninety days of the City's receipt of the proposed civil complaint.

(b) Any person who has submitted a proposed civil complaint shall fully cooperate with DOI and the Law Department from the time such proposed civil complaint was submitted through the resolution of the matter.

(c) Nothing in these rules shall be deemed to supersede or interfere with the authority of the Corporation Counsel, pursuant to the New York City Charter or any other law, with regard to the conduct of litigation or the recommendation for settlement of matters on behalf of the City of New York.

HISTORICAL NOTE

Section added City Record Aug. 8, 2005 eff. Aug. 8, 2005. [See Chapter 3 footnote]

FOOTNOTES

1

[Footnote 1]: * Chapter 3 added City Record Aug. 8, 2005 eff. Aug. 8, 2005: Note Statement of Basis and Purpose:

On May 19, 2005, the Mayor signed into law Intro. 630, the New York City False Claims Act. Section 7-804(b)(2) of the law requires the Corporation Counsel and the Commissioner of Investigation to promulgate rules establishing a protocol which details the procedures by which the City will address proposed civil complaints after they have been submitted. This proposed rule implements the directive set forth in the new law.

Statement of Need for Immediate Implementation: I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for the implementation of the rule governing the protocol for processing proposed civil complaints pursuant to the New York City False Claims Act, upon the publication in the City Record of its Notice of Adoption.

On May 19, 2005, the Mayor signed into law Intro. 630 (Local Law No. 53 of 2005), the New York City False Claims Act. This new law requires, inter alia, that the Corporation Counsel and the Commissioner of Investigation promulgate rules establishing a protocol detailing the procedures by which the City will address proposed civil complaints after they have been submitted. Local Law 53 takes effect on August 17, 2005. It is therefore essential that this rule-an important component for the success of the False Claims Act's implementation-be in effect at approximately the same time as the local law.

Michael A. Cardozo

Corporation Counsel

Approved: Michael R. Bloomberg

Mayor

Date: _____

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47 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER A GENERAL**3

§1-01 Scope of Rules.

These rules are intended to carry out the provisions of Title 8, Chapter 1 of the Administrative Code of the City of New York, Human Rights Law ("HRL"), and the policies and procedures of the Commission on Human Rights in connection therewith, as authorized by HRL §8-105(11) and §8-117.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section repealed and added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

Effective July 1, 1997, the Hearings Bureau of the Commission on Human Rights ("Commission") was discontinued, and its adjudication function was transferred to the office of Administrative Trials and Hearings ("OATH"). The proposed amendments to the Rules of Practice of the Commission, and of OATH, are intended to facilitate that transfer without change to the substantive law applicable to those adjudications, and with the least possible change to the procedure applicable to those adjudications. The Commission's adjudications, both as previously conducted by the Hearings Bureau, and as now conducted by OATH, result in the issuance of Recommended Decisions from Administrative Law Judges to the Commission, which the Commission may adopt in full, modify or reject in full. Therefore, the Commission retains the same final role in adjudication as it had before the transfer.

The proposed amendments would delete from the Commission's Rules of Practice, Title 47, Chapter 1, Rules of the City of New York, most rules governing pre-hearing, hearing and post-hearing procedures. Amendments currently being proposed by OATH will address the adjudication of Commission hearings before that Agency. To the extent that OATH's existing Rules of Practice, Title 48, Chapter 1, Rules of the City of New York, are substantially consistent with the Commission's existing Rules, OATH's existing Rules would be made applicable to cases referred by the Commission to OATH. To the extent that OATH's existing Rules of Practice are not substantially consistent with the Commission's existing Rules, OATH's Rules would be amended to include a new Subchapter C in Chapter 2 of Title 48 consisting of Rules necessary to conform the practice and procedure at OATH to the former practice and procedure before the Commission's Hearings Bureau. In those instances in which the Commission has judged the difference between its former practice and procedure and OATH's practice and procedure to be technical or insubstantial, these proposed amendments would make OATH's existing Rules applicable.

Some changes in procedure would be adopted by these proposed amendments. For example, by proposed Section 1-43 of Title 48, OATH would adopt for all of its cases a Rule governing subpoenas that is identical to the Commission's present Rule governing subpoenas, 47 RCNY, 1-81, except that ex parte applications for issuance of subpoenas would not be permitted. In addition, the time for taking an interlocutory appeal from a Decision or Order of the Administrative Law Judge would be reduced from seven days, as provided in the Commission's Existing Rules, to five days in OATH's proposed Rules. Finally, motions concerning investigative record-keeping and investigative subpoenas which were made to the Hearings Bureau under the Commission's existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed 47 RCNY 1-72 and 1-73.
3

[Footnote 3]: ** Subchapter A amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER A GENERAL**3

§1-02 Organization of Commission.

In order to carry out its various statutory responsibilities in a fair and impartial fashion, the Commission has separated its functions into discreet bureaus and offices, each of which reports to the Chair of the agency. In addition to the Chair and the Commissioners, the following components of the Commission are directly involved in the enforcement of the HRL:

(a) **Law Enforcement Bureau.** The Law Enforcement Bureau is charged with the Commission's investigatory and prosecutorial functions. Where an action is authorized or required to be taken by the Law Enforcement Bureau, such action shall be taken by the Deputy Commissioner for Law Enforcement, such Law Enforcement Bureau staff as the Deputy Commissioner shall designate, or such person as may be appointed by the Chair of the Commission.

(b) **Office of General Counsel.** The Office of General Counsel serves as counsel to the Chair and to the Commissioners. Where an action is authorized or required to be taken by the Office of General Counsel, such action shall be taken by the General Counsel, such staff of the Office of General Counsel as the General Counsel shall designate, or such person as may be appointed by the Chair of the Commission.

(c) **Office of Mediation and Conflict Resolution.** The Office of Mediation and Conflict Resolution provides mediation and conciliation services in connection with complaints that have been filed. Where an action is authorized or required to be taken by the Office of Mediation and Conflict Resolution, such action shall be taken by the Deputy

Commissioner for Mediation and Conflict Resolution, such staff of the Office of Mediation and Conflict Resolution as the Deputy Commissioner shall designate, or such person as may be appointed by the Chair of the Commission.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

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FOOTNOTES

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existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed 47 RCNY 1-72 and 1-73.
3

[Footnote 3]: ** Subchapter A amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER A GENERAL**3

§1-03 Definitions and Construction.

For purposes of this chapter,

Calculation of dates. A number of days specified in these Rules means calendar days exclusive of the calendar day from which the calculation is made.

Complainant. Complainant shall mean a person who has filed a complaint pursuant to these Rules.

Discriminatory harassment or violence. The procedures set forth in these Rules which apply to unlawful discriminatory practices shall apply with like effect to acts of discriminatory harassment or violence as set forth in Chapter 6 of Title 8 of the Administrative Code except that no complaint shall be filed with respect to an act of discriminatory harassment or violence unless the act complained of occurred on or after January 22, 1993.

Filing and proof of service. Wherever these Rules require that a paper be filed, such requirement shall be construed to require the filing of proof of prior service of the paper on the persons required to be served by the section together with the paper. Each Bureau and Office of the Commission shall retain proof of service of each paper served under these Rules.

Investigatory file. For the purposes of these Rules, the Law Enforcement Bureau's "Investigatory File" shall be

construed to include only the factual information, as opposed to opinions or legal analysis contained in those writings made or gathered by the Bureau during the course of an investigation. Any information derived from an investigation pursuant to Subchapter D of this chapter including the names and other identifying information of witnesses who request anonymity is confidential; provided, however, that the Law Enforcement Bureau may be required to disclose the names of such witnesses in the course of an administrative hearing or a civil action.

Means of service of papers. Except where otherwise specified, service of a paper means any method of service described by §2103 of the New York Civil Practice Law and Rules.

Necessary party. Necessary party shall mean any person deemed by the Law Enforcement Bureau or any person determined by an Administrative Law Judge to be a person without whom complete relief could not be ordered by the Commission or a person whose interests would be materially affected by the Commission's determination of the case. Any person deemed or determined to be a necessary party shall be treated as a party for all purposes under these rules and the HRL.

Papers to be served upon counsel. Whenever a person required to be served with a paper pursuant to these Rules has duly informed the Law Enforcement Bureau as required by these rules that such person is represented by counsel, service shall be effected upon the person's counsel in lieu of service on the person himself or herself.

Party. Unless the context requires otherwise, the term "party" shall refer to the Law Enforcement Bureau, to respondents, to those complainants that shall have intervened pursuant to §1-75 of this chapter and to necessary parties.

Person. The term "person" shall have the meaning ascribed thereto in subdivision one of HRL 8-102. The term "person" shall be construed to include associations, organizations or groups that assert the civil rights of protected classes.

Probable Cause. The Law Enforcement Bureau shall find probable cause exists to credit the allegations of a complaint that an unlawful discriminatory practice has been or is being committed by a respondent where a reasonable person, looking at the evidence as a whole, could reach the conclusion that it is more likely than not that the unlawful discriminatory practice was committed.

Respondent. Respondent shall mean a person who has been charged in a complaint filed pursuant to these Rules with having committed an unlawful discriminatory practice.

Rules. Rules shall mean the provisions of Chapter 1 of Title 47 of the Rules of the City of New York.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section repealed and added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Petitioner, a wheelchair-bound tenant who lived in a fourth floor apartment in respondent landlord's apartment building, filed a complaint with the Commission alleging that respondent failed to reasonably accommodate his disability by refusing his request to allow petitioner to relocate to a first floor apartment. Petitioner sought joinder of a

real estate company and a hospital, which leased the first floor of the building from respondent and who in turn sublet units to hospital employees, on the ground that they were necessary parties to the requested relief. All of the first floor apartments were occupied under existing lease agreements. Finding that displacement of existing tenants would not be an available remedy if petitioner was ultimately successful, the administrative law judge denied the motion. **Hagopian v. NJR Associates**, OATH Index No. 2368/99, mem. dec. (Dec. 9, 1999).

¶ 2. In a case alleging discrimination in housing accommodation on the basis of disability, where named respondents claimed that another entity currently owns the premises, administrative law judge **sua sponte** added purported owner as a necessary party pursuant to definition in this section. **Orlic v. T.K. Management, Inc.,** OATH Index No. 149/02, mem. dec. (Dec. 27, 2001).

§§1-04-1-06 from original publication July 1, 1991 repealed City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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record-keeping and investigative subpoenas which were made to the Hearings Bureau under the Commission's existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed 47 RCNY 1-72 and 1-73.
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[Footnote 3]: ** Subchapter A amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER B COMPLAINTS, ANSWERS AND NOTIFICATION OF OBLIGATIONS*4

§1-11 Complaints Generally.

(a) **Who may file.** (1) Any person claiming to be aggrieved by an unlawful discriminatory practice may in person, by his or her attorney, or by a representative acting with appropriate legal authority make, sign and file a written verified complaint with the Law Enforcement Bureau in accordance with these rules.

(2) The Law Enforcement Bureau may make, sign, and file a verified complaint alleging that a person has committed an unlawful discriminatory practice.

(b) **Form of complaints.** All complaints shall be typewritten, and must be signed and verified by the person making the complaint or in the case of a Commission-initiated complaint, by the Commission. A complaint initiated by a person other than the Commission shall be signed before a notary public or other person authorized by law to administer oaths. Each complaint shall recite the name of each complainant and respondent in a caption in the following form:

CITY OF NEW YORK

COMMISSION ON HUMAN RIGHTS

----------x

In the Matter of the Complaint of:
Complainant,
-against-
Respondent.

Verified Complaint
Case No.

----------x

(c) **Contents of complaint.** A complaint shall contain the following:

(1) the full name and address of the person or persons making the complaint or such other designation as appropriate. Each such person shall be denominated a complainant. If a complaint is prepared by a complainant's attorney, the attorney's name, address, telephone number and facsimile number, if any, shall also appear on the complaint;

(2) the full name and address, where known, of the person or persons alleged to have committed an unlawful discriminatory practice. Each such person shall be denominated a respondent;

(3) a statement of the specific facts constituting the alleged unlawful discriminatory practice. The statement shall contain, to the extent known to the complainant, the exact or approximate date or dates of the alleged discriminatory practices and, if the alleged discriminatory practices are of a continuing nature, the dates between which those continuing acts of discrimination are alleged to have occurred; and the addresses or approximate locations of any places where the acts complained of are alleged to have occurred; and

(4) whether complainant has previously filed any other civil or administrative action alleging an unlawful discriminatory practice with respect to the allegations of discrimination which are the subject of the complaint. In the event of a prior filing, a statement of the title, docket or similar identifying number, and forum before which such other claim was filed, and a statement of the status or disposition of such other action or proceeding should be made.

(d) **What constitutes filing of a complaint or answer.** A complaint or answer is filed when it is accepted for filing by the Office of the Docketing Clerk of the Law Enforcement Bureau.

(e) **Procedure upon receipt of complaint.** The Law Enforcement Bureau shall accept complaints for filing, note the date of filing on the complaint, and assign a complaint number to the complaint. The Law Enforcement Bureau shall thereafter serve by mail a copy of the filed complaint upon each respondent and necessary party and shall advise the respondent of his or her procedural rights and obligations.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and

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[Footnote 4]: * Subchapter B amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-12

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER B COMPLAINTS, ANSWERS AND NOTIFICATION OF OBLIGATIONS*4

§1-12 Commission-Initiated Complaints.

(a) **Procedure upon filing of a Commission-initiated complaint.** Upon filing of a Commission-initiated complaint, the Law Enforcement Bureau shall immediately note the date of filing on the complaint, and assign a complaint number to the complaint. The Law Enforcement Bureau shall thereafter serve a copy of the filed complaint upon each respondent and shall advise the respondent of his/her procedural rights and obligations.

(b) **Probable cause.** The filing of Commission-initiated complaint shall be deemed to be a determination of probable cause.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-13

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER B COMPLAINTS, ANSWERS AND NOTIFICATION OF OBLIGATIONS*4

§1-13 Amendments to Complaints.

A complaint may be amended as of right at any time before the referral of the complaint to the Office of Administrative Trials and Hearings (hereinafter OATH) pursuant to §1-71 of this chapter. Subsequent to the referral of a complaint to OATH a complaint may be amended by application to the presiding Administrative Law Judge.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A motion to amend a Human Rights complaint was granted to add one respondent and to delete two respondents on the basis of matters learned through discovery. Pursuant to this section, subsequent to the referral of a complaint to OATH, a complaint may be amended by application to the presiding Administrative Law Judge. **Silva v.**

Gitto, OATH Index No. 263/01, mem. dec. (Jan. 18, 2001).

¶ 2. Motion to add individual as a party (respondent) granted where individual had represented himself as an agent of corporate building owner, but Commission alleged individual is the actual building owner and the statute of limitations had not run. **Orlic v. T.K. Management, Inc.,** OATH Index No. 149/02, mem. dec. (Dec. 27, 2001).

¶ 3. Administrative law judge denied an application to amend complaint where the amending party had been aware of the facts upon which the motion was predicated for some time, the amendment was not meritorious, and no reasonable excuse for the delay was offered. **Comm'n on Human Rights v. United Parcel Service**, OATH Index Nos. 1096/02 & 1097/02, mem. dec. (Sept. 14, 2004).

¶ 4. Absent prejudice to the parties, this section and section 1-25 of the OATH rules permit amendment of pleadings. ALJ permitted respondent to amend its answer to assert that it is not an employer as defined by section 8-102(5) of the City Human Rights Law because it employs fewer than four people. The ALJ granted petitioner's counter-motion to amend the complaint to conform to the proof that even if respondent employed less than four people, respondent is an employment agency subject to the City Human Rights Law's bar on age discrimination under City Code sections 8-102(2) and 8-107(1)(b) of the Code. **Comm'n on Human Rights ex rel Campbell v. Personnel Employment Services**, OATH Index No. 1579/07 (Aug. 20, 2007), **adopted**, Dec. & Order (Dec. 14, 2007).

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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RULES OF THE CITY OF NEW YORK

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER B COMPLAINTS, ANSWERS AND NOTIFICATION OF OBLIGATIONS*4

§1-14 Answer.

(a) **Time for filing.** The respondent shall file a verified answer with the Law Enforcement Bureau within 30 days of having been served with a complaint or an amendment thereof.

(b) **Form and content of answer.** The answer shall be verified as to the truth of the statements therein, and the respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge or information sufficient to form a belief, in which case the respondent shall so state, and such statement shall operate as a denial. Any allegation in the complaint not specifically denied or explained shall be deemed admitted unless good cause to the contrary is shown. All affirmative defenses and mitigating factors set forth in HRL 8-107(13)(d), 8-107(13)(e), and 8-126(b) shall be stated separately in the answer.

(c) **Counterclaims and cross-claims.** The respondent shall not be permitted to interpose either a counterclaim or cross-claim in the answer.

(d) **Extension of time to answer.** A respondent may apply to the Law Enforcement Bureau for additional time to file an answer. Such a request shall be granted for good cause shown.

(e) **Amendment of answer.** A respondent may amend its answer to the original complaint at any time prior to the referral of the complaint to OATH pursuant to §1-71 of this chapter. An amendment to an answer subsequent to the

referral of a complaint to OATH may be made by application to the presiding Administrative Law Judge.

(f) Notwithstanding the foregoing provisions, the following shall apply with respect to complaints originally filed with the Commission prior to September 16, 1991 and amendments thereof whether filed before or after September 16, 1991:

(1) A respondent may but is not required to file a verified answer to the complaint. If a respondent elects not to file an answer to the complaint, all allegations of the complaint shall be deemed denied.

(2) A respondent must file a verified answer if the respondent has or intends to assert affirmative defenses to the charges set forth in the complaint.

(3) Where a respondent files an answer, any allegation of the complaint which is not answered or upon which respondent alleges insufficient information shall be deemed denied.

(4) An answer may be filed at any time after service of the complaint and no later than 15 days after service of a determination of probable cause.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

CASE NOTES

¶ 1. Absent prejudice to the parties this section and section 1-25 of the OATH rules, permit amendment of pleadings. ALJ permitted respondent to amend its answer to assert that it is not an employer as defined by section 8-102(5) of the City Human Rights law, because it employs fewer than four people. **Comm'n on Human Rights ex rel Campbell v. Personnel Employment Services**, OATH Index No. 1579/07 (Aug. 20, 2007), **adopted**, Dec. & Order (Dec. 14, 2007).

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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[Footnote 4]: * Subchapter B amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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***** Current through December 2009 ****

47 RCNY 1-15

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER B COMPLAINTS, ANSWERS AND NOTIFICATION OF OBLIGATIONS*4

§1-15 Representation.

Complainants and respondents may be represented by counsel. Counsel shall file with the Law Enforcement Bureau a Notice of Appearance which shall recite the person or persons for whom the attorney appears, and the attorney's name, address, and telephone and fax number.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

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47 RCNY 1-16

RULES OF THE CITY OF NEW YORK

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER B COMPLAINTS, ANSWERS AND NOTIFICATION OF OBLIGATIONS*4

§1-16 Change of Address.

Complainants, respondents, and their legal representatives are under a continuing obligation to notify the Law Enforcement Bureau of any change in their addresses.

HISTORICAL NOTE

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DERIVATION

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RULES OF THE CITY OF NEW YORK

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER C WITHDRAWALS AND DISMISSALS*5

§1-21 Withdrawal of Complaints.

At any time prior to the service of a notice that a complaint has been referred to the OATH, a complainant may withdraw a complaint that has been filed.

HISTORICAL NOTE

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DERIVATION

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[Footnote 5]: * Subchapter C amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER C WITHDRAWALS AND DISMISSALS*5

§1-22 Dismissal of Complaint.

(a) **Dismissal for administrative convenience.** The Law Enforcement Bureau may, in its discretion, dismiss a complaint for administrative convenience at any time prior to the taking of testimony at a hearing. Administrative convenience shall include, but not be limited to, the following circumstances:

(1) Law Enforcement Bureau personnel have been unable to locate the complainant after diligent efforts to do so;

(2) the complainant has repeatedly failed to appear at mutually agreed-upon appointments with the Law Enforcement Bureau or the Office of Mediation and Conflict Resolution personnel, or is unwilling to meet with the Law Enforcement Bureau or the Office of Mediation and Conflict Resolution personnel, provide requested documentation, or to attend a hearing;

(3) the complainant has repeatedly engaged in conduct which is disruptive to the orderly functioning of the Law Enforcement Bureau;

(4) where the complainant is unwilling to accept a reasonable proposed conciliation agreement;

(5) prosecution of the complaint will not serve the public interest. Without limitation, this shall include those circumstances where it is not likely that further investigation will result in a finding of probable cause or where the

passage of time or other factors have materially impaired the ability of a respondent to defend against the allegations of the complaint; and

(6) the complainant requests such dismissal, one hundred eighty days have elapsed since the filing of the complaint with the Law Enforcement Bureau, and the Law Enforcement Bureau finds (a) that the complaint has not been actively investigated and (b) that the respondent will not be unduly prejudiced thereby.

(b) **Mandatory dismissal for administrative convenience.** The Law Enforcement Bureau shall dismiss a complaint for administrative convenience at any time prior to the filing of an answer by the respondent if the complainant requests such dismissal, unless the Law Enforcement Bureau has conducted an investigation of the complaint or has engaged the parties in conciliation after the time the complaint was filed.

(c) **Dismissal because the complaint is not within the jurisdiction of the Commission.** The Law Enforcement Bureau shall dismiss a complaint in whole or in part where it concludes that the complaint or a portion thereof is not within the jurisdiction of the Commission.

(d) **Dismissal for lack of probable cause.** If, after investigation the Law Enforcement Bureau determines that probable cause does not exist to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice, the Bureau shall dismiss the complaint in whole or in part as to such respondent.

(e) **Notification of dismissal.** When the Law Enforcement Bureau makes a determination pursuant to this section, it shall promptly serve each complainant, respondent, and necessary party with an order dismissing the complaint in whole or in part.

(f) **Review of order of dismissal.** A complainant or respondent aggrieved by an order of dismissal made pursuant to this section may apply to the Chair for review of such order within 30 days of the service of such order by serving a notice of application for review on all other complainants and respondents, the Law Enforcement Bureau and any necessary parties, and by filing such notice with the Office of General Counsel.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-31

RULES OF THE CITY OF NEW YORK

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER D INVESTIGATORY PROCEDURES*6

§1-31 Policy.

The procedures to be followed in investigative proceedings shall be such as in the discretion of the Law Enforcement Bureau will best facilitate accurate, orderly, and thorough fact-finding.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

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[Footnote 6]: * Subchapter D amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-32

RULES OF THE CITY OF NEW YORK

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER D INVESTIGATORY PROCEDURES*6

§1-32 Subpoenas.

The Law Enforcement Bureau may issue and serve subpoenas ad testificandum and subpoenas duces tecum upon any person. Proceedings to enforce, quash, fix conditions, or modify subpoenas shall be governed by Article 23 of the New York Civil Practice Law and Rules.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

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RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER D INVESTIGATORY PROCEDURES*6

§1-33 Investigative Record-Keeping.

(a) The Law Enforcement Bureau shall have the authority to make demands for the preservation of records and for the continuation of the practice of making and keeping records permitted by HRL 8-114(b). The demand shall require that such records be made available for inspection by the Law Enforcement Bureau and/or be filed with the Law Enforcement Bureau.

(b) Any person upon whom a demand has been made may assert an objection to the demand within seven days after service of the demand by serving such objection upon the Law Enforcement Bureau and filing such objection with the Office of General Counsel. The Law Enforcement Bureau shall have seven days from service of the objection to serve such person with a written response to the objection and to file such response with the Office of General Counsel. The Chair shall issue an order on said demand and objection.

HISTORICAL NOTE

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Some changes in procedure would be adopted by these proposed amendments. For example, by proposed Section 1-43 of Title 48, OATH would adopt for all of its cases a Rule governing subpoenas that is identical to the Commission's present Rule governing subpoenas, 47 RCNY, 1-81, except that ex parte applications for issuance of subpoenas would not be permitted. In addition, the time for taking an interlocutory appeal from a Decision or Order of the Administrative Law Judge would be reduced from seven days, as provided in the Commission's Existing Rules, to five days in OATH's proposed Rules. Finally, motions concerning investigative record-keeping and investigative subpoenas which were made to the Hearings Bureau under the Commission's existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed 47 RCNY 1-72 and 1-73.

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[Footnote 6]: * Subchapter D amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-34

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER D INVESTIGATORY PROCEDURES*6

§1-34 Availability of Investigatory Materials.

Upon an order of the Law Enforcement Bureau dismissing the complaint, complainant and respondent may examine the factual documentation in the investigatory file.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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[Footnote 6]: * Subchapter D amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER D INVESTIGATORY PROCEDURES*6

§1-35 Pre-Complaint Investigations.

In addition to conducting investigations of allegations contained in complaints filed pursuant to §1-11 and §1-12 of this chapter, the Law Enforcement Bureau may investigate on its own initiative possible violations of the HRL.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

§§1-36-1-44 added City Record Jan. 5, 1994 eff. Feb. 4, 1994 were repealed City Record Oct. 10, 1995 eff. Nov. 9, 1995.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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[Footnote 6]: * Subchapter D amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-51

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER E DETERMINATION OF WHETHER PROBABLE CAUSE EXISTS*7

§1-51 Basis of Determination.

The Law Enforcement Bureau shall find probable cause exists to credit the allegations of a complaint that an unlawful discriminatory practice has been or is being committed by a respondent where a reasonable person, looking at the evidence as a whole, could reach the conclusion that it is more likely than not that the unlawful discriminatory practice was committed.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

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[Footnote 7]: * Subchapter E amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-52

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER E DETERMINATION OF WHETHER PROBABLE CAUSE EXISTS*7

§1-52 Notice of Determination.

The Law Enforcement Bureau shall serve a written notice of determination upon complainant and respondent. Determinations which state that probable cause has been found not to exist and that dismiss the complaint shall state the reasons for the Law Enforcement Bureau's conclusion.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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[Footnote 7]: * Subchapter E amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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Title 47 Commission on Human Rights

CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER E DETERMINATION OF WHETHER PROBABLE CAUSE EXISTS*7

§1-53 Review of Determination.

A determination that probable cause exists to credit some or all of the allegations of a complaint that an unlawful discriminatory practice has been or is being committed is not reviewable. A determination that probable cause does not exist to credit some or all of the allegations of a complaint that an unlawful discriminatory practice has been or is being committed, and that the complaint is accordingly dismissed in whole or in part, is reviewable in accordance with subdivision (f) of §1-22 of this Chapter.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

§§1-54-1-55 added Jan. 5, 1994 eff. Feb. 4, 1994; repealed City Record Oct. 10, 1995 eff. Nov. 9, 1995.

FOOTNOTES

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47 RCNY 1-61

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER F MEDIATION AND CONCILIATION*8

§1-61 Conciliation Agreements.

The Law Enforcement Bureau, complainant, respondent, and other necessary parties may at any time after the filing of a complaint agree to a conciliated resolution of a complaint.

(a) **Form and Content.** Every conciliation agreement shall contain an acknowledgment of each complainant's and respondent's execution of the agreement. The provisions of the conciliation agreement may be such as are agreed to by the Law Enforcement Bureau, complainant, and respondent.

(b) **Effective Date.** A conciliation agreement shall be deemed binding at the time that such agreement is executed by the Law Enforcement Bureau and by all complainants and respondents and other necessary parties entering into the agreement.

(c) **Entry of Order by Commission.** When a conciliation agreement has been fully executed, the Law Enforcement Bureau shall promptly forward such agreement to the Chair. The signature of the Chair on a conciliation agreement with the notation "SO ORDERED" shall be construed to be an order of the Commission pursuant to HRL 8-115(d) directing the parties to such conciliation agreement to perform each and all of their obligations under such conciliation agreement in the time and manner set forth in such conciliation agreement. The Chair shall deliver the order of the Commission to the Law Enforcement Bureau for service upon the parties to the agreement.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

CASE NOTES

¶ 1. Written agreement was inadmissible where it was not signed by the complainant or his attorney or by the Human Rights Commissioner. **Comm'n on Human Rights ex rel. Bryan v. Memorial Sloan-Kettering Cancer Center**, OATH Index No. 183/06 (July 25, 2006), **aff'd**, Comm'n Dec. (Sept. 29, 2006).

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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[Footnote 8]: * Subchapter F amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 1-62

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER F MEDIATION AND CONCILIATION*8

§1-62 Requests for Assistance of Office of Mediation and Conflict Resolution.

Upon the request of the Law Enforcement Bureau, complainant, or respondent, the Office of Mediation and Conflict Resolution shall endeavor to assist the Law Enforcement Bureau, complainant, and respondent to achieve a conciliated resolution of a complaint.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

§§1-63-1-66 added City Record Jan. 5, 1994 eff. Feb. 4, 1994; repealed City Record Oct. 10, 1995 eff. Nov. 9, 1995.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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47 RCNY 1-71

RULES OF THE CITY OF NEW YORK

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CHAPTER 1*1 PRACTICE AND PROCEDURE

SUBCHAPTER G ADJUDICATION PROCEDURES*9

§1-71 Referral of Complaints to OATH.

(a) When the Law Enforcement Bureau determines that a case is ready for adjudication, the Bureau shall refer the case to the Office of Administrative Trials and Hearings (OATH) pursuant to this section. Except as otherwise provided herein, OATH's rules of practice relating to hearing and pre-hearing procedures (Title 48, Rules of the City of New York, chapter 1, and chapter 2, subchapter C) are hereby adopted by the Commission as the rules of practice and the procedure of the Commission and shall apply to adjudications referred to OATH by the Commission.

(b) The Law Enforcement Bureau shall serve the Notice of Referral upon the complainant, the respondent and any necessary party and file it with the OATH. The notice shall include the last known address and telephone number of each complainant, respondent, and necessary party. The notice shall state whether the respondent has complied with the requirement of §1-14 of this Chapter and, if not, whether the Law Enforcement Bureau seeks to have respondent held in default. The notices shall inform the complainant of his or her right to intervene pursuant to OATH's rules (48 RCNY §2-25). No material relating to the investigation, the finding of probable cause, or the substance of conciliation efforts shall be filed with OATH.

HISTORICAL NOTE

Section amended City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

Opening par repealed City Record June 17, 1998 eff. July 17, 1998.

Subd. (a) added City Record June 17, 1998 eff. July 17, 1998.

Subd. (b) lettered and amended (formerly §1-72) City Record June 17, 1998 eff. July 17, 1998.

FOOTNOTES

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[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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Some changes in procedure would be adopted by these proposed amendments. For example, by proposed Section 1-43 of Title 48, OATH would adopt for all of its cases a Rule governing subpoenas that is identical to the Commission's present Rule governing subpoenas, 47 RCNY, 1-81, except that ex parte applications for issuance of subpoenas would not be permitted. In addition, the time for taking an interlocutory appeal from a Decision or Order of the Administrative Law Judge would be reduced from seven days, as provided in the Commission's Existing Rules, to five days in OATH's proposed Rules. Finally, motions concerning investigative record-keeping and investigative subpoenas which were made to the Hearings Bureau under the Commission's existing Rules will be made to the Chair of the Commission under the Commission's proposed Rules, proposed

47 RCNY 1-72 and 1-73.
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[Footnote 9]: * Subchapter G amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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§1-72 Motions Relating to Requests by Law Enforcement Bureau Pursuant to Subchapter D.

In the event any party has failed to comply with any request by the Law Enforcement Bureau for documents or other information pursuant to Subchapter D of this Chapter, the Law Enforcement Bureau may make a motion to have the Chair order compliance with such request. Any party to whom such a request is made shall have an opportunity to submit to the Chair any objections to such request. The Chair may order compliance with such request or may order such other relief as the Chair deems just and proper. In the event any party has failed to comply with such an order compelling compliance with a request by the Law Enforcement Bureau for documents or other information, the Law Enforcement Bureau may make a motion to have the Chair make such orders or take such actions as are permitted by HRL §8-118.

HISTORICAL NOTE

Section renumbered (formerly §1-79) and amended City Record June 17, 1998 eff. July 17, 1998; prior

§1-72 became §1-71(b). [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

1

[Footnote 1]: ** Chapter amended City Record June 17, 1998 eff. July 17, 1998. Chapter repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995. Note further provisions of City Record June 17, 1998:

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[Footnote 9]: * Subchapter G amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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§1-73 Motions Relating to Sanctions for Failure to Comply With Order for Investigative Record-Keeping.

The Law Enforcement Bureau may make a motion to have the Chair make such orders or take such actions as are permitted by HRL 8-118 in the event a respondent has failed to comply with an order for investigative record-keeping issued by the Chair pursuant to §1-33 of this Chapter.

HISTORICAL NOTE

Section renumbered (formerly §1-80) and amended City Record June 17, 1998 eff. July 17, 1998; prior

§1-73 repealed. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 9]: * Subchapter G amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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§1-74 Interlocutory Review of Administrative Law Judge Decisions and Orders.

The Chair shall entertain an interlocutory challenge to a decision or order of an Administrative Law Judge where the presiding Administrative Law Judge certifies the question for review. Any question not certified by the presiding Administrative Law Judge may be raised by a party to the Commission in connection with the Commission's review of a recommended decision and order in a case. Any challenge that is certified by the Administrative Law Judge and entertained by the Chair shall preclude further review by the Commission. The failure of a party to challenge a decision or order of an Administrative Law Judge other than a recommended decision and order, shall not preclude that party from making such challenge to the Commission in connection with the Commission's review of a recommended decision and order in a case, provided that the party timely made its objection known to the Administrative Law Judge and that the grounds for such challenge shall be limited to those set forth to the Administrative Law Judge.

HISTORICAL NOTE

Section renumbered (formerly §1-82) and amended City Record June 17, 1998 eff. July 17, 1998; prior

§1-74 repealed. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 9]: * Subchapter G amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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§1-75 Time for Commission Consideration of Recommended Decision and Order.

(a) **Generally.** The Commission shall commence consideration of a case that is the subject of a recommended decision and order upon filing of the recommended decision and order with the Office of General Counsel.

(b) **Recommended decisions and orders not completely disposing of a complaint.** The Commission shall not commence consideration of a case that is the subject of a recommended decision and order which, if adopted, would not resolve the complaint in its entirety unless the Administrative Law Judge certifies the portion of the case proposed to be decided by the recommended decision and order to the Commission for immediate consideration. Dismissal of all or part of a case shall have the effect of a Recommended Decision and Order for the purpose of this section.

HISTORICAL NOTE

Section renumbered (formerly §1-141) City Record June 17, 1998 eff. July 17, 1998, prior §1-75 repealed. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

FOOTNOTES

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[Footnote 9]: * Subchapter G amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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SUBCHAPTER G ADJUDICATION PROCEDURES*9

§1-76 Post-Hearing Comments.

Each party shall have twenty days after the commencement of Commission consideration of the recommended decision and order as provided in §1-75 of this chapter to submit written comments to the Commission. The comments should raise any objections to the recommended decision and order. Comments shall be limited to the record below. Objections not raised in the comments will be deemed waived in any further proceedings. Comments shall be served upon all other parties and shall be filed with the Office of General Counsel. Parties shall apply to the General Counsel's office for permission to submit reply comments. Upon application filed with the Office of General Counsel, the Chair may shorten or extend the time for comments or replies for good cause shown. Comments and replies shall be served upon the Commissioners by the Office of General Counsel.

HISTORICAL NOTE

Section renumbered (formerly §1-142) City Record June 17, 1998 eff. July 17, 1998, prior §1-76 repealed. [See T47 Chapter 1 footnote]

DERIVATION

Section repealed and added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

Section added City Record Jan. 5, 1994 eff. Feb. 4, 1994.

§§1-77, 1-78 repealed City Record June 17, 1998 eff. July 17, 1998. [See T47 Chapter 1 footnote]

§1-81 repealed City Record June 17, 1998 eff. July 17, 1998.

Subchapter H §§1-101-1-103, Subchapter I §§1-121-1-130 added City Record Oct. 10, 1995 eff. Nov. 9, 1995; repealed City Record June 17, 1998 eff. July 17, 1998.

§§1-143-1-152 added City Record Jan. 5, 1994 eff. Feb. 4, 1994; repealed City Record Oct. 10, 1995 eff. Nov. 9, 1995.

FOOTNOTES

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47 RCNY 1-72 and 1-73.
9

[Footnote 9]: * Subchapter G amended City Record June 17, 1998 eff. July 17, 1998; added City Record Oct. 10, 1995 eff. Nov. 9, 1995.

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47 RCNY 2-01

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CHAPTER 2 UNLAWFUL DISCRIMINATORY PRACTICES

§2-01 Definitions.

The definitions in this section shall be used by the New York City Commission on Human Rights in determining whether an institution, club, or place of accommodation is "distinctly private" as that term is used in the New York City Human Rights Law, Administrative Code §8-101 **et seq.**

Domestic partner. The term "domestic partner" means a person who has registered a domestic partnership in accordance with applicable law with the City Clerk, or has registered such a partnership with the former City Department of Personnel pursuant to Executive Order 123 (dated August 7, 1989) during the period August 7, 1989 through January 7, 1993. (The records of domestic partnerships registered at the Department of Personnel are to be transferred to the City Clerk.)

Members. "Members" shall mean individuals belonging to any class of membership offered by the institution, club, or place of accommodation including, but not limited to, full membership, resident membership, nonresident membership, temporary membership, family membership, honorary membership, associate membership, membership limited to use of dining or athletic facilities, and membership of members' minor children or spouses or domestic partners.

Payment directly from a nonmember. "Payment directly from a nonmember" shall mean payment made to an institution, club or place of accommodation by a nonmember for expenses incurred by a member or nonmember for dues, fees, use of space, facilities, services, meals or beverages.

Payment for the furtherance of trade or business. "Payment for the furtherance of trade or business" shall mean

payment made by or on behalf of a trade or business organization, payment made by an individual from an account which the individual uses primarily for trade or business purposes, payment made by an individual who is reimbursed for the payment by the individual's employer or by a trade or business organization, or other payment made in connection with an individual's trade or business, including entertaining clients or business associates, holding meetings or other business- related events.

Payment indirectly from a nonmember. "Payment indirectly from a nonmember" shall mean payment made to a member or nonmember by another nonmember as reimbursement for payment made to an institution, club or place of accommodation for expenses incurred for dues, fees, use of space, facilities, meals or beverages.

Payment on behalf of a nonmember. "Payment on behalf of a nonmember" shall mean payment by a member or nonmember for expenses incurred for dues, fees, use of space, facilities, services, meals or beverages by or for a nonmember.

Regular meal service. "Regular meal service" shall mean the provision, either directly or under a contract with another person, of breakfast, lunch, or dinner on three or more days per week during two or more weeks per month during six or more months per year.

Regularly receives payment. An institution, club or place of "accommodation "regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of nonmembers for the furtherance of trade or business" if it receives as many such payments during the course of a year as the number of weeks any part of which the institution, club or place of accommodation is available for use by members or non members per year.

HISTORICAL NOTE

Section in original publication July 1, 1991.

Domestic partner definition added City Record June 17, 1998 eff. July 17, 1998. [See Note 1]

Members definition amended City Record June 17, 1998 eff. July 17, 1998. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record June 17, 1998:

Mayoral Executive Orders spanning the past two administrations have established several rights and procedures relative to domestic partnerships, including a procedure for City residents to register their domestic partnerships in the office of the City Clerk. Such orders have further provided, among other things, that (i) registered domestic partners are eligible for visitation rights in City hospitals and correction facilities; (ii) City employees with registered domestic partnerships are eligible for child care leave and bereavement leave on the same basis as those benefits are afforded to employees with regard to their spouses; and (iii) registered domestic partnership is evidence of the right to succession to tenancy rights in facilities operated by the New York City Housing Authority and the Department of Housing Preservation and Development. By the end of April, 1998, there were approximately 8,700 couples registered as domestic partners in New York City. More than 55 percent of those registered domestic partners who reported demographic information were heterosexual couples, and less than 45 percent were same sex couples. Almost forty percent of registered domestic partnerships have accessed City health benefits available to partners of City employees and retirees.

Consistent with the intent of such orders, and its authority pursuant to Administrative Code 8-105(11), the Commission is now acting to provide that a provision of its rules applicable to spouses should now be extended to domestic partners.

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CHAPTER 2 UNLAWFUL DISCRIMINATORY PRACTICES

§2-02 Severability.

If any provision of these Regulations or the application thereof is held invalid, the remainder of these Regulations shall not be affected by such holding and shall remain in full force and effect.

HISTORICAL NOTE

Section in original publication July 1, 1991.

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47 RCNY 2-03

RULES OF THE CITY OF NEW YORK

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CHAPTER 2 UNLAWFUL DISCRIMINATORY PRACTICES

§2-03 Exemption of Certain Places of Public Accommodations in Relation to Sex Discrimination.

(a) Dressing rooms, toilets and shower rooms containing multiple facilities, and appurtenant rooms and facilities, and turkish baths and saunas, shall be exempt from the provisions of §8-107, Paragraph 2*1 of the Administrative Code insofar as the use of such accommodations is restricted to one sex. This exemption shall not apply to swimming pools and other facilities for swimming.

(b) Rooming houses or residence hotels in which rental is restricted to one sex shall be exempt from the provisions of §8-107, Paragraph 2* of the Administrative Code if such accommodation is regularly occupied on a permanent, as opposed to transient, basis by the majority of its guests.

(c) Lodging facilities in which the sleeping rooms and/or bathrooms are used in common, such as missions or dormitories designed for occupancy by members of the same sex, shall be exempt from the provisions of §8-107, Paragraph 2 of the Administrative Code insofar as members of one sex are excluded from such accommodations.

HISTORICAL NOTE

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * "Paragraph 2" should be subdivision 4; section 8-107 as amended by L.L. 39/1991, and rule has not been amended to reflect changes.

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47 RCNY 3-01

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CHAPTER 3 AGE DISCRIMINATION EXEMPTIONS FOR PUBLIC ACCOMMODATIONS*1

§3-01 Definitions.

Advantages. "Advantages" shall include but not be limited to priority services, discounts in pricing or anything of monetary value extended on the basis of a person's age.

Restrictions. "Restrictions" shall be construed to mean any limitation in access or services on the basis of a person's age.

HISTORICAL NOTE

Section amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. [See T47 Chapter 3 footnote]

Section added City Record Nov. 12, 1993 eff. Dec. 12, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter 3 amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. Note: Statement of Basis and Purpose-

Paragraph b of Subdivision 4 of Section 8-107 of the New York City Human Rights Law provides that the

provisions of the Human Rights Law which prohibit discrimination by a place or provider of public accommodation on the basis of a person's age shall not apply to places and providers of public accommodation where the Commission grants an exemption based on bona fide considerations of public policy. Rules were promulgated effective December 13, 1993, setting forth general exemptions applicable to all places and providers of public accommodation. These Rules also establish a procedure which permits the owner of a place or provider of public accommodation to apply to the Chairperson of the Commission for an exemption of a specific age-based restriction not covered by any of the general exemptions.

The Commission has received a number of requests by places and providers of public accommodation for exemption of age-based restrictions. Many of these requests arise from the concern on the part of the operator of a place or provider of public accommodation that the presence of children under a certain age within the facility will result in the destruction of property and or disruption of the quiet enjoyment of the services offered by the facility. The Commission has granted exemptions that fall within this category under the rubric of promoting the well-being of the public. In order to clarify the grounds upon which the Commission believes exemptions to the prohibition on age-based discrimination are appropriate, it proposes to add more specific language to Section 3-04 of the current Rule.

The statutory authority for this Rule is New York City Administrative Code, Title 8 Chapter 1, Section 8-105(11) and Section 8-107(4)(b). Persons affected will include all persons who own or operate one or more places or providers of public accommodation within the City of New York, as well as all persons who avail themselves of the goods or services offered by any such place or provider of public accommodation.

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RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 3 AGE DISCRIMINATION EXEMPTIONS FOR PUBLIC ACCOMMODATIONS*1

§3-02 Age-Based Extension of Advantages in Public Accommodations.

Any and all reasonable advantages extended in access to services provided by a place or provider of public accommodation on the basis of a person's age shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code of the City of New York.

HISTORICAL NOTE

Section amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. [See T47 Chapter 3 footnote]

Section added City Record Nov. 12, 1993 eff. Dec. 12, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter 3 amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. Note: Statement of Basis and Purpose-

Paragraph b of Subdivision 4 of Section 8-107 of the New York City Human Rights Law provides that the provisions of the Human Rights Law which prohibit discrimination by a place or provider of public accommodation on the basis of a person's age shall not apply to places and providers of public accommodation

where the Commission grants an exemption based on bona fide considerations of public policy. Rules were promulgated effective December 13, 1993, setting forth general exemptions applicable to all places and providers of public accommodation. These Rules also establish a procedure which permits the owner of a place or provider of public accommodation to apply to the Chairperson of the Commission for an exemption of a specific age-based restriction not covered by any of the general exemptions.

The Commission has received a number of requests by places and providers of public accommodation for exemption of age-based restrictions. Many of these requests arise from the concern on the part of the operator of a place or provider of public accommodation that the presence of children under a certain age within the facility will result in the destruction of property and or disruption of the quiet enjoyment of the services offered by the facility. The Commission has granted exemptions that fall within this category under the rubric of promoting the well-being of the public. In order to clarify the grounds upon which the Commission believes exemptions to the prohibition on age-based discrimination are appropriate, it proposes to add more specific language to Section 3-04 of the current Rule.

The statutory authority for this Rule is New York City Administrative Code, Title 8 Chapter 1, Section 8-105(11) and Section 8-107(4)(b). Persons affected will include all persons who own or operate one or more places or providers of public accommodation within the City of New York, as well as all persons who avail themselves of the goods or services offered by any such place or provider of public accommodation.

Rules of the City of New York

***** Current through December 2009 ****

47 RCNY 3-03

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 3 AGE DISCRIMINATION EXEMPTIONS FOR PUBLIC ACCOMMODATIONS*1

§3-03 Age-Based Restrictions in Public Accommodations.

(a) Any and all restrictions in access to public accommodations on the basis of a person's age which are mandated by federal, state or local law shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code of the City of New York.

(b) Any and all restrictions on the basis of a person's age in access to public accommodations displaying motion pictures with ratings by the Motion Picture Association of America, Inc. shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code of the City of New York.

(c) Any and all reasonable restrictions in access to public accommodations imposed upon minors to prevent physical harm to such persons shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code of the City of New York.

(d) Any restrictions in access to or services provided by a place or provider of public accommodation based on age which allows the owner, lessee, proprietor, manager, superintendent, agent or employee of a place or provider of public accommodation to refuse to enter into a contract which under the laws of the State of New York may be disaffirmed on the ground of infancy shall be exempt from the provisions of §8-107(4)(a) of the Administrative Code.

HISTORICAL NOTE

Section amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. [See T47 Chapter 3 footnote]

Section added City Record Nov. 12, 1993 eff. Dec. 12, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter 3 amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. Note: Statement of Basis and Purpose-

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Rules of the City of New York

***** Current through December 2009 ****

47 RCNY 3-04

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 3 AGE DISCRIMINATION EXEMPTIONS FOR PUBLIC ACCOMMODATIONS*1

§3-04 Applications for Exemption from §8-107(4)(a) Ad Code.

The owner, lessee, proprietor, manager, superintendent or agent of a place or provider of public accommodation may make an application for exemption of an age-based restriction on access to or services provided by such public accommodation which would otherwise be prohibited pursuant to §8-107(4)(a) of the Administrative Code of the City of New York and §3-03 of these rules. Such application shall be made in writing to the office of the chairperson of the New York City Commission on Human Rights. The application shall set forth the specific basis for the exemption sought together with any supporting evidence. The chairperson may grant such exemption if he or she determines that the exemption promotes the health, safety or well-being of the public, or prevents physical harm to the property or premises of a place of public accommodation, or undue disruption of the quiet enjoyment of a place of public accommodation and is not inconsistent with the goals and policies of the City Human Rights Law. The decision of the Chairperson shall be final.

HISTORICAL NOTE

Section amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. [See T47 Chapter 3 footnote]

Section added City Record Nov. 12, 1993 eff. Dec. 12, 1993.

FOOTNOTES

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[Footnote 1]: * Chapter 3 amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. Note: Statement of Basis and Purpose-

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***** Current through December 2009 ****

47 RCNY 3-05

RULES OF THE CITY OF NEW YORK

Title 47 Commission on Human Rights

CHAPTER 3 AGE DISCRIMINATION EXEMPTIONS FOR PUBLIC ACCOMMODATIONS*1

§3-05 Effective Date. [Repealed]

HISTORICAL NOTE

Section repealed City Record Aug. 18, 1995 eff. Sept. 17, 1995. [See T47 Chapter 3 footnote]

Section added City Record Nov. 12, 1993 eff. Dec. 12, 1993.

FOOTNOTES

1

[Footnote 1]: * Chapter 3 amended City Record Aug. 18, 1995 eff. Sept. 17, 1995. Note: Statement of Basis and Purpose-

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-01

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-01 Definitions.

As used in this chapter:

Administrative law judge. "Administrative law judge" shall mean the person assigned to preside over a case, whether the chief administrative law judge or a person appointed by the chief administrative law judge.

Agency. "Agency" shall mean any commission, board, department, authority, office or other governmental entity authorized or required by law to refer a case to OATH, regardless of whether the agency is petitioner or respondent in such a case.

CAPA. "CAPA" shall mean the City Administrative Procedure Act, §§1041 to 1047 of the New York City Charter ("Charter").

Case. "Case" shall mean an adjudication pursuant to CAPA, §1046, referred to OATH pursuant to Charter, §1048.

Chief administrative law judge. "Chief administrative law judge" shall mean the director of OATH appointed by the mayor pursuant to Charter, §1048.

Electronic means. "Electronic means" shall mean any method of transmission of information between computers or

other machines designed for the purpose of sending and receiving such transmissions, and which allows the recipient to reproduce the information transmitted in a tangible medium of expression, e.g. facsimile transmission and email.

Filing. "Filing" shall mean submitting papers to OATH, whether in person, by mail, or by electronic means, for inclusion in the record of proceedings in a case.

Mailing. "Mailing" shall mean the deposit, in a post office or official depository under the exclusive care and custody of the United States Postal Service, of a paper enclosed in a first class postpaid wrapper, addressed to the address designated by a person for that purpose or, if none is designated, at such person's last known address.

OATH. "OATH" shall mean the Office of Administrative Trials and Hearings.

Petition. "Petition" shall mean a document, analogous to a complaint in a civil action, which states the claims to be adjudicated.

Petitioner. "Petitioner" shall mean a party asserting claims.

Respondent. "Respondent" shall mean a party against whom claims are asserted.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section repealed and added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-02

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-02 Jurisdiction.

Pursuant to Charter §1049(3), OATH's jurisdiction includes the authority to render any ruling or order necessary and appropriate under applicable law or agency rule for the just and efficient adjudication of cases.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section repealed and added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Absent precedent stating a standard applicable to requests for **amicus** participation in a disability discrimination case under the City Human Rights Law, reference to practice before the Commission's former tribunal is appropriate and the standard is whether, in the discretion of the presiding judge, such participation will substantially further the "just and efficient adjudication of cases." **Comm'n on Human Rights v. 325 Cooperative, Inc.,** OATH Index No. 1423/98, mem. dec. (July 16, 1998).

¶ 2. Automatic stay provision of federal bankruptcy law and pendency of the contractor's bankruptcy case did not preclude the Comptroller from proceeding against the contractor under the prevailing wage law. **Office of the Comptroller v. C & F Electrical Contractors, Inc.,** OATH Index Nos. 401-02/93 (Jan. 11, 1993); **Office of the Comptroller v. IFD Construction Corp.,** OATH Index No. 901/98 (Jan. 26, 1998).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

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***** Current through December 2009 ****

48 RCNY 1-03

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-03 Applicability.

This chapter applies to the conduct of all cases, including hearings, pre-hearing and post-hearing matters, except to the extent that this chapter may be superseded by CAPA or other provision of law.

HISTORICAL NOTE

Section repealed and added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pursuant to the section and to §1049(3)(d) of the City Charter, this tribunal's rules apply to a case except to the extent that they are inconsistent with the rules of the agency that referred the case. Therefore, in a Loft Law case referred by the Loft Board, this tribunal's rules govern pre-trial discovery because the rules of the Loft Board are silent as to discovery. **Matter of Prince,** OATH Index No. 1506/95 (Aug. 4, 1995).

¶ 2. Because not all Loft Law cases are adjudicated before this tribunal, the rules of this tribunal are not applicable to a Loft Law case unless and until the case is referred here. **Matter of Ancona,** OATH Index Nos. 116/96, 621/96,

623/96 (Dec. 8, 1995).

FOOTNOTES

1

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-04 Construction and Waiver.

This title shall be liberally construed to promote just and efficient adjudication of cases. This title may be waived or modified on such terms and conditions as may be determined in a particular case to be appropriate by an administrative law judge.

HISTORICAL NOTE

Section repealed and added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Absent precedent stating a standard applicable to requests for **amicus** participation in a disability discrimination case under the City Human Rights Law, reference to practice before the Commission's former tribunal is appropriate and the standard is whether, in the discretion of the presiding judge, such participation will substantially further the "just and efficient adjudication of cases." **Comm'n on Human Rights v. 325 Cooperative, Inc.,** OATH Index No. 1423/98, mem. dec. (July 16, 1998).

¶ 2. An application that respondent's wife and a friend be permitted to observe the undercover witness' testimony was denied because divulging the witness' identity would be tantamount to placing him and his family in jeopardy and would compromise ongoing police investigations. Under section 1-49, all OATH hearings are open unless legally recognized grounds exist for closure. Section 1-49 was interpreted in light of this section which gives the administrative law judge discretion to waive or modify trial rules as may be appropriate in a particular case to promote the just and fair adjudication of cases. **Dep't of Correction v. Lowndes**, OATH Index No. 1662/99 (July 29, 1999), **rev'd on other grounds**, NYC Civ. Serv. Comm'n Item No. CD00-84-R (July 24, 2000).

FOOTNOTES

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration

Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-05

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-05 Effective Date.

This chapter shall be effective on the first day permitted by CAPA, §1043(e), and shall apply to all cases. However, for cases initiated prior to the effective date of these rules, no act which was valid, timely or otherwise proper under the rules applicable at the time of the act will be rendered improper by the subsequent effectiveness of this chapter.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section repealed and added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Section in original publication July 1, 1991.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered

and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-06

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-06 Computation of Time.

Periods of days prescribed in this chapter shall be calculated in calendar days, except that when a period of days expires on a Saturday, Sunday or legal holiday, the period shall run until the next business day. Where this chapter prescribes different time periods for taking an action depending whether service of papers is personal or by mail, service of papers by electronic means shall be deemed to be personal service, solely for purposes of calculating the applicable period of time.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section repealed and added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Section in original publication July 1, 1991.

CASE AND ADMINISTRATIVE NOTES

¶ 1. OATH practice is to recommend suspension penalties in calendar days unless otherwise specified. A reference to "days" in a recommendation means calendar days, not working days. **Dep't of Sanitation v. Boyd,** OATH Index No.

104/99, letter dated Oct. 9, 1998 to department advocate (Sept. 30, 1998).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-07

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-07 Filing of Papers.

(a) **Generally.** Papers may be filed at OATH in person, by mail or by electronic means.

(b) **Headings.** The subject matter heading for each paper sent by personal service, mail or electronic means must indicate the OATH index number where one has been assigned pursuant to §1-26(b).

(c) **Means of service on adversary.** Submission of papers by a party in a case to the administrative law judge by electronic means mail or personal delivery without providing equivalent method of service to all other parties shall be deemed to be an **ex parte** communication.

(d) **Proof of service.** Proof of service must be maintained by the parties for all papers filed at OATH. Proof of service shall be in the form of an affidavit by the person effecting service, or in the form of a signed acknowledgement of receipt of papers by the person receiving the papers. A writing admitting service by the person to be served is adequate proof of service. Proof of service for papers served by electronic means, in addition to the foregoing, may also be in the form of a record confirming delivery or acknowledging receipt of the electronic transmission.

HISTORICAL NOTE

Section added City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-08

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER A GENERAL MATTERS

§1-08 Access to Facilities and Programs by People with Disabilities.

OATH is committed to providing equal access to its facilities and programs to people with disabilities and OATH will make reasonable accommodations requested by people with disabilities. A person requesting an accommodation for purposes of participation in a case at OATH, including attendance as a member of the public, shall request such accommodation sufficiently in advance of the proceeding in which the person wishes to participate to permit a reasonable time to evaluate the request. A request for accommodation shall be submitted to OATH's office manager.

HISTORICAL NOTE

Section added City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

1-09 repealed City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered

and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-11

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER B RULES OF CONDUCT

§1-11 Appearances.

(a) A party may appear in person, by an attorney, or by a duly authorized representative. A person appearing for a party, including by telephone conference call, is required to file a notice of appearance with OATH. Docketing of a case by an attorney or representative of a party shall be deemed to constitute the filing of a notice of appearance by that person. The filing of any papers by an attorney or representative who has not previously appeared shall constitute the filing of a notice of appearance by that person, and shall conform to the requirements of subdivisions (b) and (d) of this section.

(b) The appearance of a member in good standing of the bar of a court of general jurisdiction of any state or territory of the United States shall be indicated by the suffix "Esq." and the designation "attorney for (petitioner or respondent)", and the appearance of any other person shall be indicated by the designation "representative for (petitioner or respondent)".

(c) Absent extraordinary circumstances, no application shall be made or argued by any attorney or other representative who has not filed a notice of appearance. Participation in a telephone conference call on behalf of a party by an attorney or representative of the party shall be deemed an appearance by the attorney or representative. Nonetheless, upon making such an appearance, the attorney or representative shall file a notice of appearance in conformity with subdivisions (b) and (d) of this section.

(d) A person may not file a notice of appearance on behalf of a party unless he or she has been retained by that party to represent the party before OATH. Filing a notice of appearance constitutes a representation that the person appearing has been so retained. Filing a notice of appearance pursuant to §1-11(a) of this subchapter constitutes a representation that the person appearing has read and is familiar with the rules of this subchapter.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A motion to disqualify an opposing party's counsel is governed by the disciplinary rules of the Code of Professional Responsibility. An agency's attorney who will testify as a trial witness may act as counsel to the agency, and may provide administrative and supervisory support to the agency's trial counsel, but may not himself act as trial counsel. Human Resources Administration v. Man-of-Jerusalem, OATH Index No. 1021/91 (Nov. 12, 1991).

¶ 2. A party before OATH is not required to appear by an attorney. Fire Department v. Durkin, OATH Index No. 309/90 (Mar. 28, 1991).

¶ 3. Where taxicab medallion owners defaulted at license revocation hearing, an attorney retained by a taxi management company who represents that he is in the process of contacting the medallion owners to offer his services, lacks standing under paragraphs (c) and (d) of this section to file motions to vacate the medallion owners' defaults. Taxi and Limousine Commission v. West, OATH Index Nos. 1131, 1133-37/94 (Aug. 19, 1994); Taxi and Limousine Commission v. Borko, OATH Index Nos. 1117-24 (July 18, 1994).

¶ 4. Counsel must file a notice of appearance before he could appear on behalf of respondent in the proceeding. **Taxi and Limousine Comm'n v. Surinder,** OATH Index No. 825/99, letter decision dated Nov. 30, 1998.

¶ 5. Where respondent failed to appear for trial and his union-provided counsel asked for an adjournment based upon respondent's representation to a union representative that he had to leave the state to attend to a sick parent, the respondent was declared in default because he had not authorized anyone to appear on his behalf pursuant to this rule. **Health and Hospitals Corp. (Elmhurst Hospital Center) v. Mosley**, OATH Index No. 206/00 (Nov. 15, 1999).

¶ 6. Where attorney was present at the hearing to represent respondent but had not filed a notice of appearance, the attorney was not authorized to appear or seek relief in the form of an adjournment under subsection (c). **Health and Hospitals Corp. (Bellevue Hospital Center) v. Page,** OATH Index No. 1623/01 (May 9, 2001).

¶ 7. Upon respondent's failure to appear on date of scheduled hearing, union counsel had no standing to participate in the proceedings and was excused where counsel represented that respondent had failed to respond to all attempts to contact him. **Dep't of Correction v. Bomani,** OATH Index No. 1383/01 (July 20, 2001)

¶ 8. Under subsection (d) of this section union counsel had no standing to participate in the proceedings or to make an adjournment request on respondent's behalf where respondent had not given permission for counsel to represent him in the instant proceeding. **Dep't of Correction v. Chapman,** OATH Index No. 774/02 (May 6, 2002).

¶ 9. Under OATH's Rules of Practice, a party is deemed to have appeared as of the date of filing of a notice of appearance. Respondent owner was deemed to have appeared where he retained counsel well in advance of the hearing, and where counsel filed a notice of appearance and sought and obtained at least one adjournment of the proceeding. Having so appeared, respondent owner waived any objection to service of the petition. **Dep't of Buildings v. Owners, Occupants and Mortgagees of 116 East 73rd Street, Manhattan,** OATH Index No. 1807/02 (Jan. 24, 2003).

¶ 10. In a disciplinary hearing, an attorney appeared on behalf of respondent's union and requested an adjournment in order to contact respondent. The attorney lacked standing to make the request for an adjournment under this rule and respondent was found in default. **Human Resources Admin. v. Messam,** OATH Index No. 1437/03 (May 30, 2003).

¶ 11. An attorney appeared for respondent's union and represented that he had not had contact with respondent. Pursuant to this rule, a person may not appear on behalf of a party unless he or she has been retained by that party to represent that party before OATH. **Human Resources Admin. v. Crawford,** OATH Index No. 265/04 (Sept. 16, 2003).

FOOTNOTES

1

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As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the

implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-12

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER B RULES OF CONDUCT

§1-12 Withdrawal and Substitution of Counsel.

(a) An attorney who has filed a notice of appearance shall not withdraw from representation without the permission of the administrative law judge, on application. Withdrawals shall not be granted unless upon consent of the client or when other cause exists as delineated in the applicable provisions of the Code of Professional Responsibility.

(b) Notices of substitution of counsel may be served and filed more than twenty days before trial without leave of the administrative law judge. Applications for later substitutions of counsel shall be granted freely absent prejudice or substantial delay of proceedings.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Absent any mandatory basis for withdrawal of counsel under the Code of Professional Responsibility, and absent any persuasive reason for the respondent's last-minute desire to replace counsel, who had represented him through 15 months of pre-trial proceedings, counsel's application for leave to withdraw was denied. Department of

Correction v. Rebecca, OATH Index No. 151/94 (Oct. 21, 1993).

¶ 2. The requirement that counsel seek leave to withdraw has several purposes, including protecting all parties' rights, monitoring and regulating the practice of the bar before the tribunal, ensuring that adjudication proceeds expeditiously and in an orderly fashion, and protecting the public interest in efficient application of this tribunal's resources. **Department of Correction v. Lewis,** OATH Index No. 1316/95 (May 31, 1995).

¶ 3. An attorney who has appeared pursuant to §1-11 of these rules may not unilaterally withdraw. However, because not all Loft Law cases are adjudicated before this tribunal, withdrawal of counsel before referral of the case to this tribunal is not governed by this tribunal's rules. **Matter of Ancona,** OATH Index Nos. 116/96, 621/96, 623/96 (Dec. 8, 1995).

¶ 4. Where counsel delayed seeking leave to withdraw from representation of the petitioner until too late for the petitioner to retain new counsel in time for trial, the motion to withdraw was denied notwithstanding fee dispute between counsel. **Matter of SMJ Management Corp.,** OATH Index No. 1505/95 (Nov. 21, 1995), **aff'd sub nom. SMJ Management Corp. v. New York City Loft Board,** Index No. 103595/96 (Sup. Ct. N.Y. Co. Feb. 6, 1997).

¶ 5. Counsel's bare statement that some other attorney, unknown to counsel, had taken over representation of the respondent, is an insufficient basis for granting leave to withdraw from representation of the respondent. **Department of Correction v. Lewis,** OATH Index No. 1316/95 (May 31, 1995).

¶ 6. Having previously appeared in the proceeding by attending the pre-trial conference, counsel must seek permission of the administrative law judge in order to withdraw from representing a party scheduled for a hearing. **Matter of Wilson,** OATH Index No. 1573/97 (Mar. 20, 1998), **aff'd,** Loft Bd. Order No. 2280 (Sept. 24, 1998).

¶ 7. Counsel for respondent sought to withdraw on the third and final day of trial based solely on respondent's desire to change counsel. In denying the motion, the administrative law judge found that a simultaneous request to adjourn the proceedings in order for new counsel to prepare demonstrated that substitution would substantially delay the proceedings. The matter had been pending for several months, and more than one month between the second and third day of trial had elapsed. No apparent reason existed that substitution could not have been made earlier so that new counsel would have been ready for the final trial date, or that respondent could have found new counsel who was available on that date. **Dep't of Sanitation v. Garcia,** OATH Index No. 1140/98 (May 1, 1998).

¶ 8. Pursuant to this rule, an attorney who has filed a notice of appearance shall not withdraw from representation without the permission of the administrative law judge, on application. At the end of a second day of trial, respondent's counsel requested the tribunal's permission to withdraw from representing respondent. The application was denied. On the third day of trial, when respondent indicated that she no longer wished that the attorney represent her, the administrative law judge relieved the attorney from representing respondent and the attorney withdrew. **Dep't of Correction v. Shepheard,** OATH Index No. 965/03 (Nov. 6, 2003).

¶ 9. Administrative law judge granted attorney's application to withdraw based on client's consent and the preliminary stage of the proceeding. **Matter of Rosario**, OATH Index No. 1692/04, mem. dec. (Aug. 31, 2004).

¶ 10. In an employee disciplinary proceeding at OATH, the union is not a party, and counsel appears as attorney for the employee. Therefore, the attorney's motion to withdraw from hearing is governed by OATH's rule of practice and the lawyer's Code of Professional Responsibility, not federal, state or local labor law. **Health & Hospitals Corp. (Harlem Hospitals Center) v. Norwood**, OATH Index No. 143/05, mem dec. (Mar. 7, 2005). ALJ rejects argument by union-retained counsel that he should have been permitted to withdraw because he was instructed by the union to withdraw from the proceeding since the employee failed to appear at the scheduled hearing and that the union, and not the employee, is his client.

¶ 11. Withdrawal of counsel granted based on irreconcilable differences between attorney and client. **13 East 17 th**

Street Tenants v. 13 East 17 th Street, LLC, OATH Index Nos. 1343/03, 1357/03 & 1358/03, mem. dec. (Apr. 29, 2005).

¶ 12. Counsel's motion to withdraw, made four days before scheduled completion date in protracted litigation, was denied. **Matter of Slotkin**, OATH Index No. 690/06 (May 29, 2007).

¶ 13. An attorney who has filed a notice of appearance may not withdraw from representation without the permission of the client or as delineated in the Code of Professional Responsibility. A motion to withdraw based on the respondent's failure to appear at the hearing and the attorney's inability to contact him was denied when the ALJ found no indication that the attorney had taken steps to avoid prejudice to the respondent, including giving due notice of her intention to withdraw. **Health & Hospitals Corp. (Lincoln Medical & Mental Health Center) v. Wolf**, OATH Index No. 2153/08 (June 3, 2008), **adopted**, Senior Assoc. Executive Director's Dec. (July 9, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial

implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER B RULES OF CONDUCT

§1-13 Conduct; Suspension from Practice at OATH.

(a) Individuals appearing before OATH shall comply with the rules of this chapter and any other applicable rules, and shall comply with the orders and directions of the administrative law judge.

(b) Individuals appearing before OATH shall conduct themselves at all times in a dignified, orderly and decorous manner. In particular, at the hearing, all parties, their attorneys or representatives, and observers shall address themselves only to the administrative law judge, avoid colloquy and argument among themselves, and cooperate with the orderly conduct of the hearing.

(c) Attorneys and other representatives appearing before OATH shall be familiar with the rules of this title.

(d) Attorneys appearing before OATH shall conduct themselves in accordance with the canons, ethical considerations and disciplinary rules set forth in the code of professional responsibility in their representation of their clients, in their dealings with other parties, attorneys and representatives before OATH, and with OATH's administrative law judges and staff.

(e) Willful failure of any person to abide by the standards of conduct stated in paragraphs (a) through (d) of this section, may, in the discretion of the administrative law judge, be cause for the imposition of sanctions. Such sanctions

may include formal admonishment or reprimand, assessment of costs or imposition of a fine, exclusion of the offending person from the proceedings, exclusion or limitation of evidence, adverse evidentiary inference, adverse disposition of the case, in whole or in part, or other sanctions as the administrative law judge may determine to be appropriate. The imposition of sanctions may be made after a reasonable opportunity to be heard. The form of the hearing shall depend upon the nature of the conduct and the circumstances of the case.

(f) In the event that an attorney or other representative of a party persistently fails to abide by the standards of conduct stated in paragraphs (a) through (d) of this section, the chief administrative law judge may, upon notice to the attorney or representative and a reasonable opportunity to rebut the claims against him or her, suspend that attorney or representative from appearing at OATH, either for a specified period of time or indefinitely until the attorney or representative demonstrates to the satisfaction of the chief administrative law judge that the basis for the suspension no longer exists.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

NOTE

1. Statement of Basis and Purpose in City Record Oct. 19, 2005:

Pursuant to §§1043 and 1049 of the City Charter, the Chief Judge hereby amends various sections in Chapter 1 of Title 48 of the Rules of the City of New York (RCNY), the "Rules of Practice Applicable to Cases at OATH Generally," §§2-01, 2-03 and 2-07 of Subchapter A of Chapter 2 of Title 48 RCNY, "Additional Rules for Pre-qualified Vendor Appeals," repeals Subchapter B of Chapter 2 of Title 48 RCNY, "Additional Rules for Debarment Cases" and amends §3-01 of Chapter 3 of Title 48 of the RCNY, "Fitness and Discipline Hearings for OATH Employees."

Chapter 1 of Title 48 has not been changed since the last rule revision in 1998. During the ensuing years, there have been instances where OATH Administrative Law Judges have discovered that certain provisions in Chapter 1 were unclear and that practices have developed which are inconsistent with the text of the rules. The changes to Chapter 1 clarify existing rules and ensure that the text of the rules comports with the principles of good administrative trial practice. Among other things, the amendments provide for electronic filing of papers, provide procedures for requesting reasonable accommodation for people with disabilities, and provide sanctions for not complying with the standards of conduct.

The amendments to the "Additional Rules for Prequalified Vendor Appeals" clarify the method for calculating the deadline for a respondent to file an answer to the petition and reflect that an applicable Procurement Policy Board rule has been renumbered.

The "Additional Rules for Debarment Cases" are repealed due to amendments to §335 of the City Charter in 2001, which repealed provisions for OATH to hear debarment cases. The current §335 does not provide for an OATH hearing.

The amendment to the rule for "Fitness and Discipline Hearings for OATH Employees" reflects the correct charter section authorizing such proceedings.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where counsel failed properly to move to withdraw as counsel, disregarded instructions of the administrative law judge to appear for trial as scheduled, and wrote letters to the administrative law judge that were manifestly inappropriate as a form of address by counsel to a judge, he was found to have violated paragraph (a) of this section,

was formally reprimanded, and was cautioned that future violations might result in imposition of the more severe sanctions provided by paragraph (b) of this section. **Department of Correction v. Lewis,** OATH Index No. 1316/95 (May 31, 1995).

¶ 2. Although some of the language in paragraph (a) of this section pertains to trial misconduct, the requirement of "dignified, orderly and decorous" conduct applies at all times and in all proceedings before this tribunal. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Dec. 12, 1996).

¶ 3. For failure without excuse to comply with the administrative law judge's order at the commencement of the case to submit a notice of appearance by a certain date, and failure to comply with §1-11(c) of these rules by orally arguing a motion for an adjournment of a settlement conference without having submitted a notice of appearance, counsel who had not previously been formally sanctioned was formally admonished pursuant to paragraph (a) of this section. Matter of Harmacol Realty Co., OATH Index No. 1975/96 (Dec. 12, 1996).

¶ 4. The administrative law judge cautioned attorney for failing to disclose prior adverse holdings and for repeatedly asserting issues that have been previously adjudicated. In post-trial submissions, attorney raised several defenses to the padlock law but did not disclose that a prior decision by this tribunal had considered and rejected these same legal defenses. **Dep't of Buildings v. Owners, Occupants & Mortgagees of 2377 Grand Avenue, Bronx,** OATH Index No. 1061/98 (June 12, 1998).

¶ 5. After an adjournment request was denied on the third and final day of trial, the administrative law judge instructed the parties to proceed. Counsel and respondent elected to leave the hearing, claiming they were unprepared to go forward. Pursuant to this section, the administrative law judge issued a warning to counsel for violating OATH's rules and administrative law judge's direction, as well as the applicable provision of the disciplinary rules, DR 2-110 (A)(1). **Dep't of Sanitation v. Garcia,** OATH Index No. 1140/98 (May 1, 1998).

¶ 6. Where counsel misrepresented legal precedent by inserting favorable language to his position in his brief, counsel was admonished that he would be subject to the penalties provided under this section if it occurred again. **Taxi and Limousine Commission v. Ouali,** OATH Index No. 1855/00, mem. dec. (Feb. 16, 2000).

¶ 7. Attorney is sanctioned for issuing his own subpoenas, not on notice to this tribunal or his adversary, in violation of section 1-43. **Matter of Live Centre Tenants Assoc.,** OATH Index No. 834/05, mem. dec. (Mar. 2, 2006).

¶ 8. Sanctions may be imposed pursuant to subsection (e) of this section so long as there is a willful violation of OATH's rules. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

¶ 9. The imposition of sanctions for non-compliance with discovery is not limited to the provisions of 1-33(e). Sanctions may be imposed under subsection (e) of this section for the willful failure to comply with a discovery demand. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

¶ 10. Sanctions range from admonition of counsel to dismissal of the petition. A factor to consider when assessing the sanction was whether counsel's noncompliance was malicious or due to a failure to understand her obligations. Where counsel acts maliciously or in a calculated effort to disadvantage her adversary, a severe sanction is warranted. Dismissal of the petition with prejudice is a draconian sanction, not warranted, where, as here, it was not shown that counsel's non-compliance with discovery demands was done with a malicious intent to gain an advantage. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

¶ 11. Admonition is imposed as the sanction for counsel's willful, but not malicious, failure to comply with discovery demands. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER B RULES OF CONDUCT

§1-14 Ex Parte Communications.

(a) Except for ministerial matters, and except on consent, in an emergency, or as provided in §l-31(a), communications with the administrative law judge concerning a case shall only occur with all parties present. If an administrative law judge receives an **ex parte** communication concerning the merits of a case to which he or she is assigned, then he or she shall promptly disclose the communication by placing it on the record, in detail, including all written and oral communications and identifying all individuals with whom he or she has communicated. A party desiring to rebut the **ex parte** communication shall be allowed to do so upon request.

(b) Communications between OATH and a party docketing a case, to the extent necessary to the placement of a case on the trial calendar or conference calendar pursuant to §1-26(a), shall be deemed to be ministerial communications. Communications between OATH and a party docketing a case, to the extent necessary to a request for expedited calendaring pursuant to §1-26(c), shall be deemed to be emergency communications.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Consent by one party to an **ex parte** communication by the other party must be conveyed by the consenting party to the administrative law judge. Human Resources Administration v. Morales, OATH Index No. 306/92 (Dec. 31, 1991).

¶ 2. Counsel's submission of motion papers to this tribunal by facsimile transmission, with a copy served on the opposing party by regular mail, constituted an improper **ex parte** communication. **Health and Hospitals Corporation, Emergency Medical Service v. Hermida,** OATH Index No. 715/95 (Mar. 28, 1995).

¶ 3. Counsel's application to cancel hearing, sent by facsimile to administrative law judge, without indication that it was served on counsel's adversary, was an improper **ex parte** communication. **Human Resources Admin. v. Khoury-King,** OATH Index No. 836/99 (Dec. 2, 1998).

FOOTNOTES

1

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-21 Designation of OATH.

Where necessary under the provision of law governing a particular category of cases, the agency head shall designate the chief administrative law judge of OATH, or such administrative law judges as the chief administrative law judge may assign, to hear such cases.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

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of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-22

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-22 The Petition.

The petition shall include a short and plain statement of the matters to be adjudicated, and, where appropriate, specifically allege the incident, activity or behavior at issue as well as the date, time, and place of occurrence. The petition shall also identify the law, rule, regulation, contract provision, or policy that was allegedly violated and provide a statement of the relief requested. If the petition does not comply with this provision, the administrative law judge may direct, on the motion of a party or sua sponte, that the petitioner re-plead the petition.

HISTORICAL NOTE

Section amended City Record Aug. 19, 2009 §1, eff. Sept. 18, 2009. [See Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

NOTE

1. Statement of Basis and Purpose in City Record Aug. 19, 2009:

OATH held a public hearing on proposed amendments to its Rules of Practice on July 24, 2009. One person had submitted written comments regarding the proposed rule changes but no one testified at the hearing.

OATH has amended various sections of its Rules of Practice, found in Chapter 1 of Title 48 of the Rules of the City of New York, to make the hearing process more transparent and efficient, while continuing to provide fair and impartial treatment for parties and litigants.

Section 1-22 was amended to improve pleading practice at OATH. Pleadings are to be construed liberally. However, when a petition does not adequately place a respondent on notice of the allegations and the remedy sought or when multiple charges are written in duplicative fashion or are confusing, adjudication of the matter can be delayed or complicated. The amended rule gives the administrative law judge authority to direct the petitioner to re-plead the petition, which will allow the proceeding to go forward in an efficient manner.

Section 1-32 has been amended to permit an administrative law judge to remove a case from the calendar. The amended rule provides a tool to avoid a long or indefinite continuation of the proceedings when the parties are not ready for trial or conference. It is intended to allow the ALJ to assess the readiness of the parties for trial in a period of time that is consistent with OATH's calendar management standards.

Appropriate language assistance services are needed so that parties and witnesses whose primary language is not English can participate in conferences and trials. Interpreters are also needed to ensure that a complete and accurate hearing record is made. Section 1-44 was amended to improve the quality of language assistance services provided at OATH conferences and hearings. The old rule, which allowed for the use of a friend or relative of a witness or party to act as an interpreter, did not ensure that an accurate and reliable translation was made. In addition, the old rule placed the burden of obtaining an interpreter on the party who needs it. Because OATH has access to quality language assistance services, the amended rule makes OATH responsible for ensuring that appropriate services are provided.

The amendment of §1-49 addresses publication of OATH decisions. While there is a presumption that administrative proceedings are open to the public, various statutes and rules require that certain information remain confidential. The amended rule is intended to ensure that confidential information is not published in a decision in contravention of applicable law or rules, without departing from OATH's policy of maintaining open proceedings.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pleadings do not serve a jurisdictional purpose in administrative proceedings, only a notice-giving function. Department of Buildings v. 2837-39 Decatur Avenue, Bronx, New York, OATH Index No. 349/94 (Jan. 10, 1994).

¶ 2. The purpose of administrative pleadings is notice, not jurisdiction, and a petition is sufficient if it affords notice of the matters to be adjudicated. Department of Buildings v. Owner, Occupants and Mortgagees of 31 West 11th Street, Apartments 6A and 6B, New York, OATH Index No. 990/94 (Aug. 26, 1994).

¶ 3. A petition need not be verified. Department of Buildings v. 232 Mount Hope Place, Bronx, New York, OATH Index No. 1207/94 (Oct. 28, 1994).

¶ 4. This section does not require any particular form of designation of parties, and does not refer to a caption. Therefore, the petition's reference to the premises in the caption and listing of the respondents below the caption is a matter purely of style, not of substance, and the listing of "occupants" rather than the names of the occupants is a reasonably precise description which the movant had no trouble recognizing as applying to her. Department of Buildings v. Owner, Occupants and Mortgagees of 31 West 11th Street, Apartments 6A and 6B, New York, OATH Index No. 990/94 (Aug. 26, 1994).

¶ 5. A petition alleging commercial use of premises in a residential zone need not plead the non-existence of a legal non-conforming use, because the doctrine of prior non-conforming use is an affirmative defense. Department of Buildings v. 232 Mount Hope Place, Bronx, New York, OATH Index No. 1207/94 (Oct. 28, 1994).

¶ 6. Where the petition erroneously alleged that the date of occurrence was one day before that stated in all other

documentation, notice to the respondent of the petitioner's claim was sufficient, and the respondent was afforded an adequate opportunity to prepare a defense. **Department of Correction v. Cross,** OATH Index No. 1109/95 (Aug. 9, 1995).

¶ 7. Although it is the better practice that the petition specify the rule allegedly violated by the respondent, failure to cite the rule is not fatal to the petition where the respondent was not prejudiced by the failure. **Health and Hospitals Corporation, Harlem Hospital v. Case,** OATH Index No. 595/95 (Apr. 6, 1995).

¶ 8. Where the petition alleged that the respondent was absent from her job, without leave, "since" a stated date, and where the trial evidence showed that the respondent's absence without leave was still ongoing as of the time of trial, the petition adequately pleaded a continuous period of absence without leave beginning on the stated date and continuing until the time of trial. **Health and Hospitals Corporation, Harlem Hospital v. Case,** OATH Index No. 595/95 (Apr. 6, 1995).

¶ 9. A petition that alleged that the respondent engaged in hugging and kissing a student over a period of several months was not inadequately specific pursuant to this section, because the petition alleged continuing conduct over the time period alleged, and because material produced to the respondent during pre-trial discovery revealed that the petitioner's evidence included an allegation that the respondent had engaged in the hugging and kissing approximately every other day during the time period at issue. Board of Education v. Blackson, OATH Index No. 1715/97 (Dec. 10, 1997).

¶ 10. As a threshold matter, the party filing a petition must possess the right to an administrative hearing pursuant to statute, rule, collective bargaining agreement or other legal provision. Petitioner, a base station licensee whose license had been suspended prior to hearing, filed a petition requesting a hearing and seeking termination of the pre-hearing suspension imposed by the Taxi and Limousine Commission. Although the petition meets the requirements of this rule-it alleges a wrong and asserts a claim to relief-the Commission's motion to dismiss was granted because there is no law or regulation which requires an administrative hearing when a licensee seeks termination of a pre-hearing suspension. **Haven Car Service Corp. v. Taxi and Limousine Comm'n,** OATH Index No. 994/98, mem. dec. (Feb. 9, 1998).

¶ 11. Under section 17-346(a) of the NYC Administrative Code, the Dangerous Dog Regulation and Protection Law, a dog previously determined to be dangerous may be immediately impounded if its owner is found in violation of a previous order of the Commissioner. Under section 17-346(b), the owner may request a hearing to determine whether the dog should be returned to his or her custody. **Dep't of Health v. Yosupov,** OATH Index No. 1551/98 (July 23, 1998).

¶ 12. In vehicle retention hearing, administrative law judge found petition, alleging vehicle is being retained for forfeiture as an instrumentality of a crime following owner/driver's arrest for reckless endangerment and reckless driving, provided sufficient notice under section 1-22, which requires only "a short and plain statement of the matters to be adjudicated." **Police Dep't v. Fung**, OATH Index No. 1195/05, mem dec. (Jan. 27, 2004).

¶ 13. Disciplinary pleadings should be designed to simply and concisely place employee on notice of what he or she has allegedly done wrong. Petitioner was criticized for confusing and verbose petition which itemized ten incidents in 28 redundant, cross-referenced paragraphs. **Admin. for Children's Services v. Papa**, OATH Index No. 1622/05 (Aug. 30, 2005), **modified on penalty**, Comm's Dec. (Oct. 21, 2005).

¶ 14. Disciplinary pleadings should be designed to simply and concisely place an employee on notice of what he or she has allegedly done wrong. Cross-referencing the paragraphs and repeating specifications numerous times under multiple charges and specifications leads to confusing and overly verbose pleadings. The better practice is to provide a single factual allegation with a citation to the agency rules alleged to have been violated. **Dep't of Homeless Services v. Aigbedion**, OATH Index No. 2340/07 (Nov. 2, 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-23

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-23 Service of the Petition.

(a) The petitioner shall be responsible for serving the respondent with the petition. The petition shall be accompanied by a notice of the following: the respondent's right to file an answer and the deadline to do so under §1-24; the respondent's right to representation by an attorney or other representative; and the requirement that a person representing the respondent must file a notice of appearance with OATH. The notice shall include the statement that OATH's rules of practice and procedure are published in Title 48 of the Rules of the City of New York, and that copies of OATH's rules are available at OATH's offices or on OATH's website www.nyc.gov/oath.

(b) Service of the petition shall be made pursuant to statute, rule, contract, or other provision of law applicable to the type of proceeding being initiated. Absent any such applicable law, service of the petition shall be made in a manner reasonably calculated to achieve actual notice to the respondent. Service by certified mail, return receipt requested, contemporaneously with service by regular first-class mail, shall be presumed to be reasonably calculated to achieve actual notice. Appropriate proof of service shall be maintained.

(c) A copy of the petition and accompanying notices, with proof of service, shall be filed with OATH at or before the commencement of the trial.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (a) amended City Record Aug. 19, 2009 §2, eff. Sept. 18, 2009. [See T48 §1-22 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where the individual respondent is sole owner of the corporate respondent, and service of the petition was made by certified mail to the individual respondent's last known residence address in New York and to the corporate respondent's address on file with the petitioner, but the petitioner subsequently learned of the individual respondent's relocation to Florida, service of the petition was inadequate because it was not reasonably calculated under all of the circumstances to give the respondents actual notice of the petition. Taxi and Limousine Commission v. Larch Cab Corp., OATH Index No. 363/94 (Nov. 29, 1993).

¶ 2. Where the petitioner-employer had no record of the respondent-employee's apartment number, but made service of the petition by posting a copy on the door of the apartment building at the respondent's last known address and mailing copies to the same address, and the petitioner made no attempt to serve the respondent at his workplace, service of the petition was not reasonably calculated to give the respondent actual notice of the petition. Human Resources Administration v. Garrido, OATH Index No. 213/94 (Sept. 14, 1993).

¶ 3. Actual notice to the respondent of the petition and the trial date, which can be inferred from the respondent's attendance with her attorney at a pre-trial conference at which the trial date was fixed, waives the defects in the petitioner's proof of service under the rules applicable to an employee disciplinary case (Personnel Director's Rules, Appendix A to 59 RCNY). Human Resources Administration v. Rice, OATH Index No. 455/93 (Mar. 1, 1993).

¶ 4. Service of the petition, like the content of the petition, is concerned primarily with fair notice. Department of Buildings v. Owner, Occupants and Mortgagees of 31 West 11th Street, Apartments 6A and 6B, New York, OATH Index No. 990/94 (Aug. 26, 1994).

¶ 5. In an employee disciplinary case, service of the petition by attempted personal service and certified mail to the respondent's last known address was adequate, where it appeared that the address was no longer the employee's residence, but the employing agency had no information regarding a new address. Department of Correction v. Echevarria, OATH Index No. 957/94 (May 19, 1994).

¶ 6. Strict adherence to rules regulating service is not required when actual notice of the petition is given to the respondent. Board of Education v. Earl, OATH Index No. 494/95 (Nov. 28, 1994).

¶ 7. Actual notice of the petition waives technical defects in the manner of service. Department of Buildings v. Owner, Occupants and Mortgagees of 31 West 11th Street, Apartments 6A and 6B, New York, OATH Index No. 990/94 (Aug. 26, 1994).

¶ 8. Given actual notice of the petition, technical defects in service are not jurisdictional. Department of Buildings v. Bellman, OATH Index No. 1100/93 (Apr. 11, 1994).

¶ 9. Notice of petition stating that the respondent may answer within the time provided by this section, rather than stating the date, could be improved, but is sufficient. Department of Buildings v. Owner, Occupants and Mortgagees of 31 West 11th Street, Apartments 6A and 6B, New York, OATH Index No. 990/94 (Aug. 26, 1994).

¶ 10. Although the better practice would be for the notice of petition to refer to §1-24, and to state the deadline for submission of an answer, reference to this section was adequate. Department of Buildings v. 2837-39 Decatur Avenue, Bronx, New York, OATH Index No. 349/94 (Jan. 10, 1994).

¶ 11. Under paragraph (b) and (c) of this rule, written proof of service must be maintained by the petitioner, and filed before trial. Also, where the petitioner's counsel has additional information that shows that the respondent received actual notice of the petition and trial, the better practice is for counsel to prepare an affidavit to relate that information. Board of Education v. Earl, OATH Index No. 494/95 (Nov. 28, 1994).

¶ 12. The Civil Practice Law and Rules does not apply to administrative proceedings, and therefore the CPLR does not govern service of the petition. **Department of Buildings v. Owner, Occupants and Mortgagees of 845 Walton Avenue, Bronx, New York,** OATH Index No. 234/95 (Jan. 19, 1995).

¶ 13. Service of the petition in administrative adjudication is for purposes of notice, not jurisdiction, and therefore, where the respondent receives actual notice of the petition, technical defects in service are disregarded. **Department of Buildings v. Owner, Occupants and Mortgagees of 845 Walton Avenue, Bronx, New York,** OATH Index No. 234/95 (Jan. 19, 1995).

¶ 14. An inference that the respondent had actual notice of the petition and of the trial date was based on evidence that, in seeking to retain counsel, the respondent told two different attorneys of the trial date and time. **Taxi and Limousine Commission v. Min,** OATH Index No. 669/96 (Nov. 13, 1995).

¶ 15. Because the rules of the City Personnel Director (appendix A to title 55, RCNY) apply to the Board of Education, those rules, not paragraph (b) of this section, govern the means of service of a petition in an employee disciplinary case brought by the Board of Education. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 16. Where an employee was required by the employer's rules of conduct to keep his current address on file with the employer, service of notice of employee disciplinary proceedings by mail to the employee's address of record was sufficient service pursuant to paragraph (b) of this section. Health and Hospitals Corporation, Jacobi Medical Center v. Williams, OATH Index No. 282/97 (Oct. 30, 1996).

¶ 17. Where the statute of limitations on service of employee disciplinary charges expired the day before personal service was effected, but the respondent had intentionally evaded attempts at service of employee disciplinary charges during the three days before expiration of the statute of limitations, the respondent was estopped from asserting a statute of limitations defense. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 18. The notices that must accompany service of the petition pursuant to paragraph (a) of this section are required for service of the original petition, but are not required for service of amendments to the petition. Transit Authority v. Smallwood, OATH Index No. 442/96 (Aug. 8, 1997).

¶ 19. Service of petition and notice of hearing by regular and certified mail to respondent's last known address was reasonably calculated to give actual notice to respondent, even in the face of information showing the address might no longer be valid, where respondent did not satisfy its obligation to inform the contracting agency or the Comptroller that it was moving. **Office of the Comptroller v. Goliath Allied Corp.,** OATH Index No. 1650/98 (July 10, 1998).

¶ 20. The administrative law judge found service at a foreign address provided by respondent was sufficient to give respondent actual notice of the proceeding. Inasmuch as respondent reported that he would be residing at a foreign address, personal service at his local address was unnecessary. **Dep't of Environmental Protection v. Zaza,** OATH Index No. 516/99 (Oct. 16, 1998).

¶ 21. Service of the petition provided respondent with actual notice of the proceeding since he appeared at the informal conference. Service of the notice of hearing sent to an address provided by respondent at the informal conference, was reasonably calculated to give respondent actual notice of the hearing where mail sent to respondent's address of record had been returned undelivered. **Dep't of Homeless Services v. Harrison,** OATH Index No. 396/98 (Dec. 19, 1997).

¶ 22. Service to respondent's last known address was reasonably calculated to achieve actual notice and was legally sufficient, whether or not actual notice was achieved. **Dep't of Finance v. Stevens**, OATH Index No. 1294/99 (Feb. 26, 1999).

¶ 23. Indication on personnel papers that respondent's absence was originally due to "incarceration" raised question of whether proper service of charges was made. Evidence showed that personal service on admitted relative of respondent at last known address was accomplished prior to hearing. Administrative law judge determined that service was sufficient to afford respondent opportunity to communicate with counsel or the agency prior to date of hearing. **Human Resources Admin. v. Hartley**, OATH Index No. 1829/99 (June 9, 1999).

¶ 24. Petitioner, following original default hearing, discovered additional address for respondent in agency files and moved to re-open. Administrative law judge allowed additional service of notice of petition and hearing and new hearing date. Agency provided proper proof of service on three addresses known for respondent. Upon failure of respondent to appear, administrative law judge was satisfied notice was proper and record was closed. **Human Resources Admin. v. Pancham,** OATH Index No. 965/00 (Mar. 21, 2000).

¶ 25. Respondent was properly served with the notice of hearing and charges when they were handed to her, even though she refused to sign an acknowledgment. **Dep't of Transportation v. Deloach,** OATH Index No. 2287/00 (Oct. 18, 2000).

¶ 26. Upon respondent's failure to appear at the hearing, affidavits demonstrating that the required documents were sent by regular and certified mail to respondent's address of record and an unsuccessful attempt at personal service were reasonably calculated to achieve actual notice to respondent. **Administration for Children's Services v. Esonwune,** OATH Index No. 240/01 (Jan. 10, 2001).

¶ 27. In a zoning violation proceeding, the commercial occupant, the mortgagees of record, one mortgagor of record and a taxpayer of record made no appearance and were declared in default upon showing of proper service of notice of the hearing and petition pursuant to this section. Testimony, photographs, reports and other documentary evidence established an illegal use of a portion of the first floor of the building for a commercial barber shop. **Dep't of Buildings v. Owners, Occupants, and Mortgagees of 86 West 183rd Street, Bronx,** OATH Index No. 595/01 (Apr. 9, 2001).

¶ 28. Where owner and occupant made no appearance in a zoning violation proceeding, they were declared in default upon a showing of proper service of notice of the hearing and petition under this section. **Dep't of Buildings v. Owners, Occupants, and Mortgagees of 304 Echo Place, Bronx,** OATH Index No. 1534/01 (June 11, 2001).

¶ 29. Proof of service on respondents established their default under this section. Testimony, photographs, reports and other documentary evidence established illegal use of premises as an auto repair, auto storage and salvage facility in violation of zoning resolution. **Dep't of Buildings v. 111-64 166th Street, Queens,** OATH Index No. 1735/01 (June 6, 2001).

¶ 30. A letter informing respondent of the date, time and place of the hearing that was served at respondent's last known address of record established jurisdictional prerequisite for finding respondent in default. **Dep't of Correction v. Bomani,** OATH Index No. 1383/01 (July 20, 2001).

¶ 31. Refusal to accept service did not bar a finding of personal service where investigator handed the notice to respondent, who reviewed the papers, but would not accept them. **Dep't of Correction v. Johnson,** OATH Index No. 1992/01 (Aug. 16, 2001).

¶ 32. Owner and occupants were served either personally or by affixing the notice of petition at the premises. Each of the owners and occupants were further served by mailing a copy of the petition and notice of hearing to the premises. Mortgagor and mortgagee were served by mail at addresses of record. Service was found to be sufficient to establish the

jurisdictional prerequisites for finding respondents in default. **Dep't of Buildings v. Owners, Occupants and Mortgagees of 1410-1414 Vyse Avenue, Bronx,** OATH Index No. 699/02 (June 20, 2002).

¶ 33. Attempted personal service of charges at respondent's home address held sufficient, even where agency employees may have been aware of respondent's temporary absence from residence due to an in-patient rehabilitation program. **Fire Dep't v. Reinhard**, OATH Index No. 647/05 (Oct. 21, 2004).

¶ 34. Charges dismissed without prejudice when petitioner did not follow up its attempted personal service of the charges and notice of the hearing by registered mail. The ALJ required proof of service by registered mail and rejected petitioner's argument that returned mail gave constructive notice of respondent's change of address. **Dep't of Transportation v. Salib**, OATH Index No. 891/08 (Dec. 14, 2007).

FOOTNOTES

1

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As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-24

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-24 Answer.

The respondent may serve and file an answer to the petition within eight days of service of the petition if service was personal, or within thirteen days of service of the petition if service was by mail, unless a different time is fixed by the administrative law judge. In the discretion of the administrative law judge, the respondent may be required to serve and file an answer. Failure to file an answer where required, may result in sanctions, including those specified in §1-33(e).

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City

Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

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Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules

can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-25

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-25 Amendment of Pleadings.

Amendments of pleadings shall be made as promptly as possible. If a pleading is to be amended less that twenty-five days before the commencement of the hearing, amendment may be made only on consent of the parties or by leave of the administrative law judge on motion.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Applications to amend petitions are to be freely granted absent irremediable prejudiace; disposition of related claims in a single proceeding is vastly preferable to disposing of them piecemeal. Department of Correction v. Rebecca, OATH Index No. 151/94 (Sept. 17, 1993).

¶ 2. In a disability proceeding pursuant to Civil Service Law §71, amendment of petition, three weeks before trial, to allege unfitness due to an injury subsequent to the injury alleged in the original petition would not prejudice the respondent's ability to prepare for trial and explore pretrial settlement options. Department of Correction v. Rebecca,

OATH Index No. 151/94 (Sept. 17, 1993).

¶ 3. Where petition alleged that the respondent refused to submit to drug testing "on or about March 24, 1994," "at the 110 Pct.," but the trial evidence showed that the refusal occurred on March 23, 1994, at the 112th Precinct, motion to amend the petition accordingly was granted, given fair notice to the respondent of the events at issue, the insignificance of the precinct number, and the petition's use of the "on or about" formulation. Department of Correction v. Tirado, OATH Index No. 1213/94 (Aug. 17, 1994).

¶ 4. Where the petition alleged that the respondent "did kick and/or strike with a nightstick" but the trial evidence showed that the respondent punched the complainant, and where post-trial amendment of the petition to conform to the proof would not surprise or prejudice the respondent, such amendment was granted. **Police Department v. Coll,** OATH Index Nos. 245/95, 252/95 (Feb. 16, 1995).

¶ 5. Where the petition alleged that the respondent improperly locked inmates into their cells, but the trial evidence showed that the respondent ordered the lock-in but that the lock-in was never completed, the petition was amended after trial to conform to the proof. **Department of Correction v. Aikman,** OATH Index No. 267/96 (Nov. 24, 1995).

¶ 6. Although the petitioner gave no reason for presentation of a motion to amend the petition as late as the day of trial, the motion was granted where the respondent was unable, both before and after trial, to articulate any prejudice that accrued to the respondent by virtue of either the proposed amendment or the lateness of the motion to amend. **Matter of Zabari,** OATH Index No. 419/96 (Oct. 16, 1995), **aff'd sub nom. Zabari v. New York City Loft Board,** Index No. 107964/96 (Sup. Ct. N.Y. Co. Feb. 11, 1997).

¶ 7. Where a landlord's petition for a six-month extension of time to comply with the Loft Law was not answered by any tenant, the landlord's pre-trial motion to amend the petition to seek a one-year extension was granted on the condition that the petitioner serve the motion to amend on the tenants, who were given 30 days to answer the motion. **Matter of Pittis,** OATH Index No. 1197/95 (Aug. 14, 1995).

¶ 8. In a case that had been pending for several months, a motion made only days before trial to amend the petition to add a charge to the 30 charges in the original petition was denied on the ground that the new charge would protract the trial beyond the two days allotted for the trial of the original 30 charges. **Board of Education v. Drakeford,** OATH Index No. 1406/95 (Nov. 29, 1995).

¶ 9. A motion to conform the petition to the proof at trial must be denied where the respondent did not have fair notice of the new claim to be added and an opportunity to fully litigate it, and special care must be taken where the respondent did not appear for trial and litigate the issues. Department of Correction v. Griffith, OATH Index No. 925/96 (Dec. 23, 1996), modified as to penalty, Comm'r Decision (Feb. 18, 1997).

¶ 10. Where the original petition charged that the respondent had committed employee misconduct by the publication of magazines containing nude pictures of the respondent, but the trial evidence included no proof that the respondent was responsible for the publication of the magazines, a motion to conform the petition to the proof was granted to amend the petition to allege that the respondent committed misconduct by posing nude for pictures she knew or reasonably should have known would be published. Department of Correction v. Griffith, OATH Index No. 925/96 (Dec. 23, 1996), modified as to penalty, Comm'r Decision (Feb. 18, 1997).

¶ 11. The petitioner's motion to amend the petition at the commencement of trial to allege a new theory of liability was granted on the condition that petitioner agree to an adjournment of the trial. When petitioner elected to proceed to trial as scheduled, the motion to amend was denied. Department of Correction v. Boyce, OATH Index No. 789/97 (July 9, 1997).

¶ 12. Where the petition alleged misconduct on September 23, 1995, but the evidence pertained to September 3, 1995, and where it was clear that the respondent fully understood which date was at issue and was able to defend the

charge in spite of the error, the administrative law judge in rendering the report and recommendation deemed the petition to be amended to conform to the proof. Health and Hospitals Corporation/North Central Bronx Hospital v. Cross, OATH Index No. 315/97 (Jan. 27, 1997).

¶ 13. An amended petition pursuant to this section need not be served with the notices required upon service of the original petition pursuant to §1-23(a) of this chapter. Transit Authority v. Smallwood, OATH Index No. 442/96 (Aug. 8, 1997).

¶ 14. Where a proposed amendment to the petition pertained to the same incident as the original petition, and the amendment posed no irremediable prejudice to the respondent's defense, the amendment related back to the original petition and was not time-barred. Police Department v. Zisel, OATH Index No. 389/97 (Mar. 7, 1997), modified as to penalty, Comm'r Decision (Sept. 23, 1997).

¶ 15. Petitioner commenced prevailing wage proceeding against company A as the subcontractor on a city school construction project. Petitioner sought to amend its original petition in order to seek relief against company A as the prime contractor. The administrative law judge granted petitioner's application to amend where the relief sought against company A as the prime contractor was not substantially different from the relief sought when the proceeding was commenced against A as the subcontractor. **Office of the Comptroller v. Aim Construction Corp.,** OATH Index No. 1221/98 (May 18, 1998).

¶ 16. Agency permitted to proceed on amended charges, served two weeks prior to the trial by certified mail where service was acknowledged, uncontested and the amendment was a minor modification to the original charges. **Triborough Bridge and Tunnel Auth. v. Leibowitz,** OATH Index No. 1080/98 (July 24, 1998).

¶ 17. Administrative law judge granted application made at trial to amend the charge to allege continuing unauthorized absence (AWOL) through date of the hearing, as established by the evidence. Respondent was properly notified as to the essence of the charged misconduct, long term AWOL, and no prejudice would inure to respondent in circumstances, despite default nature of the proceeding. **Dep't of Correction v. Ottle,** OATH Index No. 485/99 (Dec. 1, 1998).

¶ 18. Administrative law judge permitted petitioner to conform the charges and specifications to the proof presented at the hearing where the original charge gave an incorrect date, petitioner presented a witness who established that the mistake was the result of a typographical error and respondent failed to demonstrate the change was prejudicial. **Dep't of Transportation v. McKoy,** OATH Index No. 199/98 (Jan. 9, 1998), **app. withdrawn,** NYC Civ. Serv. Comm'n Item No. CD 99-2-W (Feb. 12, 1999).

¶ 19. Building owner filed an application with the Loft Board seeking an extension of then existing legalization deadlines. While the application was pending, the legislature added new legalization deadlines, but Loft Board continued to process the application as one for a "retroactive extension" of the pre-existing deadlines. Amendment of the application was permitted to add a request for an extension of the new deadline to obtain a building permit. **Matter of Ken-Zen Institute, Ltd.,** OATH Index No. 897/98 (Feb. 24, 1998), **aff'd in part,** Loft Bd. Order No. 2235 (Mar. 24, 1998).

¶ 20. Agency's day of trial motion to amend the charges was denied where the new charges were never served on respondent. **Triborough Bridge and Tunnel Auth. v. Leibowitz,** OATH Index No. 1080/98 (July 24, 1998).

¶ 21. Pursuant to the relation back doctrine, petitioner was allowed to substitute amended charge, which referred to the complainant, for timely served original charge, which referred to the complainant's mother, since the amendment relates to the same events, involving the same officer and the same complainant on the same night in front of the same witnesses as the original charge. **Police Dep't v. Booth,** OATH Index No. 1208/98 (Aug. 18, 1998).

¶ 22. Petitioner's motion made at the close of the hearing to conform the charges to the proof to include charge of

disrespectful conduct, which occurred on the day after the date of the charged incident, was granted because the events of the second day were fully litigated at the hearing. Respondent had the opportunity to cross-examine petitioner's witness regarding this conduct and respondent was previously on notice of both dates involved in this matter. **Dep't of Correction v. Bovell**, OATH Index No. 1910/99 (Aug. 13, 1999).

¶ 23. Where first two specifications alleged the wrong date for the incident, it was appropriate to conform the charge to the proof where no one was prejudiced by the inaccuracy, and respondent and all other witnesses were aware of the incident charged. **Dep't of Correction v. Sostre-Valentin**, OATH Index No. 1923/99 (Sept. 22, 1999).

¶ 24. Charge of directing abusive language towards the passenger (35 RCNY § 2-60(a)) was conformed to proof of discourtesy (35 RCNY § 2-42). Administrative law judge credited the passenger's testimony that respondent had told her to shut up when she gave him her desired route. Administrative law judge found that the language used by respondent did not rise to the level of a 2-60(a) violation, because that rule addresses physical force and abuse. Nevertheless, the administrative law judge found that respondent's conduct amounted to a clear act of discourtesy, in violation of 2-42. **Taxi and Limousine Comm'n v. Ahmed**, OATH Index No. 1790/99 (May 3, 1999).

¶ 25. Agency served a new charge by electronic facsimile upon employee's attorney, without serving the employee himself. Although Personnel Director's rule 6.4.3 requires personal service of disciplinary charges on the employee, the rule has not been held to require personal service of amendments to charges, made after the employee has already been personally served with the initial charges and counsel had already appeared in the case. Under these circumstances, the administrative law judge found that there was no prejudice to respondent, that he had a fair opportunity to litigate the issue of the bribe, and that the motion to amend should therefore be granted. **Dep't of Sanitation v. Vaughan,**, OATH Index No. 2234/99 (Feb. 15, 2000), **aff'd,** NYC Civ. Serv. Comm'n Item No. CD00-100-SA (Nov. 15, 2000).

¶ 26. Park worker was charged with using or being under the influence of a controlled substance while on duty; proof established respondent's urine tested positive for cocaine metabolite. Held, test result, without more, did not establish that worker was under the influence of an illegal drug at work; Administrative law judge conforms charge to the proof that respondent's urine tested positive for cocaine metabolite. **Dep't of Parks and Recreation v. Nappa,** OATH Index No. 306/00 (Jan. 25, 2000), **modified on findings, aff'd on penalty,** Comm'r Dec. (Feb. 9, 2000).

¶ 27. Respondent moved to dismiss amended charge added after the eighteen-month limitations period provided in Civil Service Law § 75(4). Administrative law judge found that charge, as amended, should be allowed as the added specification arose out of the exact incident described in the original specification, in accordance with the relation-back doctrine of the New York Civil Practice Law and Rules and this tribunal's precedent, **citing** CPLR § 203(f); **Dep't of Correction v. Lee and Potter,** OATH Index Nos. 284-85/88 (Dec. 2, 1988). Here, the facts were the same, no new witnesses were asked for, no identified witnesses were unavailable, and respondent had ample time to prepare his defense. The issues were fully litigated at the hearing. **Police Dep't v. Strom,** OATH Index No. 546/00 (July 20, 2000).

¶ 28. A motion to amend a Human Rights complaint was granted to add one respondent and to delete two respondents on the basis of matters learned through discovery. Pursuant to 47 RCNY § 1-13 and this section, applications to amend pleadings shall be made as promptly as possible. **Silva v. Gitto,** OATH Index No. 263/01, mem. dec. (Jan. 18, 2001).

¶ 29. Petitioner was permitted to amend its charges as of right under this section against respondents after the statute of limitations had run because amendments did not so substantially alter the nature of the misconduct previously noticed to respondents as to have created new charges which should be time-barred. **Dep't of Correction v. Travers,** OATH Index Nos. 2499-02/00 (Feb. 28, 2001).

¶ 30. A motion to amend charges to include four and one-half year old conduct was denied where eighteen-month statute of limitations for service of disciplinary charges had long since passed, and where conduct was separate and distinct from other charge and where conduct was not unknown or actively concealed from petitioner. **Dep't of**

Correction v. Wilder, OATH Index No. 1636/00 (June 20, 2001).

¶ 31. Under this section, if amendment is sought less than twenty-five days before the commencement of the hearing, amendment may be made only on consent of the parties or by leave of the administrative law judge on motion. Administrative law judge denied motion to expand charges because it was made on the day of trial without any prior notice to respondent's counsel or to the tribunal. **Dep't of Correction v. Barnwell,** OATH Index No. 733/02 (Apr. 24, 2002).

¶ 32. Amendment of charges was timely where amendment was sought twenty-five days before trial and thus, did not require the permission of the administrative law judge under this section. **Dep't of Correction v. Battle,** OATH Index No. 1052/02 (Nov. 12, 2002).

¶ 33. At the commencement of trial, petitioner made a motion to amend charges to include that respondent submitted a false and misleading report regarding an incident of disrespect towards a supervisor. Because no explanation was provided why the charges could not have been amended in a timely manner, and given that amendment was substantial in nature, and would likely exacerbate any penalty, the administrative law judge denied the motion. **Dep't of Correction v. James,** OATH Index No. 1453/03 (July 29, 2003).

¶ 34. Counsel's insertion of allegation into her closing memorandum does not constitute a motion to amend the pleadings. Further, it would be unfair to amend the petition **suasponte** at such a late stage. **Dep't of Housing Preservation & Development v. Scharf**, OATH Index No. 2062/07 (Mar. 31, 2008).

¶ 35. In a license revocation hearing where a driver was charged with punching another driver in the face, ALJ denied request that she conform the petition to the proof that the driver had violated Commission rule when he grabbed and pulled another driver from his cab. **Taxi & Limousine Comm'n v. Sobczak**, OATH Index No. 1691//08 (Apr. 7, 2008), **modified on penalty**, Comm'r/Chair's Decision (May 9, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and

re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-26

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-26 Docketing the Case.

(a) A case shall be docketed by filing with OATH a completed intake sheet and either a petition or a written application for relief. Parties are encouraged to docket cases by electronic means. When a case is docketed, OATH shall place it on the trial calendar, the conference calendar, or on open status. Absent prejudice, cases involving the same respondent or respondents shall be scheduled for joint trials or conferences, as shall cases alleging different respondents' involvement in the same incident or incidents.

(b) When a case is docketed, it shall be given an index number and assigned to an administrative law judge. Assignments shall be made and changed in the discretion of the chief administrative law judge or his or her designee, and motions concerning such assignments shall not be entertained except pursuant to §1-27.

(c) OATH may determine that the case is not ready for trial or conference and may adjourn the trial or conference, or may remove the case from the trial or conference calendar and place it on open status. In addition, OATH may determine that the case should proceed on an expedited basis, and may direct expedited procedures, including expedited pre-trial and post-trial procedures, shortened notice periods, and/or expedited calendaring.

(d) The party docketing a case may do so **ex parte.** If the case is placed on the conference calendar or the trial calendar rather than on open status, the party may at the time of docketing also select a trial date and/or conference date

ex parte. However, OATH encourages selection of trial and conference dates by all parties jointly. In the event that a party selects a trial date or a conference date **ex parte,** that party shall serve the notice of conference or trial required by §1-28, within one business day of selecting that date. Whenever practicable, such notice shall be served by personal delivery or electronic means.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. When a petitioner selects a trial date **ex parte** upon docketing the case at OATH, the petitioner must serve notice of trial within one business day of selecting that date. However, absent prejudice to the respondent, the appropriate remedy was an admonishment of petitioner's counsel, not removal of the case from the trial calendar. New York City Transit Authority v. Brady, OATH Index No. 959/93 (Aug. 13, 1993).

¶ 2. In an employee disciplinary case, the agency's trial scheduling was ex parte notwithstanding the agency's consultations about available dates with the law firm representing the employee's union, because the employee had not yet retained the law firm, and because the law firm was not a party to either the telephone call or the written submission by which the agency subsequently docketed the case and scheduled the trial. Department of Correction v. Brown, OATH Index No. 1208/94 (Aug. 11, 1994).

¶ 3. Where trial is calendared by the petitioner ex parte, notice of trial must be served within one business day. In an employee disciplinary case, notice of the trial date given to the law firm representing the employee's union was courteous but inadequate where the employee had not yet retained the law firm. However, because the employee did not show that he was prejudiced by his imprompt receipt of notice of the trial date, the remedy for late notice was not an adjournment of trial, but an admonishment of petitioner's counsel. Department of Correction v. Brown, OATH Index No. 1208/94 (Aug. 11, 1994).

¶ 4. Although the petitioner failed to serve the respondent with notice of trial within one business day of the **ex parte** selection of the trial date as required by paragraph (d) of this section, no sanction was imposed on the petitioner, and the petitioner was permitted to proceed to trial in the respondent's absence, because the circumstances indicated that the respondent did not wish to defend the employee disciplinary charges against him and did not wish to retain his employment. Department of Correction v. Boyce, OATH Index No. 1227/97 (Apr. 29, 1997).

¶ 5. Where the case was docketed by one party **ex parte,** but trial was not scheduled at the time of docketing pursuant to paragraph (d) of this section, subsequent scheduling of trial may not be done by **ex parte** communication with the Calendar Unit but must be done by conference call to the administrative trial judge assigned to the case. Department of Health v. Protzel, OATH Index No. 613/98 (Dec. 10, 1997).

¶ 6. With its base station license pre-suspended by the Taxi and Limousine Commission, the licensee filed a petition with OATH, asking that a hearing on the underlying charges be scheduled. Although this rule permits the docketing of a matter by motion, since the Commission's rules expressly give the Commission discretion to defer a base license revocation proceeding until a reasonable time after the final disposition of related criminal charges, the motion to have a hearing scheduled must be denied. **Haven Car Service Corp. v. Taxi and Limousine Comm'n,** OATH Index No. 994/98, mem. dec. (Feb. 9, 1998).

FOOTNOTES

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-27

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-27 Disqualification of Administrative Law Judges.

(a) A motion for disqualification of an administrative law judge shall be addressed to that administrative law judge, shall be accompanied by a statement of the reasons for such application, and shall be made as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist.

(b) The administrative law judge shall be disqualified for bias, prejudice, interest, or any other cause for which a judge may be disqualified in accordance with §14 of the Judiciary Law. In addition, an administrative law judge may, **sua sponte** or on motion of any party, withdraw from any case, where in the administrative law judge's discretion, his/her ability to provide a fair and impartial adjudication might reasonably be questioned.

(c) If the administrative law judge determines that his or her disqualification or withdrawal is warranted on grounds that apply to all of the existing administrative law judges, the administrative law judge shall state that determination, and the reasons for that determination, in writing or orally on the record, and may recommend to the chief administrative law judge that the case be assigned to a special administrative law judge to be appointed temporarily by the chief administrative law judge. The chief administrative law judge shall either accept that recommendation, or, upon a determination and reasons stated in writing or orally on the record, reject that recommendation. A special administrative law judge shall have all of the authority granted to administrative law judges under this title.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where two OATH judges will be material witnesses at trial, they are disqualified from presiding at trial due to their extra-record knowledge of the facts in issue, and other OATH judges are disqualified because their collegial relationship with the two witnesses could lead a reasonable person to question their impartiality. In such a case, the chief administrative law judge will appoint a special administrative law judge to preside. Human Resources Administration v. Man-of-Jerusalem, OATH Index No. 1021/91 (Sept. 6, 1991).

¶ 2. The fact that the administrative law judge ruled against the clients of an attorney in his three prior cases of a particular type does not demonstrate that the judge is biased against the attorney and his clients in the present case of the same type; nor would any reasonably objective observer so conclude. Police Department v. Lowe, OATH Index Nos. 923-24/94 (Oct. 21, 1993).

¶ 3. The respondent's post-trial application for recusal of the administrative law judge, alleging bias by the judge and an improper post-trial ex parte communication between the administrative law judge and the petitioner, was denied. The administrative law judge's initial reluctance to allow the requested time for the respondent's post-trial submission did not demonstrate bias against the respondent. The ex parte communication was inadvertent, occurring when the administrative law judge, rather than her secretary, answered a telephone call, and the respondent demonstrated no resulting prejudice. Department of Buildings v. Bellman, OATH Index No. 1100/93 (Apr. 11, 1994).

¶ 4. A loft tenant filed a challenge to her owner's rent increase application some three months after the deadline. Administrative law judge reviewed a prior challenge on the same matter included in the Loft Board file and, in a notice sent to the tenant, requested submissions on the apparent untimeliness of her challenge and also on prior stipulations settling the rent issue. The tenant filed a motion to disqualify the presiding administrative law judge and all other OATH administrative law judges, arguing that the judge's review of these files was improper because it was **ex parte** and constituted advocacy for the owner. Administrative law judge denied the motion finding that it lacked any legal or factual basis. **Matter of Breson Corp**., OATH Index No. 1758/99, mem. dec. (May 14, 1999).

¶ 5. Where the ALJ is not a party, has not been counsel to a party, and has no interest in or any relations to a party to the proceeding, there is no basis for mandatory recusal under Section 14 of the Judiciary Law. The rulings and conduct that respondent attributed to bias reflect the discretion inherent in the tribunal, and the attempt to conduct proceedings in a fair, balanced, and efficient manner. Motion to recuse ALJ on the ground of alleged bias denied. **Dep't of Housing Preservation and Development v. 331 W 22nd Street, LLC**, OATH Index No. 912/06, mem. dec. (May 15, 2006).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH

generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-28

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-28 Notice of Conference of Trial.

(a) When a case is placed on either the trial calendar or the conference calendar, and within the time provided in §1-26(d), if applicable, the party that placed the case on the calendar shall serve each other party with notice of the following: the date, time and place of the hearing or conference; each party's right to representation by an attorney or other representative at the hearing or conference; the requirement that a person representing a party at the hearing or conference must file a notice of appearance with OATH prior to the hearing or conference; and, in a notice of a hearing served by the petitioner, the fact that failure of the respondent or an authorized representative of the respondent to appear at the hearing may result in a declaration of default, and a waiver of the right to a hearing or other disposition against the respondent. The notice may be served personally or by mail, and appropriate proof of service shall be maintained. A copy of the notice of conference, with proof of service, shall be filed with OATH at or before the commencement of the conference. A copy of the notice of trial, with proof of service, shall be filed with OATH at or before the commencement of the trial.

(b) When multiple petitions against a single respondent, or petitions against multiple respondents, are placed on the calendar or calendar conference for joint trial or conference pursuant to §1-26(a), notice of trial or notice of conference pursuant to this section shall include notice of such joinder.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Service of notice of trial on the respondent must be made in a manner that is reasonably calculated to apprise the respondent of the trial date. Human Resources Administration v. Aiken, OATH Index No. 855/93 (Sept. 16, 1993).

¶ 2. Service of notice of trial by mail to the respondent's address of record was inadequate where the respondent had advised the petitioner at a pre-trial conference of her new address. Human Resources Administration v. Aiken, OATH Index No. 855/93 (Sept. 16, 1993).

¶ 3. Notice of trial may be served by mail pursuant to this section. Therefore, petitioner's motion for leave to serve notice of hearing by mail was dismissed as unnecessary. Board of Education v. Murphy, OATH Index No. 1432/97 (Oct. 7, 1997).

¶ 4. Where an employee advised his employer of an address change after the commencement of an employee disciplinary case against him, the employer's service of notice of the hearing by mail to the employee's former address was inadequate pursuant to this section, because the notices were returned undelivered and the employee failed to appear for trial. Department of Homeless Services v. Harrison, OATH Index No. 396/98 (Dec. 19, 1997).

¶ 5. Service of notice of trial by mail to the address given by an employee after commencement of employee disciplinary charges against him was reasonably calculated to achieve actual notice and was therefore sufficient service pursuant to this section. Department of Homeless Services v. Harrison, OATH Index No. 396/98 (Dec. 19, 1997).

¶ 6. Where the trial date was selected by the attorneys for both parties following a pre-trial conference, the respondent's counsel was obligated to inform his client of the trial schedule, and the petitioner bore no obligation pursuant to this rule to notify the respondent of the trial. Department of Correction v. Bazemore, OATH Index No. 475/97 (July 9, 1997).

¶ 7. Upon respondent's failure to appear for a hearing, petitioner established that respondent had been properly served with the notice of hearing on two sets of the charges, but not the third. **Dep't of Correction v. Floyd**, OATH Index No. 1052/99 (Mar. 23, 1999).

¶ 8. Upon setting of hearing date at prior conference, attorney was obligated to inform client of the trial schedule. **Admin. for Children's Services v. Lopez,**, OATH Index No. 198/00 (Feb. 22, 2000).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-29

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-29 Scheduling Other Conferences.

In the discretion of the administrative law judge, and whether or not a case has been on the conference calendar, conferences may be scheduled on application of either party or **sua sponte.**

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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48 RCNY 1-30

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-30 Conduct of Conferences.

(a) All parties are required to attend conferences as scheduled unless timely application is made to the administrative law judge. Participants shall be prompt and prepared to begin on time. No particular format for conducting the conference is required. The structure of the conference may be tailored to the circumstances of the particular case. The administrative law judge may propose mediation and, where the parties consent, may refer the parties to the Center for Mediation Services or other qualified mediators. In the discretion of the administrative law judge, conferences may be conducted by telephone.

(b) At the conference, all parties must be fully prepared to discuss all aspects of the case, including the formulation and simplification of issues, the possibility of obtaining admissions or stipulations of fact and of admissibility or authenticity of documents, the order of proof and of witnesses, discovery issues, legal issues, pre-hearing applications, scheduling, and settlement of the case.

(c) In the event that the case is not settled at the conference, outstanding pre-trial matters, including discovery issues, shall be raised during the conference. In the event that the case is not settled at the conference, a trial date may be set, if such a date has not already been set. The parties shall be expected to know their availability and the availability of their witnesses for trial.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-31

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-31 Settlement Conferences and Agreements.

(a) If settlement is to be discussed at the conference, each party shall have an individual possessing authority to settle the matter either present at the conference or readily accessible. A settlement conference shall be conducted by an administrative law judge or other individual designated by the chief administrative law judge, other than the administrative law judge assigned to hear the case. During settlement discussions, upon notice to the parties, the administrative law judge or other person conducting the conference may confer with each party and/or representative separately.

(b) All settlement offers, whether or not made at a conference, shall be confidential and shall be inadmissible at trial of any case. Administrative law judges shall not be called to testify in any proceeding concerning statements made at a settlement conference.

(c) A settlement shall be reduced to writing, or, in the discretion of the administrative law judge, placed on the record. In the event that a settlement is reached other than at a conference, OATH shall be notified immediately pursuant to §1-32(f). Copies of all written settlement agreements shall be sent promptly to OATH.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Petitioner failed to demonstrate that it met the requirements under OATH's rules to participate in the settlement conference process in good faith where prior precedent suggested that penalties far more minimal than what petitioner offered would be appropriate in the circumstances, assuming the charge was proved. Application to restore case to trial calendar was granted where no benefit could come from delaying trial any further. **Fire Dep't v. O'Brien,** OATH Index No. 1308/98, mem. dec. (June 16, 1998).

¶ 2. A motion to call an administrative law judge as a witness with regard to the authenticity of a document that respondent provided to petitioner during a settlement conference was denied. Under this rule, conference judges cannot be directed to testify about representations made during private conference. **Dep't of Buildings v. Goldberg,** OATH Index No. 652/03, mem. dec. (Jan. 9, 2003).

¶ 3. Landlord's request to introduce at hearing testimony concerning alleged monetary demand made by tenants to landlord during conference was denied as subsection (b) of this section makes settlement offers made during case conferences confidential. **Dep't of Housing Preservation & Development v. Bryant**, OATH Index No. 149/07 (Jan. 5, 2007).

FOOTNOTES

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[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23,

2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-32

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-32 Adjournments.

(a) Applications for adjournments of conferences or hearings shall be governed by this section and by §1-34 or §1-50. Conversion of a trial date to a conference date, or from conference to trial, shall be deemed to be an adjournment.

(b) Applications to adjourn conferences or hearings shall be made to the assigned administrative law judge as soon as the need for the adjournment becomes apparent. Applications for adjournments are addressed to the discretion of the administrative law judge, and shall be granted only for good cause. Although consent of all parties to a request for an adjournment shall be a factor in favor of granting the request, such consent shall not by itself constitute good cause for an adjournment. Delay in seeking an adjournment shall militate against grant of the request.

(c) If a party selects a trial or conference date without consulting with or obtaining the consent of another party pursuant to §1-26(d), an application for an adjournment of such date by that other party, especially if such application is based upon a scheduling conflict, shall be decided with due regard to the **ex parte** nature of the case scheduling.

(d) Counsel shall file an affirmation of actual engagement prior to a ruling on an adjournment sought on that basis. Such affirmation shall state the name and nature of the conflicting matter, the court or tribunal hearing the matter, the judge before whom it is scheduled, the date that the conflicting engagement became known to counsel, and the date, time, place and approximate duration of the engagement.

(e) Approved adjournments, other than adjournments granted on the record, shall be promptly confirmed in writing by the applicant, to all parties and to the administrative law judge.

(f) Withdrawal of a case from the calendar by the petitioner shall not be subject to the "good cause" requirement of subdivision (b) of this section. However, such withdrawal, other than pursuant to settlement agreement or other final disposition of the case, shall be permitted only upon application to the administrative law judge, who may grant or deny the application, either in full or upon stated terms and conditions.

(g) If an administrative law judge determines that a case is not ready for trial or conference and that an adjournment is inappropriate, the judge may remove the case from the calendar. Unless otherwise directed by the administrative law judge, the case will be administratively closed if the parties do not restore the matter to the calendar within 30 days.

(h) At the discretion of the administrative law judge, a grant of an adjournment may be conditioned upon the imposition of costs for travel, lost earnings and witness fees, which may be assessed against the party causing the need for an adjournment.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (g) added City Record Aug. 19, 2009 §3, eff. Sept. 18, 2009. [See T48 §1-22 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Last-minute adjournment requests are heavily disfavored. Department of Correction v. Vassel, OATH Index No. 267/93 (Nov. 18, 1992).

¶ 2. Conflict between counsel's vacation and trial is not good cause for adjournment of trial, notwithstanding consent of adversary, because counsel consented to the trial date, and because counsel belongs to a 16-attorney firm which can supply substitute trial counsel. Department of Correction v. Taylor, OATH Index No. 205/94 (Sept. 2, 1993).

¶ 3. Amendment of petition three weeks before trial is not good cause for adjournment of trial, because the respondent has adequate time for trial preparation and exploration of pre-trial settlement. Department of Correction v. Rebecca, OATH Index No. 151/94 (Sept. 17, 1993).

¶ 4. Where counsel had represented the respondent for at least 15 months, through various pre-trial proceedings at the agency and then at OATH, the respondent's desire to discharge counsel on the day of trial, without any persuasive reason to change counsel, was not good cause for an adjournment of trial. Department of Correction v. Rebecca, OATH Index No. 151/94 (Oct. 21, 1993).

¶ 5. Neither the pendency of a criminal case against the respondent corporation related to the administrative case against the respondent, nor the possibility that ongoing plea negotiations in the criminal case might resolve the issues in the administrative case constitutes good cause for an indefinite adjournment of the administrative trial. In addition, the fact that defense of the administrative case while criminal charges are pending would require a principal of the respondent to choose between testifying and compromising her privilege against self-incrimination in the criminal case, and not testifying and thereby subjecting the respondent to a negative inference, does not constitute good cause for an indefinite adjournment of the administrative trial. Comptroller v. BQE Contracting Corp., OATH Index No. 1046/93 (Sept. 3, 1993).

¶ 6. An adjournment application must be directed to the Administrative Law Judge, not to a calendar unit clerk.

Transit Authority v. Sayad, OATH Index No. 1026/94 (June 8, 1994).

¶ 7. An adjournment may only be granted by an Administrative Law Judge, not by unilateral action of one party or by consent of all parties. Department of Correction v. Kilcullen, OATH Index No. 528/95 (Oct. 19, 1994).

¶ 8. Adjournment of conferences is subject to the provisions of this section. Department of Correction v. Kilcullen, OATH Index No. 528/95 (Oct. 19, 1994).

¶ 9. Where the respondent sought to change attorneys on the evening before trial, no satisfactory reason for the delay in changing counsel was given, and the new attorney was unable to appear for trial as scheduled but the former attorney was ready and able to proceed, adjournment was denied. Department of Correction v. Tirado, OATH Index No. 1213/94 (Aug. 17, 1994).

¶ 10. In a proceeding on an agency's petition to place an employee on involuntary disability leave, the employee's application for a second adjournment of trial was denied, where the employee had been on paid sick leave for four years, and continued health insurance was available to the employee, at his expense, pending disposition of his disability retirement application. Department of Correction v. Norris, OATH Index No. 1099/94 (Aug. 10, 1994).

¶ 11. In an employee disciplinary proceeding based upon citizens' complaints against two employees, the employing agency's application for an adjournment of trial was denied, where the application was made on the day of trial, trial had been adjourned four times before, the agency acknowledged that the charges were not grave, the long pendency of the charges was impeding the employees' careers, and the complaining citizens' repeated failure to appear for scheduled trial dates indicated a disinterest in proceeding that would not likely be remedied by grant of an adjournment. Police Department v. Nation, OATH Index Nos. 1004-05/94 (Nov. 30, 1994).

¶ 12. An application for an indefinite stay of proceedings on a petition alleging illegal commercial use of premises in a residential zone was denied. The movant alleged that he was seeking an amended certificate of occupancy, but did not show that grant of an amendment was likely, would be accomplished reasonably soon, or would legalize the use of the apartments placed at issue by the petition. Department of Buildings v. Owner, Occupants and Mortgagees of 31 West 11th Street, Apartments 6A and 6B, New York, OATH Index No. 990/94 (Aug. 26, 1994).

¶ 13. Where the petitioner's case was based on the complaint of an out-of-state witness who twice failed to appear for scheduled trial dates, and the petitioner had no other evidence to support the petition, the petitioner's application for withdrawal of the case from the calendar pursuant to paragraph (f) of this section, and for dismissal of the petition, was granted. Police Department v. Tallarine, OATH Index No. 191/95 (Sept. 8, 1994).

¶ 14. Like an application for an adjournment (delay in the commencement of trial), an application for a continuance (delay after commencement of trial) may be granted only upon a showing of good cause. Where an application for a continuance is based on the need for additional time to obtain evidence, an element of good cause must be that he applicant could not reasonably have anticipated the need for the evidence which necessitates the continuance. Department of Correction v. Jewell, OATH Index No. 260/94 (Feb. 14, 1994).

¶ 15. Adjournment of trial was granted, where the motion for an adjournment was supported by medical documentation indicating that the movant would require bed rest after delivery of a baby, until four days after the previously scheduled trial date. **Human Resources Administration v. Brown,** OATH Index No. 1557/95 (Dec. 1, 1995).

¶ 16. The respondent's motion for a trial adjournment, made the day before trial, was denied where the case had been pending for six months, and the case had been marked off the calendar twice due to settlements on which the respondent had reneged. **Taxi and Limousine Commission v. Vedrine,** OATH Index No. 1001/95 (Sept. 7, 1995).

¶ 17. In an involuntary disability leave case against an employee pursuant to §71 of the Civil Service Law, the

respondent's motion for an adjournment of trial until disposition of his disability retirement application was denied, because the respondent's concession that he was disabled and unable to work vitiated his entitlement to a hearing, and the respondent's desire to remain on the public payroll pending his anticipated disability retirement did not constitute "good cause" for an adjournment. **Department of Correction v. Iannicelli,** OATH Index No. 1429/95, May 24, 1995).

¶ 18. Where a contractor debarment petition pursuant to §335 of the City Charter was based on the criminal conviction of the individual respondent, who controlled the corporate respondents, neither the individual respondent's incarceration and inability personally to attend trial nor the pendency of an appeal from his conviction constituted "good cause" for a trial adjournment. It is relevant to the assessment of "good cause" that debarment cases are to be adjudicated "as expeditiously as possible" under §7-08(d)(5) of the Procurement Policy Board rules (title 9, Rules of the City of New York). **Department of Housing Preservation and Development v. Afro Contracting Corp.,** OATH Index No. 1519/95 (June 27, 1995).

¶ 19. The respondent's motion for an indefinite adjournment of trial due to the respondent's pregnancy, or, in the alternative, for a two- or three-month adjournment, was denied, although an adjournment of 12 days was granted, where the motion was supported by medical documentation indicating that the respondent would require bed rest after delivery of her baby, until four days after the previously scheduled trial date. **Human Resources Administration v. Brown,** OATH Index No. 1557/95 (Dec. 1, 1995).

¶ 20. The respondent's motion for an adjournment of trial pending disposition of his motion to dismiss the petition on various jurisdictional grounds was denied, because the respondent is not entitled to a ruling on jurisdictional objections before proceeding to trial on the merits. **Department of Correction v. Mercer,** OATH Index No. 1638/95 (Sept. 13, 1995).

¶ 21. The respondent's motion for an adjournment of trial, to permit the respondent to move in court for a stay of proceedings in this tribunal, was denied where the issue that the respondent wished to have adjudicated in court could be asserted as a defense to the petition in this tribunal. **Department of Correction v. Malloy,** OATH Index No. 1405/95 (May 22, 1995).

¶ 22. Disposition of a petitioner's motion to withdraw the petition is committed to the discretion of the administrative law judge, pursuant to paragraph (f) of this section. Relevant factors include whether the respondents had asserted counterclaims or other rights, how far the adjudication had progressed, and whether the petition clearly lacked merit. For a petition that was found clearly lacking in merit, withdrawal without prejudice was denied, and the petition was dismissed with prejudice. For a petition against which a counterclaim had been asserted, and adjudication of which had progressed nearly to trial, withdrawal was allowed without prejudice, on conditions intended to protect the respondent from prejudice. Finally, a petition which was not clearly without merit and which had not progressed nearly to trial, withdrawal without prejudice was allowed without conditions. **Matter of Ancona,** OATH Index Nos. 116/96, 621/96, 623/96 (Dec. 8, 1995).

¶ 23. Where an adjournment of a pre-trial conference is sought on the ground of unavailability of counsel, the showing of good cause necessary to the grant of the adjournment pursuant to paragraph (b) of this section must include a showing that no other attorney can cover either the pre-trial conference or the conflicting engagement, and a showing that the attorney's acceptance of the latter-scheduled engagement was not readily avoidable. Matter of Phillips, OATH Index No. 1651/96 (Apr. 24, 1996).

¶ 24. Where the respondent, an employee of the petitioner's, called in sick on the day of trial pursuant to the petitioner's employee procedures, that call did not constitute a request for an adjournment, which, pursuant to paragraph (b) of this section, may be obtained only by motion to the administrative law judge. Department of Correction v. Kelly, OATH Index No. 1228/97 (May 16, 1997).

¶ 25. Where the respondents did not ask the petitioner to produce two of the petitioner's employees as trial

witnesses for the respondents until the day before trial, and the petitioner was unable on short notice to arrange for the attendance of those witnesses, the respondents' request for a continuance for an additional opportunity to call those witnesses was denied for lack of good cause pursuant to paragraph (b) of this section. Police Department v. Horgan, OATH Index Nos. 443/97, 446/97 (Feb. 4, 1997).

¶ 26. Counsel's need for additional time to arrange for the attendance of witnesses, due to counsel's failure to prepare for trial until the day before trial because of a heavy caseload, was not good cause for a trial continuance pursuant to paragraph (b) of this section. Police Department v. Horgan, OATH Index Nos. 443/97, 446/97 (Feb. 4, 1997).

¶ 27. The degree of need for an adjournment that is required to constitute good cause pursuant to paragraph (b) of this section can only increase as the case ages and the number of adjournments granted grows. Police Department v. Starr, OATH Index No. 1414/97 (Dec. 2, 1997).

¶ 28. Where trial was continued for more than seven weeks following the presentation of the petitioner's case, and the continuance date was then adjourned for more than two weeks, the respondent's request for an adjournment three days before the resumption of trial, on the ground that the respondent wanted to retain new counsel, was denied pursuant to paragraph (b) of this section. Transit Authority v. Merrit, OATH Index No. 963/97 (Oct. 30, 1997).

¶ 29. Speculation by the respondent's counsel that the respondent had failed to appear for trial for medical reasons, without any medical documentation or other specific information, did not constitute good cause for an adjournment pursuant to paragraph (b) of this section. Health and Hospitals Corporation, Woodhull Medical & Mental Health Center v. Pratt, OATH Index No. 818/97 (Feb. 19, 1997).

¶ 30. The respondent's motion for an adjournment, made pursuant to paragraph (b) of this section on the morning of trial, was denied where two witnesses had traveled from Georgia to attend trial. Police Department v. Carfora, OATH Index No. 621/97 (June 16, 1997).

¶ 31. Where trial was adjourned during a telephone conference call with counsel for both sides, the fact that neither the petitioner nor the respondent's counsel notified the respondent of the adjourn date, and therefore the respondent did not appear for trial, did not constitute good cause for an adjournment pursuant to paragraph (b) of this section. Police Department v. Carfora, OATH Index No. 621/97 (June 16, 1997).

¶ 32. Paragraph (f) of this section provides that a petitioner may withdraw a case from the calendar unilaterally, if the withdrawal is with prejudice, but that withdrawal of a case from the calendar without prejudice may be effected only by motion. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996).

¶ 33. One of the factors informing the discretion of the administrative law judge in determining whether to allow withdrawal without prejudice pursuant to paragraph (f) of this section is the merit of the application. Withdrawal of a petition that has no substantial likelihood of success should be with prejudice. Matter of Gala, OATH Index No. 582/97 (Dec. 9, 1996).

¶ 34. The authority of the administrative law judge pursuant to paragraph (f) of this section to impose conditions on a petitioner's withdrawal of a case without prejudice does not apply to withdrawal with prejudice. Loft Board v. Tekosky, OATH Index No. 470/97 (Apr. 18, 1997).

¶ 35. A petitioner has the right to withdraw a case with prejudice pursuant to paragraph (f) of this section, without the consent of the respondent or the permission of the administrative law judge, and OATH did not have the authority to retain jurisdiction over issues subsidiary to the withdrawn petition. Teachers' Retirement System v. Barrett, OATH Index No. 1135/97 (Nov. 18, 1997).

¶ 36. Where the petitioner's withdrawal of the case from the calendar pursuant to paragraph (f) of this section was

done unilaterally, not by motion, and where both parties at the time of the withdrawal regarded that withdrawal as a final disposition of the case, the withdrawal constituted a final disposition of the case, and OATH did not have jurisdiction to consider the respondent's motion to restore the case to the trial calendar. Human Resources Administration v. Lampart, OATH Index No. 309/97 (Dec. 2, 1997).

¶ 37. A tenant, who was not a party to a proceeding brought by the Loft Board against a landlord, has no standing to object to the Loft Board's request to withdraw the case pursuant to paragraph (f) of this section. Loft Board v. Tekosky, OATH Index No. 470/97 (Apr. 18, 1997).

¶ 38. Where the petitioner obtained a trial adjournment due to the unavailability of its principal witness, and where the petitioner on the adjourn date sought to withdraw the case without prejudice due to the witness's non-cooperation, the request was granted without prejudice pursuant to paragraph (f) of this section, over the respondent's objection that withdrawal should be with prejudice, on the condition that the case may be restored to the calendar only upon written application to the administrative law judge, on a showing that the witness will cooperate and appear for trial, including an affidavit to that effect by the witness. Jacobi Medical Center v. Arceo, OATH Index No. 161/97 (Nov. 12, 1996).

¶ 39. Applications for adjournments are addressed to the discretion of the administrative law judge and shall be granted only for good cause. Parties may not agree to adjourn a matter without making an application to the administrative law judge. **Taxi and Limousine Comm'n v. Surinder,** OATH Index No. 825/99, letter to parties (Nov. 30, 1998).

¶ 40. Good cause for granting adjournment was lacking where the doctor's notes submitted by respondent failed to provide a medical reason, either psychological or physiological, that he could not attend the OATH hearing. **Triborough Bridge and Tunnel Auth. v. Leibowitz,** OATH Index No. 1080/98 (July 24, 1998).

¶ 41. Good cause for granting adjournment was lacking where there was no basis to conclude that further attempts to locate the Department's complaining witness would be successful, and the first adjournment was marked final against the Department. **Police Dep't v. Bowser,** OATH Index No. 1694/98 (Aug. 24, 1998).

¶ 42. Adjournment denied where trial was continued for a month following the presentation of petitioner's case, where the matter had been pending for several months, and where respondent's request for an adjournment was made on the third day of trial, so that respondent's newly retained counsel would need more time to prepare for trial. **Dep't of Sanitation v. Garcia,** OATH Index No. 1140/98 (May 1, 1998).

¶ 43. Non-appearance of petitioner's attorney did not constitute good cause for an adjournment where petitioner had ample notice that her attorney would not appear unless she paid his retainer, but failed to do so. Nor did she show good cause to adjourn continued date, selected by her, based on her claim that she assumed that her recently retained attorney, whose name she could not recall, obtained an adjournment to an unspecified date. **Matter of Wilson,** OATH Index No. 1573/97 (Mar. 20, 1998), **aff'd,** Loft Bd. Order No. 2280 (Sept. 24, 1998).

¶ 44. Under paragraph (f) of this rule, a party may withdraw a case from the calendar without making an application to the administrative law judge if the withdrawal is pursuant to a settlement agreement or other final disposition of the case. Petitioner placed its employee on pre-hearing involuntary leave pursuant to section 72 of the Civil Service Law. Prior to trial, petitioner restored the employee to duty and withdrew the case from the calendar. The employee made an application to the administrative law judge seeking back pay and restoration of leave credits expended during the period of pre-hearing involuntary leave. The administrative law judge denied the application, ruling that petitioner had the right to withdraw the case with prejudice, without the consent of the employee or the permission of the administrative law judge, and OATH did not have the authority to retain jurisdiction over issues subsidiary to the withdrawn petition. **Teachers' Retirement System v. Barrett,** OATH Index No. 1135/97 (Nov. 18, 1997), **rev'd and remanded sub nom. Barrett v. Miller,** 179 Misc. 2d 24, 682 N.Y.S.2d 552 (Sup. Ct. N.Y. Co. 1998). On appeal, the court found that the employee's claims to entitlement to back pay and restoration of leave credits

were not finally disposed of within the meaning of paragraph (f) when petitioner withdrew the matter from the calendar and the court remanded the matter to OATH to determine those issues.

¶ 45. In a zoning violation proceeding, the owner of premises appeared and argued that an indefinite stay should be granted based on his submission of an application to the Board of Standards and Appeals for re-zoning. Administrative law judge denied the application, noting that the matter had already been adjourned three times before for that purpose to no avail. Commissioner adopted the administrative law judge's reasons for denying the adjournment request. In addition, the Commissioner noted that an owner who commences an illegal commercial use of a residentially zoned premises should not be entitled to wait until he is caught, then delay enforcement action by filing a re-zoning application with the City Planning Commission. Commissioner further noted that statutory discretion to order closure of a premises lies with the Buildings Department Commissioner under section 26-127.2(b), (d) of the Administrative Code, not OATH and the adjournments were therefor improvident. **Dep't of Buildings v. 100 Post Avenue, New York**, OATH Index No. 1402/99 (Sept. 29, 1999).

¶ 46. Where respondent failed to appear for trial and his attorney asked for an adjournment based upon respondent's representation to a union representative that he had to leave the state to attend to a sick parent, the respondent was declared in default because respondent had not authorized anyone to appear on his behalf pursuant to section 1-11. Pursuant to this rule, the administrative law judge denied the request for an adjournment because respondent did not provide sufficient information to warrant one, but he left record open for two weeks to permit respondent to submit explanation for his failure to appear. **Health and Hospitals Corp. (Elmhurst Hospital Center) v. Mosley**, OATH Index No. 206/00 (Nov. 15, 1999).

¶ 47. A loft tenant's request to withdraw her challenge to a rent increase indicated that she wished to preserve a right to continue to contest the accuracy of the owner's application at some future time before another forum. The tenant was permitted to submit a letter withdrawing her challenge "with the understanding that the owner's rent increase application would be deemed granted," but, absent such a submission, her withdrawal request was denied. **Matter of Breson Corp.**, OATH Index No. 1758/99, mem. dec. (May 14, 1999).

¶ 48. Agency advocate moved to dismiss the charges because he was unable to produce complaining witnesses for trial. Administrative law judge denied the motion, as it was totally within agency's discretion to discontinue the case without need for a ruling on such a motion. Administrative law judge ordered agency to proceed to trial. **Police Dep't v. Elcock**, OATH Index No. 1890/99 (May 26, 1999).

¶ 49. Commission's unilateral withdrawal of pending case without prejudice not permitted. Administrative law judge found that OATH rule 2-26, which applies only to Human Rights cases, incorporated by reference OATH rule 1-32(f), which requires permission from an administrative law judge before a matter can be withdrawn without prejudice when it is not a final disposition of the case. Sound reasons of calendar control support an interpretation of the rule to require permission of an administrative law judge before a case can be withdrawn without prejudice. **Blueweiss v. Metropolitan Life Insurance Co.**, OATH Index No. 852/99, mem. dec. (Mar. 29, 1999).

¶ 50. Disciplinary case against police officer had been adjourned three times and marked final. On the fourth trial date, petitioner withdrew the matter when the complainant did not appear on time. Petitioner's subsequent motion to vacate the "dismissal" of the charges was denied because the charges had been withdrawn by petitioner, and not dismissed by the judge. Administrative law judge advised petitioner it could make an application to restore the case to the calendar and petitioner did so two months later. Administrative law judge denied the motion to restore, based upon petitioner's unexplained delay in bringing the application and because petitioner's unilateral withdrawal was with prejudice pursuant to paragraph (f) of this rule. Further, to permit petitioner to restore the matter would render ineffective the administrative law judge's decision to mark the matter final. **Police Dep't v. Ortega**, OATH Index No. 580/99 (Aug. 6, 1999).

¶ 51. Administrative law judge denied petitioner's adjournment request where complainant and witnesses failed to

appear on scheduled trial date despite prior notice and having been subpoenaed, the case was three and a half years old and involved minor discourtesy charges, there had been previous adjournments either due to petitioner's witnesses' inability to appear or petitioner's failure to properly order respondents in for trial, and the trial date had been marked final by this tribunal two dates prior to date at issue. **Police Dep't v. Sanchez & Trinidad,** OATH Index Nos. 548-49/00 (Feb. 16, 2000).

¶ 52. Administrative law judge denied continuance to bring in respondent's partner, who was unable to appear due to illness, based on counsel's failure to know whether the potential witness could offer anything probative to the proceeding. **Dep't of Sanitation v. Branch,** OATH Index No. 169/01 (Dec. 6, 2000).

¶ 53. Adjournment application denied where occupant of the premises appeared and represented that an application for a zoning variance was pending before the Board of Standards and Appeals and a hearing on that application had been scheduled. Statutory discretion to order closure of a premises lies with the Commissioner of the Department of Buildings. **See** Admin. Code § 26-127.2(b), (d); **Dep't of Buildings v. Owners, Occupants and Mortgagees of 20 West 190th Street, Bronx,** OATH Index No. 843/00 (Mar. 8, 2000).

¶ 54. Motion to adjourn disciplinary hearing pending resolution of criminal charges is denied. Long standing precedent holds that an employee's constitutional right against self-incrimination is not violated by going forward with the administrative disciplinary proceeding. **Human Resources Admin. v. Rickenbacker-Miller,** OATH Index No. 603/01 (Dec. 12, 2000).

¶ 55. Administrative law judge denied attorney's adjournment request the day before a scheduled license revocation hearing due to its similarity to a previous adjournment request and was suggestive of deceptive delaying tactics. **Dep't of Buildings v. Banton,** OATH Index No. 2124/00 (Sept. 18, 2000).

¶ 56. On day of the scheduled hearing, attorney's office informed the tribunal that respondent's attorney would be one hour late. Administrative law judge held that the request to postpone the hearing did not meet the tribunal's standards for an adjournment request. The hearing proceeded in the form of an inquest. **Admin. for Children's Services v. Lopez,** OATH Index No. 198/00 (Feb. 22, 2000).

¶ 57. Respondent, a correction officer, sought an adjournment of her disciplinary hearing due to the pendency of a criminal proceeding. Respondent argued that she should not be forced to choose between remaining silent at her disciplinary hearing, at the risk of losing her job, or testifying at that hearing at the risk of incriminating herself in the criminal proceeding. The ALJ denied the adjournment request, noting that it was not unconstitutionally impermissible to require a defendant to go forward in a civil or administrative proceeding despite the pendency of criminal charges, and further, that the conduct at issue in the disciplinary proceedings predated and was unrelated to the subsequent criminal charges. **Dep't of Correction v. Dasque,** OATH Index No. 1270/01, mem. dec. (July 26, 2001).

¶ 58. Owner's request for an adjournment at time of trial, so he would have additional time to obtain a building permit, was denied. Adjournment of trial may be granted only upon a showing of good cause by the party seeking the adjournment. Here, the owner had already had months to obtain the permit but failed to get it. **Matter of Buchen,** OATH Index Nos. 1132/98 & 105/99 (Mar. 21, 2002), **aff'd,** Loft Bd. Order No. 2725 (Apr. 18, 2002).

¶ 59. Administrative law judge denied counsel's motion for an adjournment of the hearing, after the tribunal delayed the start of the hearing by three hours in order to give respondent an opportunity to appear and to give counsel an opportunity to locate him and determine why he was not present. **Dep't of Correction v. Jones,** OATH Index No. 1400/02 (July 10, 2002).

¶ 60. Pursuant to subsection (f) of this section, administrative law judge denied petitioner's request to withdraw Loft Law coverage application without prejudice made on the eve of trial as unfairly prejudicial to the opposing party. **Matter of Munzer,** OATH Index Nos. 2109-10/01 (May 13, 2002), **aff'd,** Loft Bd. Order No. 2743 (June 25, 2002).

¶ 61. Respondents requested an adjournment of trial date, claiming that they would not have sufficient time to obtain complainant's medical records or their own financial records to prove undue hardship. The request failed to establish the requisite good cause for an adjournment under this rule. Respondents inexplicably waited six weeks before moving to order the complainant to provide medical records. With regard to the financial records, respondents' claim was without merit given judge's scheduling order establishing discovery timeline and trial date. **Comm'n on Human Rights v. Woodycrest Realty, LLC,** OATH Index No. 779/03, mem. dec. (May 1, 2003).

¶ 62. Pursuant to this rule, adjournments may be granted only for good cause shown. Respondent requested an adjournment because of an expected arbitration proceeding on a related grievance. The administrative law judge denied the adjournment for lack of good cause where the arbitration proceeding was not imminent, where the cited Department directive did not have any applicability to OATH conferences, and where respondent would not be prejudiced by proceeding with a disciplinary hearing. **Dep't of Correction v. Chalmers,** OATH Index No. 413/04, mem. dec. (Nov. 6, 2003).

¶ 63. Adjournment request based on pending arbitration proceeding was denied where arbitration was not imminent and where movant could not show prejudice would result. **Dep't of Correction v. Crenshaw,** OATH Index No. 172/04, mem. dec. (Nov. 18, 2003).

¶ 64. Alleged flaws in the attempted personal service of charges was not found to be a basis for adjourning a disciplinary hearing where the charges were served at respondent's home, despite petitioner's possible awareness of respondent's temporary absence from residence due to an in-patient rehabilitation program. **Fire Dep't v. Reinhard**, OATH Index No. 647/05 (Oct. 21, 2004).

¶ 65. Department rule giving firefighter thirty days to request a drug test retest was found not to be a valid basis to grant an adjournment where respondent had not submitted the form required to authorize the retest and he had submitted his retirement application which was to become effective two weeks after the scheduled hearing. **Fire Dep't v. Rinehard**, OATH Index No. 647/05 (Oct. 21, 2004).

¶ 66. Motion for adjournment, made on the day of trial, to retain new counsel was denied, where counsel of record had appeared for respondent at a pre-trial conference and stated that he was prepared to go forward with the trial. **Dep't of Correction v. Cortes**, OATH Index No. 1230/06 (June 16, 2006).

¶ 67. License revocation hearing was adjourned to give respondent, a for-hire driver, an opportunity to secure counsel. Section 100.3 (A)(8) of the Rules of Conduct for Administrative Law Judges directs judges take steps to ensure that unrepresented parties have the opportunity to have his or her case fully heard. Among the steps the judge took was to give respondent time to secure counsel, obtain a translator for the hearing, and permit continued cross-examination of the complaining witness after respondent hired an attorney. **Taxi & Limousine Comm'n v. Martinez**, OATH Index No. 1183/07 (Apr. 11, 2007).

¶ 68. Application for a continuance, like an application for an adjournment, may only be granted on a showing of good cause. Request for a open-ended or prolonged continuance on the third day of hearing was denied where the party's explanation for her absence-that she had a gravely ill relative and "other factors in her life"-were vague and unsubstantiated. **Dep't of Finance v. Zindel**, OATH Index No. 1310/07 (June 22, 2007).

¶ 69. ALJ denied motions to stay civil service disciplinary hearing while related criminal charges were pending. Going forward with disciplinary trial does not unlawfully impinge on employee's Fifth Amendment right to remain silent. **Dep't of Environmental Protection v. Rodriguez**, OATH Index No. 1438/08 (Apr. 29, 2008), **modified on penalty**, Comm'r Dec. (May 15, 2008); **Dep't of Environmental Protection v. Bellach**, OATH Index No. 1574/08 (Apr. 30, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of

OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-33

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-33 Discovery.

(a) Requests for production of documents, for identification of trial witnesses, and for inspection of real evidence to be introduced at the hearing may be directed by any party to any other party without leave of the administrative law judge.

(b) Depositions shall only be taken upon motion for good cause shown. Other discovery devices, including interrogatories, shall not be permitted except upon agreement among the parties or upon motion for good cause shown. Demands for bills of particulars shall be deemed to be interrogatories. Resort to such extraordinary discovery devices shall not generally be cause for adjournment of a conference or hearing.

(c) Discovery shall be requested and completed promptly, so that each party may reasonably prepare for trial. A demand for identification of witnesses, for production of documents, or for inspection of real evidence to be introduced at trial shall be made not less than twenty days before trial, or not less than twenty-five days if service of the demand is by mail. An answer to a discovery request shall be made within fifteen days of receipt of the request, or within ten days if service of the answer is by mail. An objection to a discovery request shall be made as promptly as possible, but in any event within the time for an answer to that request. Different times may be fixed by consent of the parties, or by the administrative law judge for good cause. Notwithstanding the foregoing time periods, where the notice of the hearing is served less than twenty-five days in advance of trial, discovery shall proceed as quickly as possible, and time periods

may be fixed by consent of the parties or by the administrative law judge.

(d) Any discovery dispute shall be presented to the assigned administrative law judge sufficiently in advance of the hearing to allow a timely determination. Discovery motions are addressed to the discretion of the administrative law judge. The timeliness of discovery requests and responses, and of discovery-related motions, the complexity of the case, the need for the requested discovery, and the relative resources of the parties shall be among the factors in the administrative law judge's exercise of discretion.

(e) In ruling upon a discovery motion, the judge may deny the motion, order compliance with a discovery request, order other discovery, or take other appropriate action. The administrative law judge may grant or deny discovery upon specified conditions, including payment by one party to another of stated expenses of the discovery. Failure to comply with an order compelling discovery may result in imposition of appropriate sanctions upon the disobedient party, attorney or representative, such as the sanctions set forth in §1-13(e), the preclusion of witnesses or evidence, drawing of adverse inferences, or, under exceptional circumstances, removal of the case from the calendar, dismissal of the case, or declaration of default.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Although the parties may consent to alter the discovery deadlines set by these rules, such consent may not be inferred from a failure to object by the party receiving the discovery request. Fire Department v. James, OATH Index No. 1187/90 (Oct. 17, 1990), **modified as to penalty,** Comm'r Decision (Dec. 13, 1990).

¶ 2. Interrogatories are an extraordinary discovery device, and therefore the "good cause" standard for leave to propound interrogatories is stricter than the "material and necessary" standard applicable to discovery devices available as of right. Human Resources Administration v. Man-of-Jerusalem, OATH Index No. 790/91 (Nov. 12, 1991).

¶ 3. Although only willful noncompliance with orders compelling discovery may result in the more extreme sanctions, such as dismissal of the case, persistently negligent noncompliance with such orders may result in imposition of lesser sanctions. Where the respondent's delays in obtaining discovery from the petitioner were aggravated by the respondent's counsel's refusal to comply with discovery orders, and where the respondent was ultimately not prejudiced by the petitioner's noncompliance with discovery orders, the respondent's application for preclusion of evidence was denied, and the sanction imposed on the petitioner's counsel was a formal admonishment. Board of Eduction v. Butler, OATH Index No. 554/93 (May 24, 1993).

¶ 4. The trade secrets privilege is qualified, not absolute, and, where documents containing trade secrets are sufficiently important to a party's case, disclosure to that party can be compelled upon the condition that the party agree to maintain the confidentiality of the documents. Department of Correction v. Carlton, OATH Index No. 329/94 (Apr. 15, 1994).

¶ 5. In general, discovery is far less extensive in administrative adjudication than in modern civil litigation, and the administrative law judge is vested by this section with broad discretion in overseeing discovery. Matter of Prince, OATH Index No. 1506/95 (Aug. 18, 1995).

¶ 6. Where the information available without the benefit of discovery is inadequate to trial preparation on critical factual issues, discovery is essential. Matter of Prince, OATH Index No. 1506/95 (Aug. 4, 1995).

¶ 7. The benefits of discovery-for instance, in shaping or limiting the issues for trial-should outweigh the costs, burdens, and time associated with the discovery, and the timeliness of a request for discovery is also relevant. Matter of Prince, OATH Index No. 1506/95 (Sept. 12, 1995).

¶ 8. A motion to compel disclosure of certain facts, arguments and other information was construed to be a motion for leave to submit interrogatories pursuant to this section, and, because the proposed interrogatories were not included with the motion papers, the motion was denied. Matter of Prince, OATH Index No. 1506/95 (Sept. 12, 1995).

¶ 9. Where the respondent moved to compel discovery sought in support of an affirmative defense, the administrative law judge, in considering the motion to compel, ruled that the affirmative defense did not lie and therefore denied the motion to compel. Department of Health v. Protzel, OATH Index No. 613/98 (Dec. 10, 1997).

¶ 10. The respondent's discovery request, that the petitioner produce copies of OATH's decisions in cases brought by the petitioner in comparable cases, constituted a request for legal research of material which is available to each party at OATH's offices. Therefore, the respondent's motion to compel the petitioner to answer the discovery request was denied. Department of Health v. Protzel, OATH Index No. 613/98 (Dec. 10, 1997).

¶ 11. After the petitioner failed to produce documents requested in discovery by the respondent and failed to comply with two successive orders compelling such production, the case was marked off the calendar without prejudice to restoration upon a showing that the petitioner had complied with the respondent's discovery demands. When the petitioner moved a year later to restore the case to the calendar, but the petitioner failed to prove full compliance with the respondent's discovery demand, the motion to restore was denied and the case was dismissed with prejudice. Transit Authority v. Villa, OATH Index No. 668/95 (Apr. 15, 1996).

¶ 12. As a general matter, paragraph (e) of this section requires a two-step process: upon one party's failure to make discovery, the requesting party must move for and obtain an order compelling discovery, and only upon failure to comply with such an order may sanctions be imposed. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), reversed in part and remanded on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 13. Although the respondent's counsel was negligent in failing to respond timely to a discovery request, the petitioners' request for discovery sanctions pursuant to paragraph (e) of this section was denied because the respondent's counsel provided the discovery promptly upon receipt of the petitioners' motion to compel. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), reversed in part and remanded on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 14. Applicability of the public interest privilege to the investigatory files of a governmental agency was determined by an **in camera** inspection of the files in question. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 15. The public interest privilege is a qualified privilege, and it precluded disclosure to the respondent in an employee disciplinary case of documents pertaining to a continuing investigation of an unrelated matter involving the same respondent, and documents containing private information implicating witnesses' privacy concerns, but did not preclude disclosure of documents summarizing investigatory interviews with witnesses, provided that witnesses' addresses and dates of birth were redacted. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 16. Respondent allegedly used the Office of the Sheriff to carry on the practice of law on behalf of private clients, in violation of the Conflicts of Interest Law. After respondent made a blanket claim of attorney-client privilege in response to petitioner's document request, the administrative law judge directed production of documents for **in camera** review accompanied by a list of the documents and an itemized description of the basis of the claim of the attorney-client privilege. Respondent's refusal to cooperate by providing identifying information about the documents contained in the files produced for **in camera** review, despite repeated instruction, requires that the documents sought in discovery, as to which no privilege has been established by respondent, and as to which none is apparent, be released to

petitioner. Administrative law judge orders production of documents which, on their face, might be confidential attorney-client communications, but which also refer to fees collected by respondent during the relevant period, be produced in redacted form, showing date, author, matter, addressee(s), typist initials, letterhead and the reference to fees collected by respondent or assessed by respondent. **Conflicts of Interest Bd. v. Katsorhis,** OATH Index No. 1531/97, mem. dec. (Sept. 25, 1997), **aff'd in part, modified on other grounds,** Conflicts of Interest Bd. Case No. 94-351 (Sept. 17, 1998).

¶ 17. Bills of particulars are extraordinary discovery devices that are not allowable absent agreement among the parties or upon motion for good cause shown. Consent to use this device did not excuse petitioner from making a complete response to the demand. **Dep't of Correction v. Altreche,** OATH Index Nos. 1377-78/98, 1384-86/98, 492/99, mem. dec. (Sept. 22, 1998).

¶ 18. Extensive production demands made only days before the hearing are untimely pursuant to this rule. **Taxi and Limousine Comm'n v. Haven Car Service,** OATH Index No. 652/99 (Jan. 22, 1999).

¶ 19. Respondent's request for voluminous document production was made less than 20 days before trial, without consent of petitioner and without leave of the administrative law judge, and was returnable on the day of trial. Upon petitioner's failure to comply, respondent moved to preclude evidence on the charges related to the document request. Preclusion was denied but a continuance was allowed to enable respondent to review the documents. **Human Resources Admin. v. Dimps,** OATH Index No. 939/98 (Apr. 3, 1998), **aff'd,** NYC Civ. Serv. Comm'n CD 99-90-SA (Aug. 31, 1999).

¶ 20. No sanctions imposed where party from whom discovery material was sought was not in possession of the material and where the discovery request was untimely. No adverse inference or missing evidence inference was warranted where it was not clear that the evidence in question ever existed or that it was being purposefully withheld. **Taxi and Limousine Comm'n v. Haven Car Service,** OATH Index No. 652/99 (Jan. 22, 1999).

¶ 21. Parties voluntarily engaged in extraordinary discovery device by service and response to bill of particulars; respondent claimed inadequate compliance with demand and moved for preclusion of evidence at trial. Petitioner provided sufficient information in its subsequent response to respondent's motion to preclude, thereby putting respondent on notice of the charges against him. Administrative law judge denied the motion holding that preclusion is only appropriate where the party fails to comply with discovery order. **Dep't of Correction v. Altreche,** OATH Index Nos. 1377-78/98, 1384-86/98, 492/99, mem. dec. (Sept. 22, 1998); **Human Resources Admin. v. Dimps,** OATH Index No. 939/98 (Apr. 3, 1998), **aff'd,** NYC Civ. Serv. Comm'n CD 99-90-SA (Aug. 31, 1999).

¶ 22. Administrative law judge declines respondent's request that judge should draw a negative inference against the agency for failing to produce a document sought by respondent in discovery. The fact that a record cannot be found, absent some indication that non-production is purposeful, is insufficient reason for any sanction to be imposed. Discovery sanctions are available only if willful or "persistently negligent" noncompliance with discovery obligations is shown. **Dep't of Sanitation v. McCutchen**, OATH Index No. 1728/99 (Jan. 25, 1999), **aff'd**, NYC Civ. Serv. Comm'n Item No. CD00-102-SA (Nov. 15, 2000).

¶ 23. Extensive discovery demand, made only days before the scheduled hearing, was untimely under this section. Administrative law judge denied respondent's request that he draw an adverse inference against petitioner based upon petitioner's failure to produce documents sought by respondent in discovery. A missing evidence inference is available, not when a party merely fails to produce some evidence, but when there is a basis to believe that the party in possession of the evidence, knows it to be unfavorable, and has therefore chosen not to produce it. Here respondent failed to make such a showing. **Taxi and Limousine Comm'n v. Haven Car Service**, OATH Index No. 652/99 (Jan. 22, 1999).

¶ 24. Administrative law judge denies respondent's motion to take interrogatories in a Loft Board overcharge proceeding where all issues would be more expeditiously resolved at a prompt trial, thus eliminating delay occasioned

by taking the interrogatories first. **Matter of Shannon**, OATH Index No. 1757/99, mem. dec. (Apr. 15, 1999).

¶ 25. Under this section, discovery motions are addressed to the discretion of the administrative law judge. Depositions may be taken upon a showing of good cause by the requesting party. Administrative law judge found that respondent made showing of good cause for depositions, and that due process required two depositions previously ordered. **Dep't of Buildings v. DeAcetis,** OATH Index No. 1440/02, mem. dec. (June 10, 2002).

¶ 26. In a civil rights enforcement proceeding, based on disability discrimination, the administrative law judge granted respondents' motion to compel discovery of complainant's medical records because the complainant placed her health in issue. **Comm'n on Human Rights v. Woodycrest Realty, LLC,** OATH Index No. 779/03, mem. dec. (May 1, 2003).

¶ 27. Noncompliance with disclosure order would subject party to sanctions under 48 RCNY §§ 1-33(e), and 2-29(c), including but not limited to preclusion of evidence, striking the answer or precluding asserted defenses, and/or costs. **Comm'n on Human Rights v. G.P.C. Realty Corp.**, OATH Index No. 228/04, mem. dec. (Feb. 26, 2004).

¶ 28. Administrative law judge denied application to sanction respondent for spoilation of crucial evidence, a surveillance videotape, where no discovery disputes have been presented to the tribunal nor has an order compelling compliance with a discovery request been made. **Comm'n on Human Rights v. Space Hunters, Inc.**, OATH Index No. 997/04, mem. dec (June 22, 2004).

¶ 29. ALJ ordered petitioner to produce two witnesses requested by respondent who were present during the incident which formed the basis of the charges; she excluded four witnesses respondent requested to testify about miscellaneous uncharged conduct allegedly committed by petitioner's main witness. Those witnesses were excluded pursuant to the collateral matter rule, which precludes the introduction of extrinsic evidence to prove a collateral matter. **Dep't of Correction v. Finch**, OATH Index No. 652/07 (Nov. 28, 2006), **modified on penalty**, Comm'r Dec. (May 24, 2007).

¶ 30. In an employment discrimination case, where the employer claimed the complainant was fired for poor performance, ALJ took an adverse inference against the employer due to the employer's negligent failure to preserve certain key documents-sales reports and a recent performance evaluation for the complainant and similarly situated employees-which were sought by the complainant in discovery. **Comm'n on Human Rights ex rel Manning v. HealthFirst, LLC**, OATH Index No. 462/05 (Mar. 15, 2006), **adopted**, Comm'n Dec. (May 10, 2006).

¶ 31. Preclusion of an agency's requested witness is the proper remedy for agency's repeated failure to identify the witness during numerous pretrial communications establishing the agency's witness list. **Dep't of Housing Preservation & Development v. Porres**, OATH Index No. 627/06 (June 16, 2006).

¶ 32. Parties should disclose all evidence relevant to the case and all information reasonably calculated to lead to relevant evidence. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

¶ 33. The recipient of a discovery request must alert her adversary when she does not intend to disclose the requested material. Pursuant to subsection (c) of this section, an objection to a discovery request shall be made as promptly as possible, but no later than the time for an answer to that request. A party has two options: bring the matter to the attention of the trial judge or make an objection and allow the adversary to present the matter to the judge. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

¶ 34. Two agency attorneys who deliberately chose not to produce requested documents in their possession were admonished. **Dep't of Transportation v. Jones**, OATH Index No. 1517/07, mem. dec. (May 10, 2007).

¶ 35. Motion to preclude evidence due to petitioner's failure to produce documents prior to trial was denied where record showed that counsel was unaware of the existence of the documents until witnesses testified at trial. Counsel was

admonished to be more attentive to its pretrial discovery obligations in the future or it may face severe sanctions. **Dep't of Environmental Protection v. Ginty**, OATH Index No. 1627/07 (Aug. 10, 2007).

¶ 36. Preclusion is a disfavored remedy best suited to a situation in which a party offers the very evidence that it failed to produce in discovery. The preferred remedy when non-production is revealed at trial is a continuance. Motion for sanctions of preclusion and adverse inference denied where party rejected offer of continuance for the purposes of having supplemental document production. **Dep't of Environmental Protection v. Ginty**, OATH Index No. 1627/07 (Aug. 10, 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the

implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER C PRE-TRIAL MATTERS

§1-34 Pre-Trial Motions.

(a) Pre-trial motions shall be consolidated and addressed to the administrative law judge as promptly as possible, and sufficiently in advance of the hearing to permit a timely decision to be made. Delay in presenting such a motion may, in the discretion of the administrative law judge, weigh against the granting of the motion, or may lead to the granting of the motion upon appropriate conditions.

(b) The administrative law judge may in his or her discretion permit pre-trial motions to be made orally, including by telephone, electronic means, or in writing. The administrative law judge may require the parties to submit legal briefs on any motion. Parties are encouraged to make pre-trial motions, or to conduct preliminary discussions and scheduling of such motions, by conference telephone call or by electronic means to the administrative law judge.

(c) Motion papers shall state the grounds upon which the motion is made and the relief or order sought. Motion papers shall include notice to all other parties of their time pursuant to subdivision (d) of this section to serve papers in opposition to the motion. Motion papers and papers in opposition shall be served on all other parties, and proof of service shall be filed with the papers. The filing of motion papers or papers in opposition by a representative who has not previously appeared shall constitute the filing of a notice of appearance by that representative, and shall conform to the requirements of §1-11(b).

(d) Unless otherwise directed by the administrative law judge upon application or **sua sponte,** the opposing party shall file and serve responsive papers no later than eight days after service of the motion papers if service of the motion papers was personal or by electronic means, and no later than thirteen days after service if service of the motion papers was by mail.

(e) Reply papers shall not be filed unless authorized by the administrative law judge, and oral argument shall not be scheduled except upon the direction of the administrative law judge.

(f) Nothing in this section shall limit the applicability of other provisions to specific pre-trial motions. For instance, an application for withdrawal or substitution of counsel is also governed by §1-12; an application for an adjournment is also governed by §1-32; an application for issuance of a subpoena is also governed by §1-43.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pre-trial motions to dismiss are disfavored, and are granted only in the clearest cases of failure by petitioners to plead viable claims. Fire Department v. Zollner, OATH Index No. 623/92 (June 12, 1992).

¶ 2. A party may remain silent in response to a motion unless the administrative law judge requires a response, and paragraph (d) of this section should be read as if the word "any" appeared before "responsive papers." Fire Department v. Zollner, OATH Index No. 623/92 (June 12, 1992).

¶ 3. Untimeliness of a pre-trial motion may be sufficient ground for denial of the motion. Human Resources Administration v. Man-of-Jerusalem, OATH Index No. 1021/91 (Nov. 12, 1991).

¶ 4. The respondents' motion to dismiss the petition on the ground of laches was denied absent evidence that the respondents' ability to defend was prejudiced by the 27-month delay between the events in question and the trial. **Department of Correction v. Garcia,** OATH Index Nos. 765/95, 767-68/95 (Aug. 29, 1995).

¶ 5. The petitioner's motion for summary judgment before trial was denied where the respondent's offer of proof raised triable issues of fact. **Matter of Teitelbaum,** OATH Index No. 424/96 (Dec. 11, 1995).

¶ 6. The respondent's request for a pre-trial hearing on his motion for suppression of certain evidence against him was denied, and the suppression issues were deferred for adjudication at trial. **Department of Correction v. Mack,** OATH Index No. 964/95 (Feb. 3, 1995); **see also Transit Authority v. Castro,** OATH Index No. 748/95 (Mar. 7, 1995).

¶ 7. An employee's pre-trial motion to dismiss employee disciplinary charges on the ground that the charges were time-barred was denied as premature, because the applicability of the statute of limitations depended upon factual questions which only could be resolved after trial. Police Department v. Kushner, OATH Index Nos. 447-48/97 (May 1, 1997).

¶ 8. An employee's pre-trial motion to dismiss disciplinary charges based on the statute of limitations was denied, without prejudice to renew the motion at the close of the hearing, because the applicability of the statute of limitations turned on whether the employee had committed a crime, an issue which presented mixed questions of law and fact requiring trial. Department of Correction v. Gilliard, OATH Index No. 587/98 (Dec. 17, 1997).

¶ 9. A pre-trial motion to dismiss may be granted only in the clearest case of a failure to plead a viable claim. Police

Department v. Fredericks, OATH Index Nos. 386/97, 616/97 (Feb. 18, 1997).

¶ 10. Where the applicability of the statute of limitations turned on whether the petitioner could prove that the respondent had committed a crime, the respondent's pre-trial motion to dismiss the petition as time-barred was denied, because it was not certain that the petitioner could not prove that the respondent had committed assault in the third degree. Police Department v. Fredericks, OATH Index Nos. 386/97, 616/97 (Feb. 18, 1997).

¶ 11. Motions to disqualify opposing counsel are disfavored, because a party's right to select counsel has constitutional implications, and rejection of the counsel selected can work substantial hardships. Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996).

¶ 12. Although a person generally may not serve both as trial counsel and as a trial witness, an exception was permitted where, pursuant to applicable provisions of the Code of Professional Responsibility, the party's need for the individual as a witness was distinctive and disqualification of the individual from serving as trial counsel would impose a substantial hardship on the party. However, trial counsel was required to arrange for another attorney to conduct the proceedings while trial counsel testified. Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996).

¶ 13. A party's motion to disqualify opposing counsel, a former city employee, based on the post-employment restrictions contained in the city's conflicts of interest law, was denied because counsel had not worked on the particular matter that was to be tried while she had served as a city employee. Matter of Salva Realty Corp., OATH Index No. 743/96 (Mar. 8, 1996).

¶ 14. Submission of pre-trial amicus brief permitted where judge found no delay in briefing schedule. **Comm'n on Human Rights v. 325 Cooperative, Inc.,** OATH Index No. 1423/98, mem. dec. (July 16, 1998).

¶ 15. Delay of almost four years between the date of the charged acts of bribery and the date of the hearing does not sustain a motion to dismiss under Charter section 1046(c) that hearing be held within a reasonable time, absent proof of substantial prejudice to respondents due to the delay. **Taxi and Limousine Comm'n v. Chrisanthos, Inc.,** OATH Index Nos. 1626-32/95 (July 21, 1998); **Statharos v. NYC Taxi & Limousine Comm'n,** 269 A.D.2d 280, 703 N.Y.S.2d 461 (1st Dep't 2000).

¶ 16. Motion to dismiss for untimely service of charges denied, where the conduct fell within the crimes exception to the statutory limitations period because respondent was found to have incurred principal liability for the crime of assault in the third degree as an accessory. **Police Dep't v. Murray,** OATH Index Nos. 1695, 1820/98 and 183/99 (Nov. 6, 1998), **rev'd on other grounds,** Comm'r Decision (Dec. 3, 1999).

¶ 17. Parties may not decide unilaterally to proceed directly to trial and forego a previously scheduled conference without first making a motion to the administrative law judge. **Human Resources Admin. v. Danagogo,** OATH Index No. 373/99, letter decision dated Nov. 18, 1998.

¶ 18. Where a subtenant brought an overcharge claim against the prime tenant, then later moved to disqualify the subtenant's attorney because the attorney also represented the building owner. Administrative law judge denied the motion, noting that the owner was not a party to the litigation and finding the alleged conflict of interest due to dual representation to be conjectural. **Matter of Shannon**, OATH Index No. 1757/99, mem. dec. (Apr. 15, 1999).

¶ 19. To accommodate her disability, petitioner sought a first floor apartment. The landlord denied the request because all of the first floor apartments were occupied under existing lease agreements. Petitioner sought joinder of real estate company and hospital, which leased first floor apartments from the landlord and then in turn leased those units to subtenants, on the ground that they were necessary parties to the requested relief, a first floor apartment. Under this section, the joinder of necessary parties is at the discretion of the administrative law judge. Finding that displacement of existing tenants would not be an available remedy if petitioner was ultimately successful, the administrative law judge denied the motion. **Hagopian v. NJR Associates**, OATH Index No. 2368/99, mem. dec. (Dec. 9, 1999).

¶ 20. Petitioner's motion to reopen was properly addressed to OATH administrative law judge where judge had previously withdrawn the original report and recommendation to correct an error. Administrative law judge granted the motion to supplement the record with further proof on the issue of liability, noting that although petitioner had not made a compelling showing that the evidence to be offered was unavailable at the original hearing, the motion was unopposed and "the dictates of justice militate against penalizing a party for . . . oversight or error of law in not introducing material evidence during the course of the hearing that was then available." **Office of the Comptroller v. NAB Management Associates, Inc.**, OATH Index No. 2162/99, mem. dec. (Oct. 8, 1999).

¶ 21. Respondent's motion to reopen the record to admit into evidence the unsolicited post-hearing affidavit from a Step 1A conference leader was granted as material and relevant to an assessment of petitioner's chief witness' credibility. Petitioner's motion to submit a letter containing the preliminary investigatory findings of the State Health Department's investigation into this matter was denied on procedural grounds as well as on the merits. The motion was procedurally defective because it was not served on petitioner's adversary. On the merits, the document was excluded because the administrative law judge found it would be unfair to the respondent if the judge were to rely on a bald conclusory statement regarding respondent's culpability in the incident. **Health and Hospitals Corp. (Seaview Hospital Rehabilitation Center and Home) v. Rayside**, OATH Index No. 972/99, mem. dec. (Apr. 15, 1999).

¶ 22. Administrative law judge denied respondent's motion to dismiss where respondent claimed that a related matter was pending in the Federal courts and that it would be improper for the tribunal to usurp the courts' jurisdiction over any issues which might be raised in the Federal suit. Administrative law judge found that respondent's action had been irrevocably dismissed, except for a still pending motion addressed to the Supreme Court of the United States to reconsider its denial of **certiorari. Triborough Bridge and Tunnel Auth. v. King,** OATH Index No. 501/00, mem. dec. (Jan. 24, 2000).

¶ 23. On a motion to dismiss for failure to state a **prima facie** case, made at the close of petitioner's direct case, the trier of fact is required to afford petitioner every inference which may be properly drawn from the facts presented and to consider petitioner's evidence in its most favorable light, in determining whether proof sufficient to establish all of the necessary elements of the charged misconduct was presented. **Dep't of Buildings v. Jennings,** OATH Index No. 561/00 (Nov. 30, 2000).

¶ 24. Administrative law judge granted respondents' motion to dismiss disciplinary charges where complainant and witnesses failed to appear on scheduled trial date despite prior notice and having been subpoenaed, the case was three and a half years old and involved minor discourtesy charges, there had been previous adjournments either due to petitioner's witnesses' inability to appear or petitioner's failure to properly order respondents in for trial, and the case had been marked final by this tribunal two dates prior to date at issue. Balance of competing interests of Department in providing an opportunity for civilian complaints to be aired, respondents, in an expeditious final result, and this tribunal in the integrity of its prior rulings, weighs in favor of dismissal. **Police Dep't v. Sanchez,** OATH Index Nos. 548-49/00 (Feb. 16, 2000).

¶ 25. Petitioner is required in the first instance to present proof as to each and every element of offense in its direct case. Administrative law judge, in evaluating **prima facie** motion to dismiss, is required to give every favorable inference to petitioner's proof at that juncture. It is a fundamental element of petitioner's direct case to provide some proof that respondent was the offending officer. Administrative law judge granted respondent's motion to dismiss for failure to make a **prima facie** case, made at the close of petitioner's case, where hearsay evidence produced by petitioner failed to prove that respondent was the police officer who intentionally tightened the complainant's handcuffs to cause him pain. **Police Dep't v. Kendricks,** OATH Index No. 1586/00 (July 11, 2000).

¶ 26. Administrative law judge denied motion for disqualification of petitioner's counsel based on counsel's participation in a pre-trial investigatory interview of respondent and precluded respondent from calling petitioner's counsel as a witness. Respondent failed to show that petitioner's counsel was a "necessary" witness. **Dep't of Buildings v. Jennings,** OATH Index No. 561/00 (Nov. 30, 2000).

¶ 27. After respondent filed a memorandum of law in support of his contention that the use of the premises was not in violation of the Zoning Resolution, petitioner was granted eight days to respond to the memorandum pursuant to this rule and 48 RCNY § 1-50. **Dep't of Buildings v. Owners, Occupants, and Mortgagees of 160 St. Albans Place, Staten Island,** OATH Index No. 870/01 (Apr. 23, 2001).

¶ 28. Administrative law judge denied pre-trial motion to dismiss, based on allegations that hospital's intimidation of certain potential witnesses would make a fair hearing impossible, because potential witnesses identified by the respondent had not yet refused to appear or to testify at trial. **Health and Hospitals Corp. (Coney Island Hospital) v. Jellinek,** OATH Index No. 2192/01 (Nov. 23, 2001).

¶ 29. Motion to dismiss on the basis of laches and prejudicial delay was denied where respondents did not make the requisite showing of actual substantial prejudice to their ability to defend against the charges. **Dep't of Buildings v. Sarabella,** OATH Index Nos. 2258-59/00 (July 2, 2001).

¶ 30. In a Loft Board proceeding, petitioner-tenant moved to suppress tape recorded conversations between petitioner and doorman/security guard on the ground that the recording was made without petitioner's knowledge or consent. OATH lacks jurisdiction to exclude the tape pursuant to CPLR § 4506(1), which provides that the motion to suppress be made before a justice of the Supreme Court in the district where the proceeding is pending. Further, as the security guard was a party to the conversation and consented to the taping, the taping was not illegal within the meaning of state law (Penal Law §§ 250.00(2), 250.05). **Matter of Kasher v. BLF Realty Holding Corp.,** OATH Index No. 262/99 (Oct. 26, 2001), **aff'd in part, rev'd in part on other grounds,** Loft Bd. Order No. 2704 (Feb. 7, 2002).

¶ 31. Written motions filed with OATH must meet certain minimum standards pursuant to subsection (c) of this section, including the caption of the case with the OATH Index number; a clear statement of the nature of the motion and the specific relief sought; a specific statement of the grounds upon which the motion is based along with supporting facts and authority; proof of service upon an adversary and notice of time within which an answer may be filed. **Dep't of Correction v. Battle,** OATH Index No. 1052/02, mem. dec. (May 15, 2002).

¶ 32. A motion for reargument, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended relevant facts or misapplied a controlling principle of law. Counsel for petitioner sought to renew its request to call a conference judge as a witness. The original motion was denied under OATH rule 1-31(b), which prohibits parties from calling an administrative law judge as a witness if the subject of the testimony concerns statements made at a settlement conference. In the motion for reargument, counsel argued only that the information presented at the settlement conference was outside the context of settlement negotiations because it led to new charges related to the same incident that was the subject of the conference. The administrative law judge found that counsel had an opportunity to make that argument in the original motion and could not raise it on reargument. **Dep't of Buildings v. Goldberg,** OATH Index No. 652/03, mem. dec. (Jan. 24, 2003).

¶ 33. Motion to disqualify counsel granted pursuant to Disciplinary Rule 5-102, which prohibits an attorney from representation when it is obvious that he may be called as a witness on a significant issue; here, the adverse party intended to use at trial an affirmation made by counsel which contained statements adverse to his client. **Dep't of Finance v. Jones**, OATH Index No. 1127/06, mem. dec. (Mar. 9, 2006).

¶ 34. The Department of Buildings brought a license revocation proceeding against a master plumber. The plumber, who also works for the Department of Sanitation, made a pretrial motion to suppress statements he made to the Department of Investigation on the ground that the investigators failed to inform him of his right to representation under section 75 of the Civil Service Law. ALJ denied the motion, finding section 75 inapplicable in the license revocation proceeding. **Dep't of Buildings v. Grande**, OATH Index No. 794/06, mem. dec. (Mar. 9, 2006).

¶ 35. Preclusion of an agency's requested witness is the proper remedy for agency's repeated failure to identify the witness during numerous pretrial communications establishing the agency's witness list. **Dep't of Housing**

Preservation & Development v. Porres, OATH Index No. 627/06 (June 16, 2006).

¶ 37. Sanctions in the form of a fine of $1,000 imposed upon petitioner's counsel for counsel's willful disobedience of tribunal's orders setting trial date and requiring proper harassment pleading and production of trial exhibits. Loft Board rejects ALJ's recommendation that application be dismissed with prejudice or conditions be placed on applicant before he may refile and remanded the matter to OATH for resolution of existing claims. **Dawe v. 20 Beaver Street LLC**, OATH Index Nos. 237/06 and 335/06, mem. dec. (Oct. 20, 2006), **rejected in part and remanded,** Loft Bd. Order No. 3161 (Feb. 15, 2007).

¶ 38. Summary judgment is appropriate where there is no triable issue of fact and the movant has established entitlement to relief as a matter of law. There is no need for an evidentiary hearing where there is no material factual dispute. Held: in Loft Board matter, tenant was entitled to summary judgment in an overcharge case. **Matter of Klein**, OATH Index No. 300/06 (May 3, 2006), **adopted**, Loft Bd. Order No. 3460 (Oct. 16, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the

amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-41

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-41 Consolidation; Separate Trials.

All or portions of separate cases may be consolidated for trial, or portions of a single case may be severed for separate trials, in the discretion of the administrative law judge. Consolidation or severance may be ordered on motion or **sua sponte,** in furtherance of justice, efficiency or convenience.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Under this section and 48 RCNY §1-26(a), joint trial of cases involving the same parties in mandatory unless real and substantial prejudice by joint trial is shown. It is presumed that the trial judge will be able to distinguish proper inferences and arguments from improper ones. Human Resources Administration v. Man-of-Jerusalem, OATH Index No. 790/91 (Nov. 12, 1991).

¶ 2. The fact that the petition alleges multiple counts of misconduct, even multiple counts of similar misconduct, is not a basis for separate trials on the different counts. Human Resources Administration v. Man-of-Jerusalem, OATH

Index No. 790/91 (Nov. 12, 1991); Police Department v. Ruotolo, OATH Index No. 612/91 (Mar. 14, 1991).

¶ 3. Severance of the petition for two separate trials is committed to the trial judge's discretion, and may be ordered by the trial judge **sua sponte.** Where the parties are ready to proceed to trial on certain employee disciplinary charges but not others, and where five days have been set aside for trial, severance is preferable to a continuance or last-minute adjournment of trial. Board of Education v. Osoba, OATH Index No. 237/92 (Feb. 28, 1992). See also Police Department v. Combs, OATH Index Nos. 1073/91, 422/92 (July 7, 1992).

¶ 4. Untimeliness of a motion for a severance, made on the day of trial, is an important factor weighing against grant of the motion. Police Department v. Ruotolo, OATH Index No. 612/91 (Mar. 14, 1991).

¶ 5. Where joint adjudication and trial of two pending cases pursuant to the Loft Law would conserve resources for the parties and this tribunal, consolidation of the two cases was ordered. **Matter of 315 Berry Street Corp.,** OATH Index No. 764/96 (Nov. 9, 1995).

¶ 6. Six separate license revocation proceedings against six different licensees, involving identical charges and common issues of law and fact, were consolidated by the administrative law judge **sua sponte** pursuant to this section. Department of Buildings v. Catapano, OATH Index Nos. 1066/97, 1091/97, 1122/97, 1184-86/97 (July 17, 1997).

¶ 7. Administrative adjudication is intended to be expeditious and efficient, and therefore such proceedings as bifurcated trials are largely alien to administrative law, and the presumption against bifurcation of trial is quite a heavy one. Department of Environmental Protection v. Bruni, OATH Index No. 1038/96 (May 16, 1996).

¶ 8. Severance of the petition for two separate trials is a matter for the trial judge's discretion. Board of Education v. Osoba, OATH Index No. 237/92 (Feb. 28, 1992).

¶ 9. The contention by both parties that bifurcation of trial might improve the prospects of a settlement of the case was, by itself, insufficient to justify bifurcation. Department of Environmental Protection v. Bruni, OATH Index No. 1038/96 (May 16, 1996).

¶ 10. Where resolution of a preliminary issue in favor of the respondent would dispose of the case, alleviating the need for the petitioner to call its main witness on the merits of the case from North Carolina, and where the trial would take two days even if not bifurcated, the possibility of saving the petitioner and the taxpayers the considerable expense of bringing the out-of-state witness to trial warranted a bifurcated trial and resolution of the preliminary issue. Department of Environmental Protection v. Bruni, OATH Index No. 1038/96 (May 16, 1996).

¶ 11. On application to sever trial, charged employee failed to rebut heavy presumption against bifurcation given the interests of administrative efficiency weigh in favor of consolidating incidents for trial. **Dep't of Correction v. Graham**, OATH Index No. 1380/03 (Feb. 25, 2004).

¶ 12. Administrative law judge consolidated harassment and access applications for trial. **Matter of Alkara,** OATH Index No. 1101/03 (Oct. 6, 2004), **aff'd in part, modified in part**, Loft Bd. Order No. 2920 (Apr. 21, 2005) & **Matter of Plot Realty, LLC,** OATH Index No. 1285/03 (Oct. 6, 2004), **aff'd**, Loft Bd. Order No. 2920 (Apr. 21, 2005).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-42 Witnesses and Documents.

The parties shall have all of their witnesses available on the hearing date. A party intending to introduce documents into evidence shall bring to trial copies of those documents for the administrative law judge, the witness, and the other parties. Repeated failure to comply with this section may be cause for sanctions, as set forth in §1-13(e).

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. ALJ denied agency's request to call an additional witness to testify to tenant statements where offer of proof failed to identify tenants or specify substance of the statements. **Dep't of Housing Preservation & Development v. Porres**, OATH Index No. 627/06 (June 16, 2006).

FOOTNOTES

1

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of

OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-43

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-43 Subpoenas.

(a) A subpoena **ad testificandum** requiring the attendance of a person to give testimony prior to or at a hearing or a subpoena **duces tecum** requiring the production of documents or things at or prior to a hearing may be issued only by the Administrative Law Judge upon application of a party or **sua sponte.**

(b) A request by a party that the Administrative Law Judge issue a subpoena shall be deemed to be a motion, and shall be made in compliance with §1-34 or §1-50, as appropriate; provided, however, that such a motion shall be made on 24 hours notice by electronic means or personal delivery of papers, including a copy of the proposed subpoena, unless the Administrative Law Judge directs otherwise. The proposed subpoena may be prepared by completion of a form subpoena available from OATH. The making and scheduling of requests for issuance of subpoenas by telephone conference call to the Administrative Law Judge or by electronic means is encouraged.

(c) Subpoenas shall be served in the manner provided by §2303 of the Civil Practice Law and Rules, unless the Administrative Law Judge directs otherwise. The party requesting the issuance of a subpoena shall bear the cost of service, and of witness and mileage fees, which shall be the same as for a trial subpoena in the Supreme Court of the State of New York.

(d) In the event of a dispute concerning a subpoena after the subpoena is issued, informal resolution shall be

attempted with the party who requested issuance of the subpoena. If the dispute is not thus resolved, a motion to quash, modify or enforce the subpoena shall be made to the Administrative Law Judge.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section amended City Record June 29, 1998 eff. July 29, 1998. [See Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

NOTE

1. Statement of Basis and Purpose in City Record June 29, 1998:

Effective July 1, 1997, the Hearings Bureau of the Commission on Human Rights (the "Commission") was discontinued and the Bureau's adjudication function was transferred to the Office of Administrative Trials and Hearings ("OATH"). These amendments to the rules of practice of OATH, and the simultaneous amendments to the rules of practice of the Commission, are intended to facilitate that transfer without change to the substantive law applicable to those adjudications, and with the least possible change to the procedures applicable to those adjudications.

The Commission's adjudications, both as previously conducted by the Hearings Bureau and as now conducted by OATH, result in the issuance of recommended decisions from administrative law judges to the Commission, which the Commission may adopt in full, modify, or reject in full. Therefore, the Commission retains the same final role in adjudication as it had before the transfer.

The amendments to the Commission's rules delete from the Commission's rules of practice (Title 47, Chapter 1, Rules of the City of New York), most rules governing pre-hearing, hearing and post-hearing procedures. To the extent that OATH's existing rules of practice (Title 48, Chapter 1, Rules of the City of New York) are substantially consistent with the Commission's existing rules, OATH's existing rules are made applicable to cases referred by the Commission to OATH. To the extent that OATH's existing rules of practice are not substantially consistent with the Commission's existing rules, OATH's rules are amended to include a new Subchapter C in Chapter 2 of Title 48, consisting of rules necessary to conform the practice and procedure at OATH to the former practice and procedure before the Commission's Hearings Bureau. Where the Commission has judged the differences between its former practice and procedure and OATH's practice and procedure to be technical or insubstantial, these amendments would make OATH's existing rules applicable.

Some changes in procedure are adopted by these amendments. For example, by amended section 1-43 of Title 48, OATH adopts for all of its cases a rule governing subpoenas that is identical to the Commission's present rule governing subpoenas (47 RCNY §1-81), except that **ex parte** application for issuance of a subpoena is not permitted. In addition, the time for taking an interlocutory appeal from a decision or order of the administrative law judge is reduced from seven days, as provided in the Commission's former rules (47 RCNY §1-82), to five days, in OATH's amended rules (48 RCNY §2-30). Finally, motions concerning investigative record-keeping and investigative subpoenas, which were made to the Hearings Bureau under the Commission's previous rules (47 RCNY §§1-79, 1-80), will be made to the Chair of the Commission under the Commission's amended rules (47 RCNY §§1-72, 1-73).

CASE AND ADMINISTRATIVE NOTES

¶ 1. This section recognizes that subpoenas may be judicially enforced, but, in the interests of judicial economy, requires that any dispute concerning a subpoena be submitted to the Administrative Law Judge before resort to the courts. Department of Buildings v. Bellman, OATH Index No. 1100/93 (Apr. 11, 1994).

¶ 2. Where a party served an attorney-issued subpoena on the day of trial, and moved for enforcement of the subpoena by the Administrative Law Judge, the application was denied as untimely. Department of Buildings v. Bellman, OATH Index No. 1100/93 (Apr. 11, 1994).

¶ 3. A motion to quash an attorney issued subpoena made to this tribunal in the first instance is actually an application to exclude the testimony of a proposed witness. A demand for a witness with no knowledge of relevant facts is denied where respondent wanted to question her only on points of law. Administrative law judge grants petitioner's motion to quash subpoena calling for production of Deputy Commissioner at trial who had no knowledge of the facts concerning the preparation and service of the charges and was being called only to testify about her interpretation of department rules. **Fire Dep't v. Durkin**, OATH Index No. 309/90, mem. dec. (Jan. 4, 1991).

¶ 4. Respondent requested issuance of subpoenas **ad testificandum** and **duces tecum** for production of contract documents to show a pattern of harassment of respondent. Administrative law judge required offer of proof of testimony of proposed witnesses. Motion for subpoenas denied because respondent provided only representations as to what proposed witnesses might testify to and because contract documents had no apparent relevance to charge. **Transit Auth. v. Wagh,** OATH Index No. 517/02, mem. dec. (Apr. 29, 2002).

¶ 5. Administrative aw judge denied the **Daily News'** motion to quash Department's subpoenas and testimony from its reporter and the photographer, related to published, non-confidential journalistic material. **Dep't of Transportation v. Sampugnaro,** OATH Index Nos. 1564/03, 1565/03 & 1566/03, mem. dec. (June 13, 2003).

¶ 6. Administrative law judge granted the **Daily News'** motion to quash Department's subpoenas requiring production of non-published journalistic materials in accordance with the Shield Law. **Dep't of Transportation v. Sampugnaro,** OATH Index Nos. 1564/03, 1565/03 & 1566/03, mem. dec. (June 13, 2003).

¶ 7. Attorney is sanctioned for issuing his own subpoenas, not on notice to this tribunal or his adversary, in violation of this section. **Matter of Live Centre Tenants Assoc**., OATH Index No. 834/05, mem. dec. (Mar. 2, 2006).

¶ 8. In vehicle retention case, respondent vehicle owner's request for subpoena **ad testificandum** requiring arresting officer to testify denied because requiring the appearance of the arresting officer would run contrary to the letter and spirit of the **Krimstock** Order, sufficient documentary evidence was available in lieu of such live testimony, and the respondent remained free to present his own defense through other witnesses, documentary evidence, or his own testimony. **Police Dep't v. McBrien**, OATH Index No. 1058/09, mem. dec. (Oct. 2, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title

48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-44

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-44 Interpreters.

OATH will make reasonable efforts to provide language assistance services to a party or their witnesses who are in need of an interpreter to communicate at a hearing or conference.

HISTORICAL NOTE

Section amended City Record Aug. 19, 2009 §4, eff. Sept. 18, 2009. [See T48 §1-22 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-45

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-45 Failure to Appear.

All parties, counsel and other representatives are required to be present at OATH and prepared to proceed at the time scheduled for commencement of trial. Commencement of trial, or of any session of trial, shall not be delayed beyond the scheduled starting time except for good cause as determined in the discretion of the administrative law judge. Absent a finding of good cause, and to the extent permitted by the law applicable to the claims asserted in the petition, the administrative law judge may direct that the trial proceed in the absence of any missing party or representative, render a disposition of the case adverse to the missing party, or take other appropriate measures, including the imposition of sanctions listed in §1-13(e). Relief from the direction of the administrative law judge may be had only upon motion brought as promptly as possible pursuant to §1-50 or §1-52. The administrative law judge may grant or deny such a motion, in whole, in part, or upon stated conditions.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Under this section and 48 RCNY §1-52, a respondent's post-trial motion to vacate her trial default is addressed to the trial judge's discretion, and requires a showing that the default was excusable, and that the respondent has a legally viable and factually substantial trial defense. New York City Transit Authority v. O'Connell, OATH Index No. 1076/91 (Nov. 8, 1991).

¶ 2. A post-trial motion to re-open the record before issuance of the trial decision is directed to the trial judge's discretion, and requires a showing that the movant has evidence that is material to the outcome of the case, that the evidence was not improperly withheld, and that the opposing party will not be prejudiced by grant of the motion. New York City Transit Authority v. O'Connell, OATH Index No. 1076/91 (Nov. 8, 1991).

¶ 3. Inability of the respondent to attend trial, due to his incarceration, is no impediment to proceeding in his absence. New York City Transit Authority v. Daniels, OATH Index No. 140/94 (Nov. 18, 1993).

¶ 4. Because service of the petition on the individual and corporate respondents was inadequate under 48 RCNY §1-23(b), the petitioner was not entitled to proceed to trial in the absence of the respondents. Taxi and Limousine Commission v. Larch Cab Corp., OATH Index No. 363/94 (Nov. 29, 1993).

¶ 5. Late arrival to trial by counsel with a history of such late arrivals resulted in the formal admonishment of counsel. Department of Correction v. Pesante, OATH Index No. 618/93.

¶ 6. Upon a respondent's failure to appear for trial in a case under the conflicts of interest law, the Administrative Law Judge will scrutinize the notice of petition and notice of trial for compliance with §§1-23 and 1-28, but need not inquire whether the address at which the respondent was served was the respondent's actual address. Proper procedure is to declare the respondent to be in default and to permit the petitioner to proceed to trial in the respondent's absence, subject to any post-trial motions made by the respondent. Conflicts of Interest Board v. Two City Employees, OATH Index Nos. 605, 641/94 (Apr. 8, 1994).

¶ 7. Upon the respondents' failure to appear for trial in a case brought pursuant to §26-127.2 of the Administrative Code, the petitioner's proof of proper service of the petition and notice of the hearing date was sufficient to permit the trial to proceed in the respondents' absence. **Department of Buildings v. Owners and Occupants of 84-19 115th Street, Queens, New York,** OATH Index No. 1236/95 (June 29, 1995).

¶ 8. Upon the respondent's failure to appear for trial in a license revocation proceeding, the petitioner's proof of proper service of the petition and notice of the hearing, and proof of the respondent's actual knowledge of the petition and hearing date, were sufficient to permit the trial to proceed in the respondent's absence. **Taxi and Limousine Commission v. Vedrine,** OATH Index No. 1001/95 (Sept. 7, 1995); **see also Taxi and Limousine Commission v. Min,** OATH Index No. 669/96 (Nov. 13, 1995).

¶ 9. Upon the 26 respondents' failure to appear for trial in a case brought pursuant to §12-110 of the Administrative Code, proof of proper service of the petitions and notices of hearing were sufficient to permit trial to proceed in the respondents' absence. **Conflicts of Interest Board v. Twenty-Six Individual Respondents,** OATH Index Nos. 135/96, **et al.** (Oct. 16, 1995).

¶ 10. Where the respondent in an employee disciplinary case pursuant to §75 of the Civil Service Law conveyed through his attorney his desire not to attend trial due to the pendency of the respondent's federal civil rights action against the petitioner, the attorney's motion to withdraw from representation of the respondent was granted and trial proceeded in the respondent's absence. **Board of Education v. Clarke,** OATH Index No. 285/95 (Feb. 2, 1995).

¶ 11. Where an employee had notice of employee disciplinary charges against him, and the circumstances indicated that the employee did not wish to defend the charges or retain his employment, the employer was entitled to proceed to trial in the employee's absence notwithstanding untimely notice of trial pursuant to §§1-26(d) and 1-28 of this chapter. Department of Correction v. Boyce, OATH Index No. 1227/97 (Apr. 29, 1997).

¶ 12. Because a food cart licensee is required by the Health Code to keep a current address on file with the Department of Health, the Department's service of the requisite notices by regular and certified mail to the licensees' addresses of record was legally sufficient, and the Department was entitled to proceed to trial in the licensees' absence pursuant to this section. Department of Health v. Moustafa, OATH Index Nos. 533/98, 535/98 (Nov. 5, 1997).

¶ 13. Where an employee, who was required by the employer's rules of conduct to keep his current address on file with the employer, was served with notice of employee disciplinary proceedings by mail to his address of record and was given actual notice of the trial by telephone call from his union representative, the employer was entitled to proceed to trial in the employee's absence pursuant to this section. Health and Hospitals Corporation, Jacobi Medical Center v. Williams, OATH Index No. 282/97 (Oct. 30, 1996).

¶ 14. Where a taxi driver appeared for trial on license revocation charges and the administrative law judge delayed the commencement of trial briefly to allow the driver's attorney time to arrive, and the driver left without explanation before his attorney arrived, trial proceeded in the driver's absence pursuant to this section, and the driver's attorney was permitted to withdraw as counsel. Taxi and Limousine Commission v. Herrera, OATH Index No. 509/98 (Nov. 20, 1997).

¶ 15. Where the petitioner presented evidence that two licensees had signed certified mail receipt cards evidencing their actual receipt of notice of the petition and notice of the hearing, and one of the licensees had written to the petitioner stating that he had no objection to the revocation of his license, the petitioner was entitled pursuant to this section to proceed to trial in the licensees' absence. Department of Buildings v. Catapano, OATH Index Nos. 1066/97, 1091/97, 1122/97, 1184-86/97 (July 17, 1997).

¶ 16. Where the record contained two different addresses for a former city contractor, and service of notices was made by mail to both addresses, the fact that the notices mailed to one of the addresses were returned by the postal service did not render service insufficient because there was no indication that the other address was not valid. Therefore, the petitioner was entitled pursuant to this section to proceed to trial in the former contractor's absence. Comptroller v. Kallo Building Construction Co., Inc., OATH Index No. 868/97 (Mar. 11, 1997).

¶ 17. Where service of notices was made by mail to an employee's last known address, and no other address for the employee was known, the employer was entitled to proceed to trial in the employee's absence pursuant to this section, although all of the notices were returned undelivered. Health and Hospitals Corporation, Bellevue Hospital Center v. Barber, OATH Index No. 193/98 (Aug. 15, 1997).

¶ 18. Upon failure of respondent to appear, and on showing of proof of service, a hearing may proceed in the form of an inquest. **Dep't of Buildings v. Owners, Occupants and Mortgagees of 1517 Rowland Street, Bronx,** OATH Index No. 896/00 (Mar. 13, 2000).

FOOTNOTES

1

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-46

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-46 Evidence at the Hearing.

(a) Compliance with technical rules of evidence, including hearsay rules, shall not necessarily be required. Traditional rules governing trial sequence shall apply. In addition, principles of civil practice and rules of evidence may be applied to ensure an orderly proceeding and a clear record, and to assist the administrative law judge in the role as trier of fact. Traditional trial sequence may be altered by the administrative law judge for convenience of the parties, attorneys, witnesses, or OATH, where substantial prejudice will not result.

(b) The administrative law judge may limit examination, the presentation of testimonial, documentary or other evidence, and the submission of rebuttal evidence. Objections to evidence offered, or to other matters, will be noted in the transcript, and exceptions need not be taken to rulings made over objections. The administrative law judge may call witnesses, may require any party to clarify confusion, fill gaps in the record, or produce witnesses, and may question witnesses directly.

(c) In the discretion of the administrative law judge, closing statements may be made orally or in writing. On motion of the parties, or **sua sponte,** the administrative law judge may direct written post-trial submissions, including legal briefing, proposed findings of fact and conclusions of law, or any other pertinent matter.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Although hearsay is permissible under the relaxed standards of evidence applicable to administrative proceedings, competence rules remain applicable, and a fact can only be alleged by a person who is, and who shows that she is, in a position to know that fact. An allegation related as hearsay must include an indication of the source of the allegation and the competence of that source to know the thing alleged. Penn-Troy Machine Company, Inc. v. Department of General Services, OATH Index No. 478/93 (Mar. 2, 1993).

¶ 2. In general, hearsay evidence is admissible in administrative trials. **Transit Authority v. Castro,** OATH Index No. 748/95 (Mar. 7, 1995); **see also Davidson v. Department of Correction,** OATH Index No. 545/95 (Feb. 7, 1995).

¶ 3. Where the respondent declined to testify and give explanations for the evidence against him, the administrative law judge was permitted to draw the strongest inference against the respondent that the evidence permitted. Department of Correction v. Sorisio, OATH Index No. 2110/96 (Apr. 30, 1997); see Department of Correction v. Brookins, OATH Index No. 193/97 (Apr. 21, 1997).

¶ 4. Where the refusal of a witness to appear and testify against the respondent was not shown to be based on a desire to avoid testifying falsely against the respondent, no adverse inference was drawn against the petitioner. Transit Authority v. Tarquini, OATH Index Nos. 1585-87/96 (Aug. 1, 1997).

¶ 5. Prior sworn testimony-in this case, the testimony of a witness at two criminal trials-is among the most reliable forms of hearsay. Transit Authority v. Tarquini, OATH Index Nos. 1585-87/96 (Aug. 1, 1997).

¶ 6. Where the petitioner offered hearsay and double hearsay statements that were contemporaneously made, at a time when the subject matter of the statements was not known to be an issue, and where the respondent's trial testimony contrary to those statements was not credible, the hearsay statements were credited. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 7. Although hearsay is often less reliable than testimony given subject to cross-examination, hearsay was credited over contrary testimony where the hearsay was given contemporaneously and was found to be reliable. Department of Correction v. Boyce, OATH Index No. 789/97 (July 9, 1997).

¶ 8. A hearsay declarant does not present herself to the trier of fact for assessment of her demeanor and credibility; does not submit to cross-examination in which the certainty of her perceptions, her motivations and biases, the reliability of her memory, and her character may be tested by one with a motive to test them vigorously. Therefore, the fact that hearsay is admissible in administrative proceedings does not mean that hearsay is not skeptically received. Triborough Bridge and Tunnel Authority v. Simms, OATH Index No. 1303/97 (May 30, 1997).

¶ 9. A federal court conviction, based on the respondent's guilty plea, was binding on the respondent here, and he was not free to contest the facts established by his conviction. Department of Buildings v. Gelb, OATH Index No. 2155/96 (Mar. 3, 1997).

¶ 10. As a general rule, it is improper to prove that a person did an act on a particular occasion by showing that he did a similar act on a different, unrelated occasion. Therefore, evidence of prior, similar but unrelated acts by the respondents was properly excluded. Department of Housing Preservation and Development v. Isidro, OATH Index No. 777/96 (Mar. 27, 1996).

¶ 11. The scope of permissible cross-examination for purposes of impeachment of a trial witness is a matter that is relegated to the discretion of the administrative law judge. Police Department v. Zisel, OATH Index No. 389/97 (Mar. 7, 1997), modified as to penalty, Comm'r Decision (Sept. 23, 1997).

¶ 12. A witness's conviction for armed robbery, and the underlying nature of the act that led to that conviction, were permissible subjects of cross-examination for purposes of impeachment of the witness. Police Department v. Zisel, OATH Index No. 389/97 (Mar. 7, 1997), modified as to penalty, Comm'r Decision (Sept. 23, 1997).

¶ 13. Cross-examination of a witness about prior bad acts, for purposes of impeachment of the witness, must be founded upon matters about which cross-examining counsel had a good faith basis to inquire. Police Department v. Zisel, OATH Index No. 389/97 (Mar. 7, 1997), modified as to penalty, Comm'r Decision (Sept. 23, 1997).

¶ 14. Where cross-examination of a witness about an alleged prior bad act by the witness was based upon information improperly obtained by cross-examining counsel from sealed records of an arrest that had not led to a conviction, the cross-examination lacked good faith basis and was not permitted. Police Department v. Zisel, OATH Index No. 389/97 (Mar. 7, 1997), modified as to penalty, Comm'r Decision (Sept. 23, 1997).

¶ 15. The respondents' post-trial submission of a statement that the complaining witness against the respondents had been arrested after trial was improper, because an arrest by itself did not constitute proof of wrongdoing, but further hearings were unnecessary because the law presumes that a judge, unlike a jury, is able to ignore improper evidence. Police Department v. Kushner, OATH Index Nos. 447-48/97 (May 1, 1997).

¶ 16. A segment of videotape was admitted into evidence based on the testimony of one of the participants in the incident shown on the videotape, that the tape fairly depicted what had occurred, and based on the testimony of the person who copied the videotape from the original, that the tape segment was unedited and continuous. A second segment of videotape, compiled by editing videotape from three cameras at three different angles, was admitted into evidence based on the testimony from the person who compiled the videotape from the originals, that he had copied all portions of the three different original videotapes that showed any portion of the incident in question, and had compiled them into a single tape to show one continuous sequence of events. Triborough Bridge and Tunnel Authority v. Simmons, OATH Index No. 1166/96 (May 1, 1997).

¶ 17. Documents obtained by the petitioner before the conclusion of a criminal case that was disposed of favorably to the respondent, and before those documents were sealed by court order, could not be introduced into evidence at a subsequent employee disciplinary proceeding against the respondent unless the petitioner obtained an unsealing order from the court that had sealed the records. However, a witness was permitted to testify to the events at issue based on recollection independent of the sealed records, and the petitioner was permitted to introduce into evidence reports of the petitioner's investigators which contained information taken from the criminal case records before those records were sealed. Department of Correction v. Toby C., OATH Index No. 1692/96 (Sept. 19, 1997).

¶ 18. A transcript of the respondent's investigatory interview was admitted into evidence at trial, despite the fact that the transcript was not notarized, because the transcript certification included the stenographer's statement that the transcript was a true and accurate record of the proceeding held in her presence. Department of Buildings v. Mogg, OATH Index No. 1757/96 (May 31, 1996), modified as to penalty, Comm'r Decision (June 24, 1996); Department of Buildings v. Purrier, OATH Index No. 1744/96 (May 29, 1996), modified as to penalty, Comm'r Decision (June 24, 1996).

¶ 19. Although the prior disciplinary history of a respondent in an employee disciplinary case is not admissible to show that the respondent had a propensity to commit the charged misconduct, it may be admissible for other purposes. Here, the prior disciplinary history was admissible to rebut the respondent's contention that the complainant against him overreacted to the encounter with the respondent that was the subject of the instant charges. Department of Correction v. West, OATH Index No. 1498/96 (July 1, 1996).

¶ 20. Where the petitioner bears the burden of proof by a preponderance of the evidence, as in an employee disciplinary case, and disposition of the case turns on the resolution of factual disputes between the petitioner and the respondent, the petitioner must prove that its account of events was more probable than the respondent's. If the weight

of the evidence is with the respondent or if the evidence is equally balanced, the petitioner's case must fail. Department of Correction v. Toby C., OATH Index No. 1692/96 (Sept. 19, 1997).

¶ 21. The petitioners' request to call the respondent's trial counsel as a witness was denied because, although counsel unquestionably had knowledge of facts relevant to the petition, other witnesses were available to the petitioners whose knowledge was equal to counsel's, if not superior, and because grant of the request would have raised difficult questions concerning not only the disqualification of the respondent's trial counsel but also the disqualification of his entire firm. Matter of Seyfried, OATH Index No. 127/97 (Jan. 3, 1997), rev'd in part and remanded on other grounds, Loft Bd. Order No. 2083 (Mar. 20, 1997).

¶ 22. Although the rules of this subchapter do not expressly state that a trial must be conducted in the form of a traditional adversarial evidentiary hearing, that procedure is implicit throughout the rules. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997).

¶ 23. Where the material facts were undisputed and disposition of the case turned entirely on the application of the law to those undisputed facts, the petitioner's request, consented to by the respondents, to conduct the trial by written submissions was granted. Matter of Chin, OATH Index No. 1142/97 (Apr. 18, 1997).

¶ 24. Where the respondent spoke with a pronounced accent and could not be understood, and refused to testify through an interpreter, the respondent was permitted to testify, by consent of both sides, by means of written answers to written questions from counsel. Administration for Children's Services v. Lin, OATH Index No. 1665/97 (Dec. 15, 1997).

¶ 25. Hearsay evidence, consisting of affidavit from out-of-state passenger, was insufficient to meet petitioner's burden of proof where credibility questions concerning the complainant's version, motive and honesty required that the right to cross-examination not be dispensed with. **Taxi and Limousine Comm'n v. Gamliel,** OATH Index No. 996/98 (July 24, 1998).

¶ 26. Administrative law judge issued preliminary ruling from the bench that the Dead Man's Statute, CPLR section 4519, is inapplicable in a Loft Board hearing. Party's objection to receipt of testimony on that basis was deemed waived where party did not avail himself of the opportunity to submit authority to the contrary. **Matter of Sultan,** OATH Index Nos. 1314-15/98, at 14, n. 1 (Aug. 18, 1998), **aff'd,** Loft Bd. Order No. 2323 (Oct. 27, 1998).

¶ 27. No adverse inference was drawn from petitioner's unintentional loss of tape recordings of witness interviews, because respondent had summaries of the witnesses' statements and was able to cross-examine the witnesses effectively. **Dep't of Correction v. Whitehead,** OATH Index No. 1552/97 (Oct. 10, 1997).

¶ 28. As a general rule, petitioner may not use a prior disciplinary disposition that was adverse to the respondent to prove that respondent is guilty of the instant disciplinary charges. **Dep't of Correction v. Whitehead,** OATH Index No. 1552/97 (Oct. 10, 1997).

¶ 29. A detective taped a conversation that she had with respondent civil servant without respondent's knowledge. Ethical opinions have generally condemned secret taping by lawyers as unethical, but have recognized an exception for such taping by law enforcement personnel and prosecutors, where one party to the conversation consents to the recording. Respondent's motion to suppress the secretly taped conversation denied. **Dep't of Finance v. Diaz,** OATH Index No. 611/98 (Dec. 11, 1997).

¶ 30. As a general rule, petitioner may not use a prior disciplinary disposition that was adverse to respondent to prove respondent guilty of the instant disciplinary charges. **Dep't of Correction v. Whitehead,** OATH Index No. 1552/97 (Oct. 10, 1997).

¶ 31. It is within the administrative law judge's discretion to permit rebuttal testimony by a witness not called on

either petitioner's or respondent's direct case, where respondent's attorney did not object and the testimony did not unduly protract the proceeding. **Police Dep't v. Guarino,** OATH Index No. 1696/98 (Dec. 17, 1998).

¶ 32. Administrative law judge admitted into evidence the transcript of respondent's investigatory interview over respondent's objection that he was never offered an opportunity to correct any errors in the transcription of his statements. While CPLR section 3116(a) requires that a deposed person be given his deposition for changes and signing (see also CPLR section 5525(c)), no departmental rule or regulation requires a similar procedure be followed for a recorded investigatory interview. The collective bargaining agreement provided that a record of the interview be made available to a member who is brought up on charges based on answers to the questions; here there was no indication respondent requested a copy of the transcript, nor has he asserted that it contained any errors or omissions. **Fire Dep't v. Durkin**, OATH Index No. 309/90, mem. dec. (Jan. 4, 1991).

¶ 33. In a default proceeding, one-page conclusory memos from a supervisor were found to be unreliable and insufficient to sustain charges of insubordination and neglect of duty. Other hearsay evidence was found to have established unauthorized absence and excessive lateness charges. **Dep't of Homeless Services v. Ighodaro**, OATH Index No. 1594/99 (June 11, 1999).

¶ 34. Hearsay account of threatening phone call was found insufficient to prove conduct absent testimony of "victim," since her credibility was placed in question, having been the former paramour of respondent's husband. **Dep't of Correction v. Aiken**, OATH Index No. 1750/99 (Aug. 4, 1999).

¶ 35. Hearsay evidence was found insufficient to meet petitioner's burden of proof that respondent used excessive force against a civilian, where it was central to the outcome of the case, complainant had arguable bias, complainant failed to make a complaint or appear at the hearing but instead had fled criminal court jurisdiction and made prior inconsistent statements. **Police Dep't v. Nieves**, OATH Index No. 1888/99 (Oct. 4, 1999).

¶ 36. Imposition of a prior fine on respondent was admissible to rebut respondent's claim that he lacked notice of a rule prohibiting his use of a City car for anything other than official business. **Dep't of Housing Preservation and Development v. Thomas**, OATH Index No. 1175/99 (June 10, 1999).

¶ 37. In Loft Board proceeding, denying owner's request to call rebuttal witness was within administrative law judge's discretion where it was made on the last scheduled hearing day, four months after the testimony began, and where the witness was not newly discovered and the owner could have called the witness during his direct case. **Matter of DeLong,** OATH Index Nos. 266 & 518/99 (Oct. 4, 1999), **aff'd and remanded,** Loft Bd. Order No. 2457 (Dec. 13, 1999), **application for reconsideration denied,** Loft Bd. Order No. 2500 (Mar. 30, 2000).

¶ 38. Administrative law judge ruled that petitioner laid proper foundation for drug test results to be admitted as a business record. **Dep't of Parks and Recreation v. Nappa,** OATH Index No. 306/00 (Jan. 25, 2000), **modified on findings, aff'd on penalty,** Comm'r Dec. (Feb. 9, 2000).

¶ 39. A pre-trial application to present testimony via speaker telephone was denied where basis of application was uncertainty of whether and when a witness might be called to testify and where documents would be exhibited to the witness. Under this section, applications to present testimony by alternative means are within the discretion of the Administrative Law Judge. **Matter of Pelli**, OATH Index Nos. 1195-96/01, mem. dec. (Jan. 11, 2001).

¶ 40. Petitioner's application to call a rebuttal witness was denied at the conclusion of a case. A party may not offer rebuttal evidence except to counter new facts affirmatively asserted by its adversary. Pursuant to this rule, the use of rebuttal witnesses is within the discretion of the ALJ. **Dep't of Sanitation v. Ambrosino,** OATH Index No. 208/01 (May 30, 2001).

¶ 41. Administrative law judge denied petitioner's application for a continuance to call a rebuttal witness who was an obvious participant in the events in question. **Dep't of Sanitation v. Edgar,** OATH Index No. 2228/01 (Dec. 3,

2001).

¶ 42. Administrative law judge granted respondent's motion to dismiss without prejudice where petitioner refused to obey Administrative law judge's direction to proceed with other witnesses when its main witness was unavailable to testify. **Dep't of Environmental Protection v. Elliott**, OATH Index No. 1647/03, mem. dec. (Feb. 17, 2004).

¶ 43. Application to call rebuttal witness made during closing argument denied where there was no undue surprise. **Health & Hospital Corp. (Segundo Ruiz Belvis Diagnostic and Treatment Center) v. Pena**, OATH Index No. 1961/04 (Oct. 14, 2004).

¶ 44. WWW.Mapquestcom adequately provides one measure of driving distances, reliable enough for administrative proceedings, to show at least in terms of gross estimates, that City employee was not using City van exclusively for City business. **Human Resources Admin. v. Allen**, OATH Index No. 212/06 (June 28, 2006).

¶ 45. Dead Man's statute will not be applied reflexively in administrative hearing. **Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC**, OATH Index No. 912/06, mem. dec. (Dec. 29, 2006).

¶ 46. The attorney-client privilege may be asserted by the client or the attorney or someone who stands in their interest. A litigant may not preclude the admission of evidence by claiming it violates his adversary's privilege. Building owner could not assert attorney-client privilege on behalf of deceased tenant. **Dep't of Housing Preservation & Development v. 331 West 22nd Street LLC**, OATH Index No. 912/06, mem. dec. (Dec. 29, 2006).

¶ 47. In a taxi license revocation hearing, documentary evidence was found sufficiently reliable, by itself without witness testimony, to establish prima facie case that licensee's urine tested positive for marijuana, which licensee failed to rebut. Documents included an affidavit from a toxicologist, with accompanying chain of custody form, toxicology reports and a confirmation from a medical review officer. **Taxi & Limousine Comm'n v. Shakoor**, OATH Index No. 860/08 (Nov. 30, 2007).

¶ 48. In the exercise of discretion, ALJ admitted polygraph test results in a disciplinary hearing at the accused worker's request, where the worker presented sufficient evidence that a recognized expert performed the test on a properly functioning machine. **Dep't of Sanitation v. Bacigalupo**, OATH Index No. 2091/07 (Jan. 25, 2008).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-47 Evidence Pertaining to Penalty or Relief.

(a) A separate trial shall not be held as to the penalty to be imposed or the relief to be granted in the event that the petition is sustained in whole or in part.

(b) In the event that a personnel file, abstract of a personnel file, driver record, owner record, or other similar or analogous file is not admitted into evidence at the trial on the merits, the administrative law judge, upon determining that the petition shall be sustained in whole or in part, may request that the petitioner forward such file or record to the administrative law judge for consideration relative to penalty or relief. That request may be conveyed to the petitioner or the petitioner's representative **ex parte** and without further notice to the respondent. The petitioner shall forward only the requested file or record, without accompanying material, and such file or record shall include only material which is available from the petitioner for inspection by the respondent as of right. In his or her report and recommendation, the administrative law judge shall refer to any material from such file or record relied on in formulating the recommendation as to penalty or other relief.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pursuant to this section, evidence relevant to penalty may be adduced at trial, or after trial by submission, in an employee disciplinary case, of the employee's personnel file. **Human Resources Administrative v. Brown,** OATH Index No. 1557/95 (Dec. 1, 1995).

¶ 2. The petitioner is entitled to adduce any relevant evidence, from any competent source, in an effort to prove any fact that might aggravate the penalty to be imposed on the respondent. **Human Resources Administrative v. Brown,** OATH Index No. 1557/95 (Dec. 1, 1995).

¶ 3. Generally speaking, the petitioner bears the burden of proof of aggravating factors, and the respondent bears the burden of proof of mitigating factors. **Human Resources Administrative v. Brown,** OATH Index No. 1557/95 (Dec. 1, 1995).

¶ 4. Administrative law judge denies motion seeking modification of procedures used by OATH to request and consider personnel materials. Administrative law judge found that section 1-47(b) of OATH's Rules of Practice provides notice of the procedures to be followed when requesting and considering personnel materials and that these procedures satisfy the "fundamental fairness" standard set forth in **Bigelow v. Board of Trustees,** 63 N.Y.2d 470, 474, 483 N.Y.S.2d 173, 174 (1984). **Dep't of Sanitation v. Joyce,** OATH Index 888-89/00, mem. dec. (May 8, 2000).

¶ 5. Unadjudicated allegations and police report in respondent's personnel file could not be considered for purposes of penalty. **Health and Hospitals Corp. (Woodhull Medical and Mental Health Center) v. Pawlowski,** OATH Index No. 1836/00 (Oct. 4, 2000).

¶ 6. A post-trial motion to obtain copies of material from respondent's personnel file submitted to ALJ for review in making a penalty recommendation and requesting a hearing with respect to the documentation contained in the file prior to the issuance of a report and recommendation was denied. Subsection (b) of this section provides notice of the procedures to be followed when requesting and considering personnel material and that these procedures satisfy the fairness standard articulated in **Bigelow v. Board of Trustees,** 63 N.Y.2d 470, 474, 483 N.Y.S.2d 173, 174 (1984). As the administrative law judge may consider only those records that respondent may inspect as of right, respondent therefore may review his personnel records at any time prior to submission to the judge and may, if necessary, correct any errors or omissions in the records. Finally, respondents have a right to comment to the final decision maker prior to the issuing of a final decision in the matter. **Triborough Bridge and Tunnel Auth. v. Mondiello,** OATH Index No. 1563/01, mem. dec. (June 28, 2001).

¶ 7. Proof that respondent received memoranda which appear in his personnel file were satisfied by notarized statement by his supervisor and therefore could be considered in determination of an appropriate penalty. Memoranda showed that respondent had engaged in similar acts of disrespect towards his supervisors in 1993 and 1994. When considered together with the misconduct found to have occurred in 1999 and 2000, the penalty of termination of employment was recommended. **Bd. of Education v. Fuccio,** OATH Index No. 924/01 (June 21, 2001).

¶ 8. In a disciplinary proceeding, respondent's counsel requested leave to present evidence as to penalties in similar cases that were settled. Under this rule, penalty evidence is not considered prior to a finding that the employee has engaged in misconduct. The administrative law judge denied the motion because stipulations of settlement lack precedential effect. **Triborough Bridge and Tunnel Auth. v. Colon,** OATH Index No. 1501/03, mem. dec. (July 31, 2003).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

Rules of the City of New York

***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-48 Official Notice.

(a) In reaching a decision, the administrative law judge may take official notice, before or after submission of the case for decision, on request of a party or **sua sponte** on notice to the parties, of any fact which may be judicially noticed by the courts of this state. Matters of which official notice is taken shall be noted in the record, or appended thereto. The parties shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by presentation of authority.

(b) Official notice may be taken, without notice to the parties, of rules published in the Rules of the City of New York or in The City Record. In addition, all parties are deemed to have notice that official notice may be taken of other regulations, directives, guidelines, and similar documents that are lawfully applicable to the parties, provided that any such materials that are unpublished are on file with OATH sufficiently before trial of the case to enable all parties to address at trial any issue as to the applicability or meaning of any such materials. Unpublished materials on file with OATH shall be available for inspection by any party or attorney or representative of a party.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. In deciding the merits of a disciplinary petition against a police officer, the trial judge is entitled to take official notice of provisions of the Patrol Guide on file with OATH. Police Department v. Connors, OATH Index No. 348/92 (Feb. 18, 1992).

¶ 2. An unpublished agency policy governing penalty in an employee disciplinary case may either be proved at trial, officially noticed if filed with OATH pursuant to paragraph (b) of this section, or discerned from precedents. Transit Authority v. Monteverde, OATH Index No. 1198/94 (Dec. 5, 1994).

¶ 3. Official notice was taken of symptoms of a disease listed on the website for National Institutes of Health. **Dep't of Correction v. Rodriguez**, OATH Index No. 277/06 (Mar. 27, 2006).

¶ 4. Official notice was taken of driving distances between points of travel as calculated on the internet website, www.Mapquest.com. **Human Resources Admin. v. Allen**, OATH Index No. 212/06 (June 28, 2006).

¶ 5. Official notice taken of research amassed by the federal government in support of the accuracy of GPS. **Dep't of Education v. Halpin**, OATH Index No. 818/07 (Aug. 9, 2007).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

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ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-49

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-49 Public Access to Proceedings.

(a) Other than settlement conferences, all proceedings shall be open to the public, unless the administrative law judge finds that a legally recognized ground exists for closure of all or a portion of the proceeding, or unless closure is required by law. Trial witnesses may be excluded from proceedings other than their own testimony in the discretion of the administrative law judge.

(b) No person shall make or cause to be made a stenographic, electronic, audio, audio-visual or other verbatim or photographic reproduction of any hearing or other proceeding, whether such hearing or other proceeding is conducted in person, by telephone, or otherwise, except upon application to the administrative law judge. Except as otherwise provided by law (**e.g.,** N.Y. Civil Rights Law, §52), such application shall be addressed to the discretion of the administrative law judge, who may deny the application or grant it in full, in part, or upon such conditions as the administrative law judge deems necessary to preserve the decorum of the proceedings and to protect the interests of the parties, witnesses and any other concerned persons.

(c) Transcripts of proceedings made a part of the record by the administrative law judge shall be the official record of proceedings at OATH, notwithstanding the existence of any other transcript or recording, whether or not authorized under the previous subdivision of this section.

(d) Unless the administrative law judge finds that legally recognized grounds exist to omit information from a decision, all decisions will be published without redaction. To the extent applicable law or rules require that particular information remain confidential, including but not limited to the name of a party or witness or an individual's medical records, such information will not be published in a decision. On the motion of a party, or sua sponte, the administrative law judge may determine that publication of certain information will violate privacy rights set forth in applicable law or rules and may take appropriate steps to ensure that such information is not published.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

Subd. (d) added City Record Aug. 19, 2009 §5, eff. Sept. 18, 2009. [See T48 §1-22 Note 1]

CASE NOTES

¶ 1. Application that respondent's wife and a friend be permitted to observe the undercover witness' testimony was denied where divulging the witness' identity would be tantamount to placing him in jeopardy and would compromise ongoing police investigations. Under paragraph (a) of this section, all OATH hearings are open unless legally recognized grounds exist for closure. This rule was interpreted in light of section 1-04, which gives the administrative law judge discretion to waive or modify trial rules as may be appropriate in a particular case to promote the just and fair adjudication of cases. **Dep't of Correction v. Lowndes**, OATH Index No. 1662/99 (July 29, 1999).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23,

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As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-50 Trial Motions.

Motions may be made during the hearing orally or in writing. Trial motions made in writing shall satisfy the requirements of §1-34. The administrative law judge may, in his or her discretion, require that any trial motion be briefed or otherwise supported in writing. In cases referred to OATH for disposition by report and recommendation to the head of the agency, motions addressed to the sufficiency of the petition or the sufficiency of the petitioner's evidence shall be reserved until closing statements.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. The respondent, a correction officer, was gay but had kept that fact private and separate from his professional life. The complainant in the employee disciplinary case against him was his former paramour, and the trial evidence necessarily included considerable evidence about the history and nature of the private relationship between the two men. Therefore, the respondent's motion at the conclusion of trial, to be identified in the report and recommendation only by first name and last initial, in the event that he was not found guilty, was granted in order to protect his privacy.

Department of Correction v. Toby C., OATH Index No. 1692/97 (Sept. 19, 1997).

¶ 2. After respondent filed a memorandum of law in support of his contention that the use of the premises was not in violation of the Zoning Resolution, petitioner was granted eight days to respond to the memorandum pursuant to 48 RCNY § 34 and this rule. **Dep't of Buildings v. Owners, Occupants, and Mortgagees of 160 St. Albans Place, Staten Island,**, OATH Index No. 870/01 (Apr. 23, 2001).

¶ 3. Administrative law judge granted motion to dismiss during trial where petitioner-attorney failed to put on any **prima facie** evidence in support of the charges. **Human Resources Admin. v. Levitant**, OATH Index No. 397/04 (Sept. 7, 2004).

FOOTNOTES

1

[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

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The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

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Rules of the City of New York

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48 RCNY 1-51

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-51 The Transcript.

Hearings shall be stenographically or electronically recorded, and the recordings shall be transcribed, unless the administrative law judge directs otherwise. In the discretion of the administrative law judge, matters other than the hearing may be recorded and such recordings may be transcribed. Transcripts shall be made part of the record, and shall be made available upon request as required by law.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where respondent, who spoke with a pronounced accent so that he could not be understood, refused to testify through an interpreter, the administrative law judge permitted respondent to testify, by means of written answers to written questions from counsel. **Admin. for Children's Services v. Lin,** OATH Index No. 1665/97 (Dec. 15, 1997).

FOOTNOTES

1

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-51.1 Decision Made on the Record.

An administrative law judge may dispose of a case by making a decision or report and recommendation on the record.

HISTORICAL NOTE

Section added City Record Oct. 19, 2005 §1, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

FOOTNOTES

1

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Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 1-52

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 1 RULES OF PRACTICE APPLICABLE TO CASES AT OATH GENERALLY, OTHER THAN ENVIRONMENTAL CONTROL BOARD CASES1

SUBCHAPTER D TRIALS AND HEARINGS

§1-52 Post-Trial Motions.

Post-trial motions shall be made in writing, in conformity with the requirements of §1-34, to the administrative law judge, except that after issuance of a report and recommendation in a case referred to OATH for such motions, as well as comments on the report and recommendation to the extent that such comments are authorized by law, shall be addressed to the deciding authority.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. A post-trial motion for an indefinite delay of the issuance of the report and recommendation, in contemplation of the possibility of a motion to reopen the record following further investigation, was denied where movant provided no reason for delay in concluding his investigations, and there was no reason to expect that the evidence being pursued would be favorable to movant or that the evidence would be available in the near future. Department of Correction v. Grant, OATH Index No. 798/92 (Aug. 26, 1992).

¶ 2. Where the petitioner did not call the respondents during its case in chief, or seek to reserve the right to call the respondents if they did not testify on their own behalf, grant of the petitioner's motion after summations to reopen the record to allow the petitioner to call the respondents, or to introduce transcripts of their pre-trial interviews, would be fundamentally unfair. Police Department v. Abbate, OATH Index Nos. 228 & 230/93 (Nov. 2, 1992).

¶ 3. The respondent's application to re-open the trial to permit the respondent to testify is denied because none of the medical documentation profferred by the respondent showed that the respondent had been unable to appear for trial, especially in light of the fact that the respondent had appeared for pre-trial conferences and the fact that the respondent had travelled out-of-state during the pendency of the case. Department of Correction v. Wilson, OATH Index No. 590/93 (July 30, 1993).

¶ 4. The respondent's application to re-open the trial to permit the respondent to testify is denied because the conclusory assertion by respondent's counsel that the respondent has vital evidence to offer in her own defense does not substitute for an explanation of what that evidence is and how it might alter the outcome of the hearing. Department of Correction v. Wilson, OATH Index No. 590/93 (July 30, 1993).

¶ 5. Although attorney who had not been retained by any party, and who appeared at trial as an "officer of the court," lacked standing to move to vacate the respondent's trial default, the administrative law judge vacated the default **sua sponte** based on information produced by the attorney demonstrating that service of the petition on the respondent had been inadequate under 48 RCNY 1-23(b). Taxi and Limousine Commission v. Larch Cab. Corp., OATH Index No. 363/94 (Nov. 29, 1993).

¶ 6. A respondent's motion to vacate a trial default, if made after trial but before issuance of a decision, may be granted upon the respondent's showing of an excuse for the default and a meritorious defense to the petition. Human Resources Administration v. Rice, OATH Index No. 455/93 (Apr. 7, 1993).

¶ 7. A post-trial motion to re-open the record before issuance of the trial decision is directed to the trial judge's discretion, and requires a showing that new evidence might reasonably alter the outcome of the case, either as to the merits or as to penalty, that there was substantial reason the new evidence was not admitted at trial, and that grant of the motion will not prejudice the other party to the case. Department of Correction v. Tirado, OATH Index No. 1213/94 (Aug. 17, 1994).

¶ 8. Even absent the requisite showing on a motion to reopen the record, the Administrative Law Judge has the discretion to reopen the record to afford the respondents an opportunity to be heard. Taxi and Limousine Commission v. Rolf, OATH Index Nos. 1111-16/93 (Jan. 28, 1994).

¶ 9. A motion to vacate a trial default was denied where the respondent acknowledged the validity of the petition and his only articulated reason for failing to appear at trial was that he "forgot." Conflict of Interest Board v. Sixty-Two City Employees, OATH Index Nos. 593/94 et al. (Apr. 8, 1994).

¶ 10. The respondent's post-trial motion for a new trial was denied where the respondent's counsel, retained by the respondent after trial at which the respondent appeared **pro se,** proffered new evidence relevant to penalty, but not to the merits of the petition. However, the motion was construed to include a request, in the alternative, to re-open the record for submission of additional evidence, and that alternative request was granted. **Human Resources Administrative v. Brown,** OATH Index No. 1557/95 (Dec. 1, 1995).

¶ 11. The respondent's post-trial motion to re-open the record to permit the respondent to present witness testimony was denied because the respondent had knowingly chosen at trial to rest its case solely on documentary evidence. **Davidson v. Department of Correction,** OATH Index No. 545/95 (Feb. 7, 1995).

¶ 12. Post-trial motion by the respondent to re-open the record was denied where the proffered evidence would explain the significance of a circumstance that the trial evidence showed to be possible but highly improbable, such that

the proffered evidence was merely speculative and theoretical. **Department of Correction v. Mack,** OATH Index No. 726/95 (May 22, 1995).

¶ 13. The respondent's post-trial motion to vacate his trial default was denied because the respondent had deliberately chosen not to attend trial due to the pendency of his federal civil rights action against the petitioner. **Board of Education v. Clarke,** OATH Index No. 285/95 (Feb. 2, 1995).

¶ 14. Following trial held in the respondent's absence due to the respondent's failure to appear, the respondent's motion to reopen the record to permit the respondent to testify was denied, because, although the respondent established a reasonable excuse for his failure to appear at trial, he was unable to show that his testimony could support a meritorious defense to employee disciplinary charges that were based on criminal convictions. Health and Hospitals Corporation, Elmhurst Hospital Center v. Stevens, OATH Index No. 447/98 (Nov. 7, 1997).

¶ 15. The petitioner's post-trial motion to reopen the record pursuant to this section, made before issuance of the report and recommendation, was granted where the petitioner showed that the evidence was unknown or unavailable at the time of trial, and the evidence was probative and would not prejudice the respondent. Taxi and Limousine Commission v. Nawaz, OATH Index No. 1433/97 (Aug. 22, 1997).

¶ 16. The petitioner's post-trial motion to reopen the record for admission of two affidavits was denied because the evidence was unavailable at the time of trial and was not reasonably likely to alter the outcome of the trial, and because granting the motion would unfairly allow the petitioner to review the trial evidence and decide to address a disputed issue further. Board of Education v. Roman, OATH Index No. 1555/97 (Sept. 30, 1997).

¶ 17. Where the respondent failed to appear for trial, but moved after trial to reopen the trial, the motion was denied because the respondent's motion established neither a reasonable excuse for his failure to attend trial nor a meritorious defense to the petition. Transit Authority v. Rodriguez, OATH Index No. 1368/96 (May 20, 1996).

¶ 18. The respondent's motion for reconsideration of the recommended penalty was denied because, after issuance of the report and recommendation to the agency head, post-trial motions must be made to the agency head pursuant to this section. Department of Correction v. Spencer, OATH Index No. 1387/97 (Oct. 27, 1997).

¶ 19. After the administrative law judge rendered the report and recommendation on the record at the conclusion of trial, but before the trial and report and recommendation was transcribed and the transcript was forwarded to the deciding authority, post-trial motions are properly made to the administrative law judge pursuant to this rule, not to the deciding authority. Transit Authority v. Rodriguez, OATH Index No. 1368/96 (May 20, 1996).

¶ 20. Pursuant to this rule, respondents may address challenge to the Comptroller of the administrative law judge's finding of default before the Comptroller renders a final decision in the case. **Office of the Comptroller v. IFD Construction Corp.,** OATH Index No. 901/98 (Jan. 26, 1998).

¶ 21. Petitioner's motion to reopen was granted where evidence was unknown or unavailable at trial, appeared to be probative to a trial issue, might reasonably alter the outcome of the case and reopening would not prejudice respondent, who would have the opportunity to test the evidence at trial. **Taxi and Limousine Comm'n v. Nawaz,** OATH Index No. 1433/97, mem. dec. (Aug. 22, 1997).

¶ 22. Motion to vacate default denied for failure to submit a more complete showing in support of the motion, as previously instructed by the administrative law judge. **Taxi and Limousine Comm'n v. Mohammad,** OATH Index Nos. 173-75/99 (Oct. 6, 1998), **modified on penalty,** Comm'n Decision (Feb. 10, 1999).

¶ 23. Respondent's motion to vacate and set aside a stipulation of settlement was denied as there was no longer an active case before OATH. The stipulation constituted a final disposition of the padlock proceeding which could not be set aside without petitioner's consent. **Dep't of Buildings v. Owners, Occupants and Mortgagees of 1565 Grand**

Avenue, Bronx, OATH Index No. 1074/98, mem. dec. (July 2, 1998).

¶ 24. Administrative law judge denies respondent's motion to reopen the record after a settlement because OATH lacks the authority to unilaterally rescind such an agreement. **Dep't of Health v. Khedr,** OATH Index No. 144/99, mem. dec. (Nov. 12, 1998).

¶ 25. Respondent's post-hearing motion to reopen to admit into evidence an unsolicited post-hearing affidavit from Step 1A conference leader was granted as material and relevant to an assessment of petitioner's chief witness' credibility. Petitioner's motion to submit a letter containing the preliminary investigatory findings of the State Health Department's investigation into this matter was denied on procedural grounds (it was not served on respondent) as well as on the merits. **Health and Hospitals Corp. (Seaview Hospital Rehabilitation Center and Home) v. Rayside**, OATH Index No. 972/99 (June 4, 1999).

¶ 26. Respondent, who appeared shortly after the conclusion of the trial, moved to vacate his default, stating that he had been in the building for almost two hours and that he had been misdirected to TLC's offices. Respondent made motion to vacate his default on the record before the administrative law judge and with petitioner's counsel present. Judge granted respondent's motion. **Taxi and Limousine Comm'n v. Singh**, OATH Index No. 618/00 (Dec. 20, 1999).

¶ 27. After a default determination, respondent was terminated from his position and appealed to the Civil Service Commission. The Commission ruled that no appeal lies from a default, but provided respondent time to file a motion to vacate his default. Administrative law judge denied the motion to vacate, finding respondent did not meet the "good cause" standard to excuse his default and that the motion to vacate was untimely. **Fire Dep't v. Parker,** OATH Index No. 2003/99 (July 7, 1999), **aff'd,** NYC Civ. Serv. Comm'n Item No. CD 99-92-SA (Aug. 31, 1999), **reaffirmed,** NYC Civ. Serv. Comm'n Item No. CD 99-117-A (Nov. 19, 1999).

¶ 28. Petitioner moved to dismiss the disciplinary charges due to inability to produce complaining witnesses for trial. Administrative law judge denied the motion, holding it was totally within petitioner's discretion to unilaterally discontinue the case without need for a ruling. Judge ordered agency to proceed to trial. **Police Dep't v. Elcock**, OATH Index No. 1890/99 (May 26, 1999).

¶ 29. Administrative law judge granted motion to vacate default based on **pro se** respondent's notation on respondent's calendar of the wrong date for the hearing. **Dep't of Buildings v. Owners, Occupants and Mortgagees of 1517 Rowland Street, Bronx,** OATH Index No. 896/00 (Mar. 13, 2000).

¶ 30. Motion to vacate default was denied where party put forth an insufficient explanation for his failure to appear, **i.e.,** he forgot about the hearing, and he gave no indication of a meritorious defense. **Dep't of Correction v. Heyward,** OATH Index No. 2041/00 (July 18, 2000).

¶ 31. A motion to vacate a default was granted where respondent was incarcerated on the date of the hearing and notice issues and where respondent established meritorious defenses to allegations of excessive absenteeism, AWOLs, and abusive language. **Health and Hospitals Corp. (Jacobi Hospital Center) v. Velez,** OATH Index No. 748/01 (May 18, 2001).

¶ 32. Motion to vacate default pursuant to section 1-06(i)(2) of the Loft Board's rules is granted as it is the public policy of New York State that a party should not be prejudiced by the running of a statute of limitations in the period following the disaster at the World Trade Center. **Matter of Haley,** OATH Index No. 355/02, mem. dec. (Dec. 6, 2001).

¶ 33. In a padlock proceeding, defaulting owner/occupant moved to vacate default. Administrative law judge found that owner/occupant failed to set forth meritorious defense to allegation of illegal commercial use of residentially zoned premises, but she permitted reopening of the record for the limited purpose of allowing the owner/occupant to offer testimony as to whether padlocking would impair residential access to the premises. The commissioner ruled that the administrative law judge erred when she reopened the record for that purpose, finding the access issue was not a proper

subject for adjudication before the administrative law judge, based upon her interpretation that the padlock law leaves the choice of the method of enforcement to the Department, post-adjudication. **Dep't of Buildings v. Owners, Occupants, Mortgagees of 1410-1414 Vyse Avenue, Bronx,** OATH Index No. 699/02, mem. dec. (Mar. 21, 2002), **rev'd,** Commissioner's Memorandum Decision (Aug. 16, 2002).

¶ 34. Motion to vacate default denied where papers did not provide adequate proof of the reason the respondent failed to attend, and because they did not assert that the respondent had a meritorious defense. **Dep't of Correction v. Patrick,** OATH Index No. 871/02, mem. dec. (Mar. 13, 2002)

¶ 35. Motion to supplement the record made before issuance of report and recommendation denied where the documents offered would not affect the outcome or the penalty recommendation. **Dep't of Sanitation v. Manzi,** OATH Index No. 1753/01 (Dec. 4, 2001).

¶ 36. Respondent failed to appear and the disciplinary hearing went forward in the form of an inquest. After the report and recommendation was issued, respondent's counsel moved to vacate the default. Under OATH rule 1-52, the application was required to be made to the agency head. **Human Resources Admin. v. Smith,** OATH Index No. 1110/03, mem. dec. (May 29, 2003).

¶ 37. Administrative law judge may hear a motion to vacate default prior to the issuance of the report and recommendation to the agency head for final action. **Human Resources Admin. v. Thomas,** OATH Index No. 190/05, mem. dec. (Dec. 8, 2004).

¶ 38. Although noting that under this section, a post report and recommendation, motion should be made to the deciding authority, who, in turn, could refer it to the presiding judge for disposition, ALJ agreed to decide such a motion to reopen record to submit new evidence made by petitioner, **Health and Hospitals Corp. (Harlem Hospital Center) v. Norwood,** OATH Index No. 143/05, mem. dec. (June 20, 2005), where adherence to regular process would have caused further unnecessary delay in the disposition of the disciplinary proceeding, which has remained undecided for six months.

¶ 39. Motion to reopen open the record to submit new evidence was denied where proffered evidence was not likely to change the outcome of the proceeding. **Health & Hospitals Corp. (Harlem Hospital Center) v. Norwood,** OATH Index No. 143/05, mem. dec. (June 20, 2005). After hearing ALJ found that employee's attendance violations were the result of his disability. Hospital sought to reopen record to submit medical officer's report opining that the employee was currently fit to work. ALJ found that the report that the hospital sought to add to the record did not contradict ALJ's finding that the employee suffered from depression at the time of the attendance violations, where the report was based largely on the fact that the employee's condition was in remission because she was currently in treatment and compliant with her medications.

¶ 40. In a padlock proceeding, the building owner made a post-report and recommendation motion to the Commissioner to vacate his default. Motion is denied as Commissioner found the owner did not show a reasonable excuse for his failure to appear (he merely alleged that he misread the notice) or a meritorious defense to the allegation of illegal commercial use of the premises in a residential zone (owner's claim that he was not engaged in commercial activity), where the proof showed storage of unlicensed motor vehicles (dead storage of motor vehicles) in violation of the Zoning Resolution. **Dep't of Buildings v. Owners, Occupants and Mortgagees of 144-11 Lackwood Avenue**, OATH Index No. 176/06 (Sept. 27, 2005), **aff'd and motion to vacation default denied**, Comm'r Dec. (Sept. 29, 2005).

¶ 41. A motion to reargue, addressed to the discretion of the judge, is designed to afford a party an opportunity to establish that the judge overlooked or misapprehended relevant facts or misapplied any controlling principle of law. Its purpose is not to serve as a vehicle to the unsuccessful party to argue once again the very questions previously decided. **Dep't of Education v. Brust**, OATH Index No. 2280/07, mem. dec. (Nov. 7, 2007).

FOOTNOTES

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[Footnote 1]: * Chapter 1 heading amended City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note Statement of Basis and Purpose of Final Rule:

The Office of Administrative Trials and Hearings (OATH) has amended the name of Chapter 1 of Title 48 of the Rules of the City of New York to clarify the fact that Environmental Control Board (ECB) rules of procedures are distinct from the rules of practice that otherwise govern cases at OATH. Specifically, OATH has amended the name of Chapter 1 of Title 48, presently entitled "Rules of Practice Applicable to Cases at OATH generally," to instead read "Rules of Practice Applicable to Cases at OATH Generally, Other Than Environmental Control Board Cases."

OATH also has re-numbered Chapter 3 of Title 48, "Fitness and Discipline of Employees of the Office of Administrative Trials and Hearings," as Chapter 4 of Title 48, and therefore also has re-numbered §3-01 of Title 48 as §4-01 of Title 48. The reason for this re-numbering is to allow for the insertion (which is done by separate rule) of a new Chapter 3, which will contain the rules of the Environmental Control Board.

The reason for these changes is that as of November 23, 2008, ECB has been consolidated within OATH. The consolidation of OATH and ECB is pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which governs ECB, and re-numbers that Charter section as §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" was effectuated was on November 23, 2008. Accordingly, the consolidation of OATH and ECB was effective on November 23, 2008.

In view of the fact that ECB is now a part of OATH, as of November 23, 2008, ECB rules of procedure and ECB penalty schedules are now included within Title 48, as Chapter 3 of that title. However, those ECB rules of procedure and penalty schedules will be added to Title 48 by a separate rule.

As is authorized by §1043(d)(ii) of the Charter, there was no public hearing regarding the proposed rule, on the ground that such a public hearing would serve no public purpose. This was in view of the fact that the amendment to the title of Chapter 1, and the re-numbering of Chapter 3 and of §3-01, merely reflect ministerial implementations of the statutory mandate of Local Law Number 35, that ECB and OATH be consolidated.

Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the Office of Administration Trials and Hearing's (OATH's) rule to re-number and re-name various provisions of OATH's rules of procedure as found in Title 48 of the Rules of the City of New York, as is set forth in the final rule.

The purpose of the re-numbering and re-naming is to accommodate the inclusion within Title 48 of the rules of the Environmental Control Board (ECB). ECB's rules must be included within Title 48 because ECB will be consolidated within OATH pursuant to Local Law Number 35 of 2008.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a

transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The date on which a "transfer of functions" will be effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB will be effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will be effective on November 23, 2008, implementation of this rule upon publication is essential to ensure that provisions of Title 48 are re-numbered and re-named as of the publication date of this rule, to ensure that ECB's procedural rules and penalty schedules can be properly located within Title 48 immediately following the consolidation of ECB and OATH.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-01 Applicability.

This subchapter shall apply solely to prequalified vendor appeals pursuant to §324(b) of the Charter and the rules of the Procurement Policy Board, 9 RCNY §3-10(m). Chapter 1 shall also apply to such proceedings except to the extent that it is inconsistent with this subchapter.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §2, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Asbestos contractor, appealing revocation of its prequalified vendor status to the Office of Administrative Trials and Hearings failed to demonstrate that the agency's actions were arbitrary or capricious, where it was undisputed that petitioner contracted with a consultant who was under criminal investigation for his involvement as a subcontractor at the Deutsche Bank building, where a fire occurred, killing two firefighters. **Gramercy Group, Inc. v. Dep't of Housing Preservation & Development**, OATH Index No. 637/09, mem. dec. (Nov. 12, 2008).

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-02 Docketing; Service of the Petition.

(a) A vendor shall docket an appeal by delivering to OATH a completed intake sheet, with a petition and appropriate proof of service of the petition upon the agency whose prequalification determination is to be reviewed. The petition shall include a copy of the determination to be reviewed and shall state the nature and basis of the challenge to the determination.

(b) The petition shall be accompanied by a notice to the respondent of its time to serve and file an answer. The notice described in §1-23(a) shall not be required.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. In an appeal from denial of prequalification, service of the petition need not be made on the agency head, and can be made on the agency chief contracting officer (ACCO). Neither this section nor the applicable section of the Procurement Policy Board rules (9 RCNY §7-06) requires service on the agency head. Silverite Construction Co., Inc.

v. Department of Transportation, OATH Index No. 486/94 (Mar. 8, 1994).

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-03 Answer; Reply.

(a) If the petition is served personally on the respondent, the respondent shall file an answer, with appropriate proof of service, within fourteen days of the respondent's receipt of the petition. If the petition is served by mail, it shall be presumed that the respondent received the petition five days after it was served.

(b) The answer shall include the determination to be reviewed, the basis of the determination, admission, denial or other response to each allegation in the petition, and a statement of any other defenses to the petition. The basis of the determination included in the answer shall consist of all documentation and information that was before the agency head, including any submissions by the vendor. To the extent that information in support of the determination was not written, it shall be reduced to writing and included in the answer in the form of affidavits or affirmations, documentary exhibits, or other evidentiary material. Also, defenses may be supported by evidentiary material. The answer may be accompanied by a memorandum of law.

(c) If the respondent's attorney or other representative has not already filed a notice of appearance, such notice shall be filed with the answer.

(d) Within fifteen days of the service of the answer, or within twenty days if such service is by mail, the petitioner may file a reply. The reply may include affidavits or affirmations, documentary exhibits, or other evidentiary material in

rebuttal of the answer, including information provided to the agency head which was not written. The reply may be accompanied by a memorandum of law.

HISTORICAL NOTE

Section amended City Record Oct. 19, 2005 §2, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Facts asserted in the answer and reply should be submitted in evidentiary form as provided in this section, not merely in the form of pleadings signed solely by the parties' attorneys, without indication whether the facts asserted are within the attorneys' knowledge. Penn-Troy Machine Company, Inc. v. Department of General Services, OATH Index No. 478/93 (Mar. 2, 1993).

¶ 2. Reason offered for denial of prequalified status for first time in agency's answer is not considered by the administrative law judge where the information was not before the agency head at the time of the initial determination to deny prequalified status. **East Coast Services, Inc. v. Dep't of Housing Preservation and Development,** OATH Index No. 413/99 (Nov. 5, 1998).

¶ 3. Vendor appealed revocation of its pre-qualified status based upon unsatisfactory performance on two projects. Under paragraph (b) of this section, the answer is limited to "all documentation and information that was before the agency head, including any submissions by the vendor" upon which the decision was based. Therefore, the administrative law judge did not consider affidavits and exhibits submitted by the agency in its answer relating to later events which were not before the agency head at the time the decision to revoke petitioner's pre-qualified status was made. **Matter of Promatech, Inc. v. Dep't of Design and Construction**, OATH Index No. 1590/99 (Sept. 27, 1999).

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-04 Further Proceedings.

An appeal shall be decided on the petition, answer and reply, unless the administrative law judge directs further written submissions, oral argument, or an evidentiary hearing, as may be necessary to the decision of the appeal.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. An evidentiary hearing on a prequalified vendor appeal will be conducted only in the most extraordinary circumstances where a determination cannot otherwise be reached, not simply whenever there are facts in dispute. Rod Knox Architect v. Department of General Services, OATH Index No. 304/93 (Dec. 10, 1992).

¶ 2. This section, which expressly prohibits submission of sur-reply papers, furthers the purpose of speedy and simplified presentation and adjudication of prequalified vendor appeals. In the event that counsel believes sur-reply papers are necessary, proper procedure is an application, which may be made by telephone conference call, for leave to file such papers. The intention of this section is that leave to file sur-reply papers will rarely be granted. Penn-Troy

Machine Company, Inc. v. Department of General Services, OATH Index No. 478/93 (Mar. 2, 1993).

¶ 3. Vendor's motion for document discovery and to make the ACCO and agency head available for deposition was denied. The purpose of an appeal pursuant to this subchapter of the OATH rules is to permit limited and expedited review of a decision already made by the agency, not to provide a **de novo** fact-finding proceeding where that decision will be made anew by an OATH ALJ. **Mazzocchi Wrecking, Inc. v. Dep't of Housing Preservation & Development**, OATH Index No. 1296/06, mem. dec. (Mar. 27, 2006).

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-05 Discovery.

Discovery shall not be permitted except upon order of the administrative law judge in connection with §2-04.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-06 Determination.

The administrative law judge shall render as expeditiously as possible a determination as to whether the agency's decision is arbitrary or capricious.

HISTORICAL NOTE

Section added City Record Nov. 13, 1992 eff. Dec. 13, 1992.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Where administrative law judge affirms the agency's findings regarding its factual basis for revoking vendor's prequalified status, administrative law judge retains discretion of decide if the penalty of revocation was inappropriate or was arbitrary or capricious. Administrative law judge found that such penalty review is limited to the "arbitrary and capricious" standard, which is met if there is a rational basis for the administrative action. Administrative law judge found a rational basis for revocation here based upon the vendor's false answers to questions on the VENDEX questionnaire. **Leroy Brookes d/b/a Brookes Plumbing & Heating v. Dep't of Housing Preservation & Development,** OATH Index No. 1275/00 (Apr. 5, 2000).

¶ 2. Asbestos contractor, appealing revocation of its prequalified vendor status to the Office of Administrative Trials and Hearings failed to demonstrate that the agency's actions were arbitrary or capricious, where it was undisputed that petitioner contracted with a consultant who was under criminal investigation for his involvement as a subcontractor at the Deutsche Bank building, where a fire occurred, killing two firefighters. **Gramercy Group, Inc. v. Dep't of Housing Preservation & Development**, OATH Index No. 637/09, mem. dec. (Nov. 12, 2008).

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER A ADDITIONAL RULES FOR PREQUALIFIED VENDOR APPEALS

§2-07 Copies of Determination.

The respondent shall send copies of the administrative law judge's determination to such non-parties as may be required, for instance, by the rules of the Procurement Policy Board, 9 RCNY §3-10(m)(5).

HISTORICAL NOTE

Section added City Record Oct. 19, 2005 §2, eff. Nov. 18, 2005. [See T48 §1-13 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-21 Applicability.

This subchapter shall apply solely to cases brought by the New York City Commission on Human Rights pursuant to the City Human Rights Law, Title 8 of the New York City Administrative Code. Chapter 1 of this title shall also apply to such proceedings except to the extent that it is inconsistent with this subchapter.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-22 Definitions.

For purposes of this subchapter:

Commission. "Commission" shall mean the New York City Commission on Human Rights.

Complainant. "Complainant" shall be defined according to the Commission's rules, 47 RCNY §1-03.

Party. "Party" shall be defined according to the Commission's rules, 47 RCNY §1-03.

Petition. The complaint as defined in the Commission's rules, 47 RCNY §§1-11, 1-12 shall constitute the petition as defined in §1-01 of Chapter 1 of this title.

Petitioner. "Petitioner" shall mean the Law Enforcement Bureau of the Commission.

Report and recommendation. The "report and recommendation" referred to in this title shall constitute the recommended decision and order referred to in the Commission's Rules.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-23 Proceedings Before Referral to OATH.

Proceedings before the case is docketed at OATH shall be governed by the Commission's rules (47 RCNY §§1-01 to 1-62).

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-24 Docketing the Case at OATH.

(a) Notwithstanding the provisions of §1-26 of this title, only the petitioner may docket a case at OATH. The petitioner shall docket a case by delivering to OATH a completed intake sheet, the notice of referral required by the Commission's rules (47 RCNY §1-71), the pleadings and any amendments to the pleadings, any notices of appearances filed with the petitioner pursuant to the Commission's rules (47 RCNY §1-15), and any changes of address filed with the petitioner pursuant to the Commission's rules (47 RCNY §1-16).

(b) Upon docketing the case at OATH, the petitioner shall serve notice of trial, if a trial date has been selected, and notice of conference, if a conference date has been selected, in compliance with §1-28 of this title.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-25 Intervention.

(a) A person may move to intervene as a party at any time before commencement of the hearing. Intervention may be permitted, in the discretion of the Administrative Law Judge, if the proposed intervenor demonstrates a substantial interest in the outcome of the case. In determining applications for intervention, the Administrative Law Judge shall consider the timeliness of the application, whether the issues in the case would be unduly broadened by grant of the application, the nature and extent of the interest of the proposed intervenor and the prejudice that would be suffered by the intervenor if the application is denied, and such other factors as may be relevant. The Administrative Law Judge may grant the application upon such terms and conditions as he or she may deem appropriate and may limit the scope of an intervenor's participation in the adjudication.

(b) A complainant shall be permitted to intervene as of right, upon notice to all parties and the Administrative Law Judge at or before the first conference in the case, or, if no conference is held, before commencement of trial. The Commission's Law Enforcement Bureau shall prosecute the complaint. Complainants and respondents may be represented by counsel or other duly authorized representatives, who shall file notices of appearance pursuant to the Commission's rules (47 RCNY §1-15), if before referral of the case to OATH, or pursuant to §1-11 of this title, if after such referral.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Submission of pre-trial amicus brief permitted where judge found no delay in briefing schedule. **Comm'n on Human Rights v. 325 Cooperative, Inc.,** OATH Index No. 1423/98, mem. dec. (July 16, 1998).

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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§2-26 Withdrawal or Dismissal of the Petition.

After referral of a case to OATH, but before commencement of the hearing, dismissal of the case by the petitioner on the grounds provided in the Commission's Rules (47 RCNY §1-22), or withdrawal of the case by the petitioner pursuant to §1-32(f) of this title, shall be effected by notice to all other parties and to the Administrative Law Judge. The complainant may move to withdraw the complaint at any time before commencement of the hearing. All other motions to withdraw or dismiss the petition shall be governed by §§1-34 and 1-50 of this title.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Commission's unilateral withdrawal of pending case without prejudice not permitted. Administrative law judge found that this section, which applies only to Human Rights cases, incorporated by reference section 1-32(f), which requires permission from an administrative law judge before a matter can be withdrawn where the withdrawal is not with prejudice or otherwise a final disposition of the case. Sound reasons of calendar control support an interpretation of the rule which requires permission of an administrative law judge before a case can be withdrawn without prejudice.

Blueweiss v. Metropolitan Life Insurance Co., OATH Index No. 852/99, mem. dec. (Mar. 29, 1999).

FOOTNOTES

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[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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§2-27 Entry of and Relief from Default.

(a) If the notice of referral to OATH alleges that a respondent has not complied with the requirements of §1-14 of the Commission's rules (47 RCNY §1-14), the respondent shall serve and file an affidavit asserting that the respondent has complied with those requirements, or asserting reasons constituting good cause for its failure to comply with those requirements. Such affidavit shall be served and filed at or before the first conference in the case, or, if no conference is held, before commencement of the hearing. If the respondent fails to serve and file such an affidavit within the time allowed by this paragraph, the Administrative Law Judge shall declare the respondent to be in default and shall preclude the respondent from further participation in the adjudication. If the respondent timely serves and files such an affidavit, the Administrative Law Judge shall decide the questions presented, and shall either declare the respondent to be in default and preclude the respondent from further participation in the adjudication, or shall deny the default in full or upon stated terms and conditions which may include such limitations on the respondent's participation in the adjudication as the Administrative Law Judge deems to be equitable.

(b) A respondent against whom a default has been entered pursuant to paragraph (a) of this section may move at any time before issuance of the report and recommendation to open the default. Such a motion must include a showing of good cause for the conduct constituting the default, a showing of good cause for the failure to oppose entry of the default in accordance with paragraph (a) of this section, and a meritorious defense to the petition, in whole or in part. In granting any such motion, the Administrative Law Judge may impose such terms and conditions as he or she deems to

be equitable.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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§2-28 Settlement Conferences.

In addition to or instead of the conduct of settlement conferences pursuant to §§1-30 and 1-31 of this title, the Administrative Law Judge may in his or her discretion, on the request of any party, refer the case for a settlement conference to be conducted by the Commission's Office of Mediation and Conflict Resolution pursuant to the Commission's Rules (47 RCNY Subchapter F). In the discretion of the Administrative Law Judge, proceedings at OATH may be stayed, in whole or in part, pending completion of such settlement conference or for any shorter period of time.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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SUBCHAPTER C**1 ADDITIONAL RULES FOR HUMAN RIGHTS CASES

§2-29 Discovery.

(a) **Policy.** Although strict compliance with the provisions of Article 31 of the Civil Practice Law and Rules shall not be required, the principles of that article may be applied to ensure orderly and expeditious preparation of cases for trial.

(b) **Scope of discovery.** (1) With the exception of the substance of any oral or written communications made by and between a complainant or complainant's counsel and the petitioner subsequent to a determination that probable cause exists, the materials contained in the petitioner's investigatory file shall be available as of right to any party for inspection and copying subsequent to docketing at OATH upon reasonable notice, unless a default has been entered against that party by the Administrative Law Judge.

(2) In the absence of an agreement by the parties, the number of interrogatories, including subparts, shall be limited to fifteen. The Administrative Law Judge may permit additional interrogatories upon application for good cause shown.

(3) Any party may take the deposition of any other party as of right. Other depositions shall be taken only upon leave of the Administrative Law Judge for good cause shown. No person shall be deposed by the party conducting the examination for a period aggregating more than seven hours except upon consent of all parties or leave of the administrative law judge for good cause shown. Deposition testimony may be recorded by a stenographer or by

videotape or audiotape recording, at the option of the party conducting the deposition. The cost of the recording and transcription of deposition testimony shall be borne by the party conducting the deposition.

(c) **Sanctions.** Failure to comply with or object to a discovery request in a timely fashion as provided by §1-33 of this title may result in the imposition of sanctions as appropriate, including those specified in §1-33(e) of this title.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Noncompliance with disclosure order would subject party to sanctions under 48 RCNY §§ 1-33(e), and 2-29(c), including but not limited to preclusion of evidence, striking the answer or precluding asserted defenses, and/or costs. **Comm'n on Human Rights v. G.P.C. Realty Corp.**, OATH Index No. 228/04, mem. dec. (Feb. 26, 2004).

¶ 2. In an employment discrimination case, where the employer claimed the complainant was fired for poor performance, ALJ took an adverse inference against the employer due to the employer's negligent failure to preserve certain key documents-sales reports and a recent performance evaluation for the complainant and similarly situated employees-which were sought by the complainant in discovery. **Comm'n on Human Rights ex rel Manning v. HealthFirst, LLC**, OATH Index No. 462/05 (Mar. 15, 2006), **adopted**, Comm'n Dec. (May 10, 2006).

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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§2-30 Interlocutory Review.

(a) Within five days after issuance of any interlocutory order or decision, a party may move for certification by the Administrative Law Judge that such order or decision may be submitted, in whole or in specified part, for review by the chair of the Commission. If the party moving for certification seeks a stay of proceedings, in whole or in part, pending completion of the interlocutory review, the motion for certification shall include a statement as to why the failure to grant the requested stay would materially prejudice the party. Certification may also be made, and a stay may be ordered, by the Administrative Law Judge on his or her own motion.

(b) As provided by the Commission's rules (47 RCNY §1-74), failure of a party to seek interlocutory review of a decision or order shall not preclude that party from making such challenge to the Commission in connection with the Commission's review of a report and recommendation in a case, provided that the party timely made its objection known to the Administrative Law Judge and that the grounds for such challenge shall be limited to those set forth to the Administrative Law Judge.

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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§2-31 Proceedings After Issuance of Report and Recommendation.

Proceedings following issuance by the Administrative Law Judge of the report and recommendation in the case shall be governed by the Commission's Rules (47 RCNY §§1-75, 1-76).

HISTORICAL NOTE

Section added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

FOOTNOTES

1

[Footnote 1]: ** Subchapter added City Record June 29, 1998 eff. July 29, 1998. [See T48 §1-43 Note 1]

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CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER D RULES FOR POST-SEIZURE REVIEW OF IMPOUNDMENT OF VEHICLES*2

§2-41 Applicability.

This subchapter shall apply solely to cases brought to determine the validity of post-seizure retention of vehicles by the Police Department as evidence or for prospective or pending actions to forfeit such vehicles pursuant to §14-140 of the New York City Administrative Code. Chapter 1 of this title shall also apply to such cases except to the extent that it is inconsistent with this subchapter or with **Krimstock v. Kelly,** 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), and any amendments, modifications and revisions thereof.

HISTORICAL NOTE

Section added City Record Apr. 27, 2004 eff. May 27, 2004; replaces section added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Apr. 27, 2004 eff. May 27, 2004 [Note 1]; replaces Subchapter D added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [Note 2] Note:

1. Statement of Basis and Purpose of Rules in City Record Apr. 27, 2004. These rules replace rules promulgated by emergency procedure on January 22, 2004, to implement Krimstock v. Kelly, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004). The order in Krimstock v. Kelly requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated. The emergency rules applied solely to vehicle forfeiture cases brought by the Police Department pursuant to Krimstock v. Kelly. These rules have been modified slightly to make them applicable to any vehicle forfeiture cases that might be brought. No other substantive change is intended.

These rules supplement and modify OATH's existing rules of practice, solely for purposes of hearings regarding city agencies' retention of vehicles seized for use as evidence or for forfeiture, including vehicles seized, as required by Krimstock v. Kelly.

2. Provisions of City Record Jan. 22, 2004: This emergency rulemaking implements Krimstock v. Kelly, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), which requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated.

The rules promulgated herein on an emergency basis supplement and modify OATH's existing rules of practice, solely for purposes of hearings to be held pursuant to the order in Krimstock v. Kelly. In addition, the order in Krimstock v. Kelly provides that OATH's rules of practice shall apply to such hearings "to the extent such rules are not in conflict with the terms of this Order and Judgment"; therefore, the practitioner or party appearing before OATH in these hearings must be familiar with OATH's existing rules of practice, these proposed rules, and the order in Krimstock v. Kelly.

FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules relating to the post-seizure review of the impoundment of certain vehicles is necessary to prevent an immediate threat to health, safety and property, by ensuring compliance with a Court order prescribing procedures for such review to be undertaken by the Office of Administrative Trials and Hearings. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

On January 5, 2004, the United States District Court for the Southern District of New York (Mukasey, J.) issued its Order and Judgment in Krimstock v. Kelly, 99 Civ. 12041. Judge Mukasey's Order implements a determination by the United States Court of Appeals for the Second Circuit in that case, 306 F.2d 40 (2d Cir. 2002). The Court of Appeals held that, when a vehicle is seized by the City and held for forfeiture after its driver has been arrested for driving while intoxicated ("DWI") or another crime, the vehicle's owner must be afforded an opportunity to be heard on the "probable validity" of the seizure. The District Court Order sets forth certain procedures which must be followed by the City in contacting the owner of a vehicle seized for forfeiture or as evidence in a criminal proceeding and holding the hearing. These procedures, by the terms of the Order, are effective on and after January 23, 2004. The Order further mandates that the hearing be held by the Office of Administrative Trials and Hearings ("OATH"). OATH's Rules of Practice (set forth in chapter 1 of Title 48 of the Rules of the City of New York), which normally govern OATH proceedings, differ in certain points from the requirements of the Order and set forth certain requirements which are not necessary for hearings conducted pursuant to the Order. It is essential that, by the date set by Judge Mukasey, OATH put in place rules for the conduct of the hearings in question which are consistent with the Order. Failure to do so would jeopardize OATH's ability to hold the required hearings and put at risk the City's program of seizing vehicles driven by

persons arrested for DWI, thus undermining the public's interest in having such vehicles forfeited. Further, such hearings are necessary to ensure that vehicles seized as evidence in criminal proceedings remain available for use by prosecuting authorities.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule relating to the post-seizure review of the impoundment of vehicles driven by persons arrested for DWI or other crimes or held as evidence in a criminal proceeding is necessary to address an immediate threat to health, safety and property.

Dated: January 19, 2004

Roberto Velez

Chief Administrative Law Judge

Approved:

Michael R. Bloomberg

Mayor

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SUBCHAPTER D RULES FOR POST-SEIZURE REVIEW OF IMPOUNDMENT OF VEHICLES*2

§2-42 Parties.

For purposes of this subchapter, the Police Department shall be the petitioner, and the claimant to the vehicle shall be the respondent, as defined in §1-01 of this title.

HISTORICAL NOTE

Section added City Record Apr. 27, 2004 eff. May 27, 2004; replaces section added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Apr. 27, 2004 eff. May 27, 2004 [Note 1]; replaces Subchapter D added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [Note 2] Note:

1. Statement of Basis and Purpose of Rules in City Record Apr. 27, 2004. These rules replace rules promulgated by emergency procedure on January 22, 2004, to implement Krimstock v. Kelly, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004). The order in Krimstock v. Kelly requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated. The emergency rules applied solely to vehicle forfeiture cases brought by the Police Department pursuant to Krimstock v. Kelly. These rules have been modified slightly to make them applicable to any vehicle forfeiture cases that might be brought. No other substantive change is intended.

These rules supplement and modify OATH's existing rules of practice, solely for purposes of hearings regarding city agencies' retention of vehicles seized for use as evidence or for forfeiture, including vehicles seized, as required by Krimstock v. Kelly.

2. Provisions of City Record Jan. 22, 2004: This emergency rulemaking implements Krimstock v. Kelly, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), which requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated.

The rules promulgated herein on an emergency basis supplement and modify OATH's existing rules of practice, solely for purposes of hearings to be held pursuant to the order in Krimstock v. Kelly. In addition, the order in Krimstock v. Kelly provides that OATH's rules of practice shall apply to such hearings "to the extent such rules are not in conflict with the terms of this Order and Judgment"; therefore, the practitioner or party appearing before OATH in these hearings must be familiar with OATH's existing rules of practice, these proposed rules, and the order in Krimstock v. Kelly.

FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules relating to the post-seizure review of the impoundment of certain vehicles is necessary to prevent an immediate threat to health, safety and property, by ensuring compliance with a Court order prescribing procedures for such review to be undertaken by the Office of Administrative Trials and Hearings. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

On January 5, 2004, the United States District Court for the Southern District of New York (Mukasey, J.) issued its Order and Judgment in Krimstock v. Kelly, 99 Civ. 12041. Judge Mukasey's Order implements a determination by the United States Court of Appeals for the Second Circuit in that case, 306 F.2d 40 (2d Cir. 2002). The Court of Appeals held that, when a vehicle is seized by the City and held for forfeiture after its driver has been arrested for driving while intoxicated ("DWI") or another crime, the vehicle's owner must be afforded an opportunity to be heard on the "probable validity" of the seizure. The District Court Order sets forth certain procedures which must be followed by the City in contacting the owner of a vehicle seized for forfeiture or as evidence in a criminal proceeding and holding the hearing. These procedures, by the terms of the Order, are effective on and after January 23, 2004. The Order further mandates that the hearing be held by the Office of Administrative Trials and Hearings ("OATH"). OATH's Rules of Practice (set forth in chapter 1 of Title 48 of the Rules of the City of New York), which normally govern OATH proceedings, differ in certain points from the requirements of the Order and set forth certain requirements which are not necessary for hearings conducted pursuant to the Order. It is essential that, by the date set by Judge Mukasey, OATH put in place rules for the conduct of the hearings in question which are consistent with the Order. Failure to do so would jeopardize OATH's ability to hold the required hearings and put at risk the City's program of seizing vehicles driven by persons arrested for DWI, thus undermining the public's interest in having such vehicles forfeited. Further, such hearings are necessary to ensure that vehicles seized as evidence in criminal proceedings remain available for use by prosecuting authorities.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule relating to the post-seizure review of the impoundment of vehicles driven by persons arrested for DWI or other crimes or held as evidence in a criminal proceeding is necessary to address an immediate threat to health, safety and property.

Dated: January 19, 2004

Roberto Velez

Chief Administrative Law Judge

Approved:

Michael R. Bloomberg

Mayor

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SUBCHAPTER D RULES FOR POST-SEIZURE REVIEW OF IMPOUNDMENT OF VEHICLES*2

§2-43 Pleadings.

(a) The time provided in §1-26(d) for service of the notice of hearing shall not apply.

(b) Notwithstanding §1-24 of this title, the responent may serve and file an answer at any time until the commencement of the hearing.

HISTORICAL NOTE

Section added City Record Apr. 27, 2004 eff. May 27, 2004; replaces section added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Apr. 27, 2004 eff. May 27, 2004 [Note 1]; replaces

Subchapter D added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [Note 2]
Note:

1. Statement of Basis and Purpose of Rules in City Record Apr. 27, 2004. These rules replace rules promulgated by emergency procedure on January 22, 2004, to implement Krimstock v. Kelly, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004). The order in Krimstock v. Kelly requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated. The emergency rules applied solely to vehicle forfeiture cases brought by the Police Department pursuant to Krimstock v. Kelly. These rules have been modified slightly to make them applicable to any vehicle forfeiture cases that might be brought. No other substantive change is intended.

These rules supplement and modify OATH's existing rules of practice, solely for purposes of hearings regarding city agencies' retention of vehicles seized for use as evidence or for forfeiture, including vehicles seized, as required by Krimstock v. Kelly.

2. Provisions of City Record Jan. 22, 2004: This emergency rulemaking implements Krimstock v. Kelly, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), which requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated.

The rules promulgated herein on an emergency basis supplement and modify OATH's existing rules of practice, solely for purposes of hearings to be held pursuant to the order in Krimstock v. Kelly. In addition, the order in Krimstock v. Kelly provides that OATH's rules of practice shall apply to such hearings "to the extent such rules are not in conflict with the terms of this Order and Judgment"; therefore, the practitioner or party appearing before OATH in these hearings must be familiar with OATH's existing rules of practice, these proposed rules, and the order in Krimstock v. Kelly.

FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules relating to the post-seizure review of the impoundment of certain vehicles is necessary to prevent an immediate threat to health, safety and property, by ensuring compliance with a Court order prescribing procedures for such review to be undertaken by the Office of Administrative Trials and Hearings. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

On January 5, 2004, the United States District Court for the Southern District of New York (Mukasey, J.) issued its Order and Judgment in Krimstock v. Kelly, 99 Civ. 12041. Judge Mukasey's Order implements a determination by the United States Court of Appeals for the Second Circuit in that case, 306 F.2d 40 (2d Cir. 2002). The Court of Appeals held that, when a vehicle is seized by the City and held for forfeiture after its driver has been arrested for driving while intoxicated ("DWI") or another crime, the vehicle's owner must be afforded an opportunity to be heard on the "probable validity" of the seizure. The District Court Order sets forth certain procedures which must be followed by the City in contacting the owner of a vehicle seized for forfeiture or as evidence in a criminal proceeding and holding the hearing. These procedures, by the terms of the Order, are effective on and after January 23, 2004. The Order further mandates that the hearing be held by the Office of Administrative Trials and Hearings ("OATH"). OATH's Rules of Practice (set forth in chapter 1 of Title 48 of the Rules of the City of New York), which normally govern OATH proceedings, differ in certain points from the requirements of the Order and set forth certain requirements which are not necessary for hearings conducted pursuant to the Order. It is essential that, by the date set by Judge Mukasey, OATH put in place rules for the conduct of the hearings in question which are consistent with the Order. Failure to do so would jeopardize OATH's ability to hold the required hearings and put at risk the City's program of seizing vehicles driven by persons arrested for DWI, thus undermining the public's interest in having such vehicles forfeited. Further, such

hearings are necessary to ensure that vehicles seized as evidence in criminal proceedings remain available for use by prosecuting authorities.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule relating to the post-seizure review of the impoundment of vehicles driven by persons arrested for DWI or other crimes or held as evidence in a criminal proceeding is necessary to address an immediate threat to health, safety and property.

Dated: January 19, 2004

Roberto Velez

Chief Administrative Law Judge

Approved:

Michael R. Bloomberg

Mayor

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SUBCHAPTER D RULES FOR POST-SEIZURE REVIEW OF IMPOUNDMENT OF VEHICLES*2

§2-44 Trial Continuances.

A motion by the petitioner, after the conclusion of the respondent's evidence, for a continuance of trial to present rebuttal evidence in the form of testimony from witnesses not called on the petitioner's case-in-chief, shall be granted for good cause shown.

HISTORICAL NOTE

Section added City Record Apr. 27, 2004 eff. May 27, 2004; replaces section added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [See Subchapter D footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. A relaxed standard for applications exists for trial continuances to produce witness testimony in vehicle retention cases. **Police Dep't v. Burnett**, OATH Index No. 1363/04, mem. dec. (Mar. 11, 2004), **aff'd, Property Clerk v. Burnett**, Index No. 04/400955 (N. Y. Sup. Ct. July 19, 2004) (Schulman, J.), **aff'd**, 22 A.D.3d 201, 801 N.Y.S.2d 592 (1st Dep't 2005).

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Apr. 27, 2004 eff. May 27, 2004 [Note 1]; replaces Subchapter D added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [Note 2] Note:

1. Statement of Basis and Purpose of Rules in City Record Apr. 27, 2004. These rules replace rules promulgated by emergency procedure on January 22, 2004, to implement Krimstock v. Kelly, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004). The order in Krimstock v. Kelly requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated. The emergency rules applied solely to vehicle forfeiture cases brought by the Police Department pursuant to Krimstock v. Kelly. These rules have been modified slightly to make them applicable to any vehicle forfeiture cases that might be brought. No other substantive change is intended.

These rules supplement and modify OATH's existing rules of practice, solely for purposes of hearings regarding city agencies' retention of vehicles seized for use as evidence or for forfeiture, including vehicles seized, as required by Krimstock v. Kelly.

2. Provisions of City Record Jan. 22, 2004: This emergency rulemaking implements Krimstock v. Kelly, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), which requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated.

The rules promulgated herein on an emergency basis supplement and modify OATH's existing rules of practice, solely for purposes of hearings to be held pursuant to the order in Krimstock v. Kelly. In addition, the order in Krimstock v. Kelly provides that OATH's rules of practice shall apply to such hearings "to the extent such rules are not in conflict with the terms of this Order and Judgment"; therefore, the practitioner or party appearing before OATH in these hearings must be familiar with OATH's existing rules of practice, these proposed rules, and the order in Krimstock v. Kelly.

FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules relating to the post-seizure review of the impoundment of certain vehicles is necessary to prevent an immediate threat to health, safety and property, by ensuring compliance with a Court order prescribing procedures for such review to be undertaken by the Office of Administrative Trials and Hearings. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

On January 5, 2004, the United States District Court for the Southern District of New York (Mukasey, J.) issued its Order and Judgment in Krimstock v. Kelly, 99 Civ. 12041. Judge Mukasey's Order implements a determination by the United States Court of Appeals for the Second Circuit in that case, 306 F.2d 40 (2d Cir. 2002). The Court of Appeals held that, when a vehicle is seized by the City and held for forfeiture after its driver has been arrested for driving while intoxicated ("DWI") or another crime, the vehicle's owner must be afforded an opportunity to be heard on the "probable validity" of the seizure. The District Court Order sets forth certain procedures which must be followed by the City in contacting the owner of a vehicle seized for forfeiture or as evidence in a criminal proceeding and holding the hearing. These procedures, by the terms of the Order, are effective on and after January 23, 2004. The Order further mandates that the hearing be held by the Office of Administrative Trials and Hearings ("OATH"). OATH's Rules of Practice (set forth in chapter 1 of Title 48 of

the Rules of the City of New York), which normally govern OATH proceedings, differ in certain points from the requirements of the Order and set forth certain requirements which are not necessary for hearings conducted pursuant to the Order. It is essential that, by the date set by Judge Mukasey, OATH put in place rules for the conduct of the hearings in question which are consistent with the Order. Failure to do so would jeopardize OATH's ability to hold the required hearings and put at risk the City's program of seizing vehicles driven by persons arrested for DWI, thus undermining the public's interest in having such vehicles forfeited. Further, such hearings are necessary to ensure that vehicles seized as evidence in criminal proceedings remain available for use by prosecuting authorities.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule relating to the post-seizure review of the impoundment of vehicles driven by persons arrested for DWI or other crimes or held as evidence in a criminal proceeding is necessary to address an immediate threat to health, safety and property.

Dated: January 19, 2004

Roberto Velez

Chief Administrative Law Judge

Approved:

Michael R. Bloomberg

Mayor

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 2-45

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER D RULES FOR POST-SEIZURE REVIEW OF IMPOUNDMENT OF VEHICLES*2

§2-45 Default by Vehicle Owner.

Pursuant to §1-45 of this title, where an owner of a vehicle fails to appear for trial, having been properly served with required notices, the petitioner need not prove that such owner "permitted or suffered" the allegedly illegal use of the seized vehicle.

HISTORICAL NOTE

Section added City Record Apr. 27, 2004 eff. May 27, 2004; replaces section added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [See Subchapter D footnote]

CASE AND ADMINISTRATIVE NOTES

¶ 1. Administrative law judge did not need to consider whether the Police Department disproved any "innocent owner" defense where an owner fails to appear for trial. **Police Dep't v. Benkovich**, OATH Index No. 1296/04, mem. dec. (Mar. 9, 2004).

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Apr. 27, 2004 eff. May 27, 2004 [Note 1]; replaces Subchapter D added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [Note 2] Note:

1. Statement of Basis and Purpose of Rules in City Record Apr. 27, 2004. These rules replace rules promulgated by emergency procedure on January 22, 2004, to implement Krimstock v. Kelly, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004). The order in Krimstock v. Kelly requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated. The emergency rules applied solely to vehicle forfeiture cases brought by the Police Department pursuant to Krimstock v. Kelly. These rules have been modified slightly to make them applicable to any vehicle forfeiture cases that might be brought. No other substantive change is intended.

These rules supplement and modify OATH's existing rules of practice, solely for purposes of hearings regarding city agencies' retention of vehicles seized for use as evidence or for forfeiture, including vehicles seized, as required by Krimstock v. Kelly.

2. Provisions of City Record Jan. 22, 2004: This emergency rulemaking implements Krimstock v. Kelly, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), which requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated.

The rules promulgated herein on an emergency basis supplement and modify OATH's existing rules of practice, solely for purposes of hearings to be held pursuant to the order in Krimstock v. Kelly. In addition, the order in Krimstock v. Kelly provides that OATH's rules of practice shall apply to such hearings "to the extent such rules are not in conflict with the terms of this Order and Judgment"; therefore, the practitioner or party appearing before OATH in these hearings must be familiar with OATH's existing rules of practice, these proposed rules, and the order in Krimstock v. Kelly.

FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules relating to the post-seizure review of the impoundment of certain vehicles is necessary to prevent an immediate threat to health, safety and property, by ensuring compliance with a Court order prescribing procedures for such review to be undertaken by the Office of Administrative Trials and Hearings. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

On January 5, 2004, the United States District Court for the Southern District of New York (Mukasey, J.) issued its Order and Judgment in Krimstock v. Kelly, 99 Civ. 12041. Judge Mukasey's Order implements a determination by the United States Court of Appeals for the Second Circuit in that case, 306 F.2d 40 (2d Cir. 2002). The Court of Appeals held that, when a vehicle is seized by the City and held for forfeiture after its driver has been arrested for driving while intoxicated ("DWI") or another crime, the vehicle's owner must be afforded an opportunity to be heard on the "probable validity" of the seizure. The District Court Order sets forth certain procedures which must be followed by the City in contacting the owner of a vehicle seized for forfeiture or as evidence in a criminal proceeding and holding the hearing. These procedures, by the terms of the Order, are effective on and after January 23, 2004. The Order further mandates that the hearing be held by the Office of Administrative Trials and Hearings ("OATH"). OATH's Rules of Practice (set forth in chapter 1 of Title 48 of the Rules of the City of New York), which normally govern OATH proceedings, differ in certain points from the

requirements of the Order and set forth certain requirements which are not necessary for hearings conducted pursuant to the Order. It is essential that, by the date set by Judge Mukasey, OATH put in place rules for the conduct of the hearings in question which are consistent with the Order. Failure to do so would jeopardize OATH's ability to hold the required hearings and put at risk the City's program of seizing vehicles driven by persons arrested for DWI, thus undermining the public's interest in having such vehicles forfeited. Further, such hearings are necessary to ensure that vehicles seized as evidence in criminal proceedings remain available for use by prosecuting authorities.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule relating to the post-seizure review of the impoundment of vehicles driven by persons arrested for DWI or other crimes or held as evidence in a criminal proceeding is necessary to address an immediate threat to health, safety and property.

Dated: January 19, 2004

Roberto Velez

Chief Administrative Law Judge

Approved:

Michael R. Bloomberg

Mayor

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 2-46

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 2 ADDITIONAL RULES OF PRACTICE APPLICABLE TO PARTICULAR TYPES OF CASES AT OATH

SUBCHAPTER D RULES FOR POST-SEIZURE REVIEW OF IMPOUNDMENT OF VEHICLES*2

§2-46 Transcription of Hearings.

Notwithstanding §1-51 of this title, the recording of the hearing or of other proceedings in the case, whether electronic or stenographic, shall not be transcribed except (i) upon request and payment of reasonable transcription costs, (ii) upon direction of the administrative law judge, in his or her discretion, or (iii) as otherwise required by law.

HISTORICAL NOTE

Section added City Record Apr. 27, 2004 eff. May 27, 2004; replaces section added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [See Subchapter D footnote]

FOOTNOTES

2

[Footnote 2]: * Subchapter D added City Record Apr. 27, 2004 eff. May 27, 2004 [Note 1]; replaces Subchapter D added by emergency rule promulgated City Record Jan. 22, 2004 eff. Jan. 22, 2004. [Note 2]

Note:

1. Statement of Basis and Purpose of Rules in City Record Apr. 27, 2004. These rules replace rules promulgated by emergency procedure on January 22, 2004, to implement Krimstock v. Kelly, 99 Civ. 12041 (MBM), amended order and judgment (S.D.N.Y. Jan. 22, 2004). The order in Krimstock v. Kelly requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated. The emergency rules applied solely to vehicle forfeiture cases brought by the Police Department pursuant to Krimstock v. Kelly. These rules have been modified slightly to make them applicable to any vehicle forfeiture cases that might be brought. No other substantive change is intended.

These rules supplement and modify OATH's existing rules of practice, solely for purposes of hearings regarding city agencies' retention of vehicles seized for use as evidence or for forfeiture, including vehicles seized, as required by Krimstock v. Kelly.

2. Provisions of City Record Jan. 22, 2004: This emergency rulemaking implements Krimstock v. Kelly, 99 Civ. 12041 (MBM), order and judgment (S.D.N.Y. Jan. 5, 2004), which requires the New York City Police Department to provide hearings to drivers and owners of vehicles seized in connection with arrests for alleged crimes such as driving while intoxicated.

The rules promulgated herein on an emergency basis supplement and modify OATH's existing rules of practice, solely for purposes of hearings to be held pursuant to the order in Krimstock v. Kelly. In addition, the order in Krimstock v. Kelly provides that OATH's rules of practice shall apply to such hearings "to the extent such rules are not in conflict with the terms of this Order and Judgment"; therefore, the practitioner or party appearing before OATH in these hearings must be familiar with OATH's existing rules of practice, these proposed rules, and the order in Krimstock v. Kelly.

FINDING OF IMMEDIATE THREAT IT IS HEREBY CERTIFIED that the immediate effectiveness of emergency rules relating to the post-seizure review of the impoundment of certain vehicles is necessary to prevent an immediate threat to health, safety and property, by ensuring compliance with a Court order prescribing procedures for such review to be undertaken by the Office of Administrative Trials and Hearings. I hereby make the following finding of immediate threat to health, safety and property necessary to establish that an emergency rulemaking is required in relation to the protection of health, safety and property.

On January 5, 2004, the United States District Court for the Southern District of New York (Mukasey, J.) issued its Order and Judgment in Krimstock v. Kelly, 99 Civ. 12041. Judge Mukasey's Order implements a determination by the United States Court of Appeals for the Second Circuit in that case, 306 F.2d 40 (2d Cir. 2002). The Court of Appeals held that, when a vehicle is seized by the City and held for forfeiture after its driver has been arrested for driving while intoxicated ("DWI") or another crime, the vehicle's owner must be afforded an opportunity to be heard on the "probable validity" of the seizure. The District Court Order sets forth certain procedures which must be followed by the City in contacting the owner of a vehicle seized for forfeiture or as evidence in a criminal proceeding and holding the hearing. These procedures, by the terms of the Order, are effective on and after January 23, 2004. The Order further mandates that the hearing be held by the Office of Administrative Trials and Hearings ("OATH"). OATH's Rules of Practice (set forth in chapter 1 of Title 48 of the Rules of the City of New York), which normally govern OATH proceedings, differ in certain points from the requirements of the Order and set forth certain requirements which are not necessary for hearings conducted pursuant to the Order. It is essential that, by the date set by Judge Mukasey, OATH put in place rules for the conduct of the hearings in question which are consistent with the Order. Failure to do so would jeopardize OATH's ability to hold the required hearings and put at risk the City's program of seizing vehicles driven by persons arrested for DWI, thus undermining the public's interest in having such vehicles forfeited. Further, such hearings are necessary to ensure that vehicles seized as evidence in criminal proceedings remain available for

use by prosecuting authorities.

IT IS THEREFORE HEREBY CERTIFIED that the immediate effectiveness of a rule relating to the post-seizure review of the impoundment of vehicles driven by persons arrested for DWI or other crimes or held as evidence in a criminal proceeding is necessary to address an immediate threat to health, safety and property.

Dated: January 19, 2004

Roberto Velez

Chief Administrative Law Judge

Approved:

Michael R. Bloomberg

Mayor

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-11

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-11 Definitions.

As used herein the following terms shall have the meanings specified.

Appearance. "Appearance" means a communication with the board or its tribunal that is made by a party or the representative of a party in connection with a notice of violation that is or was pending before the board or its tribunal. An appearance may be made in person or otherwise-for example, by mail.

Board. "Board" means the Environmental Control Board of the City of New York.

Executive Director. "Executive Director" means the executive director of the Environmental Control Board of the City of New York.

Hearing Officer. "Hearing Officer" means a person designated as a hearing officer by the chairman of the board.

Notice of Violation. "Notice of Violation" means the document issued by a petitioner to a respondent which specifies the charges forming the basis of an adjudicatory proceeding before the Environmental Control Board.

Party. "Party" means the person named as petitioner or respondent, or intervening as of right, in an adjudicatory or enforcement action before the board or its tribunal.

Person. "Person" means any individual, partnership, unincorporated association, corporation or governmental agency.

Petitioner. "Petitioner" means the commissioner, department or bureau within a department of the City of New York which commences an adjudicatory or enforcement proceeding before the Environmental Control Board.

Respondent. "Respondent" means the person against whom the charges alleged in a notice of violation have been filed.

Tribunal. "Tribunal" means the hearing officers and staff at the Environmental Control Board under the direction of the executive director charged with holding hearings on notices of violation, or hearings in the course of any special enforcement proceeding by the board.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See Note 1]

Section repealed and reissued (former T15 §31-11) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record May 15, 2009:

Local Law 35 of 2008, signed by the Mayor on August 12, 2008 and effective November 23, 2008, created a new §1049-a of the City Charter, which consolidates the Environmental Control Board with the Office of Administrative Trials and Hearings. Section 2 of Local Law 35 also amended the City Charter to include a new subdivision b-1 of §1049-a, which imposes upon the Environmental Control Board the obligation to promulgate rules concerning provision of language assistance services and limitations on the discretion of a hearing officer to adjourn a hearing under certain circumstances. Section 2 also adds a new subdivision (f) of Section 1049-a, which allows for judicial review of a hearing officer's recommended decision and order if the respondent files exceptions in accordance with the board's rules and the board does not render a decision within 180 days, provided that the respondent complies with certain requirements including prior written notice. Section 13 of the Local Law requires that mandated rules must be promulgated no later than 180 days after the effective date of the local law. Therefore, it is required that these amended rules be promulgated no later than May 22, 2009. The proposed rule was published for notice and comment in the City Record on April 1, 2009.

The amendments proposed are intended to effectuate the purposes and the specific requirements now set forth in §1049-a, subdivision b-1 of the City Charter, as amended by Local Law 35. Other amendments have been proposed to clarify that a recording of a hearing may serve as a transcript for purposes of an appeal from a hearing officer's decision and to correct typographical errors and inconsistencies in the existing Rules of Procedure.

The Environmental Control Board held a public hearing on May 1, 2009 on the amendments to the Environmental Control Board's Rules of Procedure as required by Local Law 35 of 2008. Three written comments were received by the Environmental Control Board. No testimony was presented. After carefully considering the written comments submitted by the members of the public, the Board modified Section 3-52.1 (b) (i), entitled Adjournments to define a respondent's appearance on an adjourned date as "timely" if the respondent appears within two hours of the scheduled hearing time for a Notice of Violation (NoV). In the originally proposed rule, a respondent's appearance was "timely" if the

respondent appeared within one hour of the scheduled hearing time. The reason for this modification is to provide the same definition of timely for both respondents and petitioning agencies.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a,

in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11

Note 1]

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-12 Scope of Rules.

The rules contained herein govern the conduct of all adjudicatory hearings at the tribunal brought pursuant to the provisions of §1049-a of the New York City Charter and provisions of the New York City Administrative Code, or as otherwise authorized by law, and the conduct of such special hearings or enforcement proceedings before the board as authorized by Title 24 of the New York City Administrative Code.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section amended City Record Nov. 25, 2008 §1, eff. Nov. 25, 2008 per City Record notice. [See Note 1]

Section repealed and reissued (former T15 §31-12) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section repealed and added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

NOTE

1. Statement of Basis and Purpose in City Record Nov. 25, 2008:

The Environmental Control Board has amended internal numbering references within its rules so as to change all references from §1404 of the City Charter to references to §1049-a of the City Charter, and so as to change all references from its own rules prefaced with a "31-" to references to its own rules prefaced with a "3-".

ECB has amended the internal numbering references within ECB's rules because ECB was consolidated with OATH as of November 23, 2008. This consolidation was pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amended City Charter §1404 which governs ECB, and re-numbered that section as §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008, and the functional transfer was effective on November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

In view of the consolidation of ECB with OATH, ECB has by separate rule (i) included all of its rules within Chapter 3 of Title 48, which is the title of the Rules of the City of New York that includes the rules of the Office of Administrative Trials and Hearings, and (ii) replaced the prefix "31-" in all ECB rule numbers with the prefix "3-".

Accordingly, ECB in the instant rule has re-numbered all internal references in its own rules to City Charter §1404, as references to §1049-a, and has renumbered all internal references in its own rules to sections prefaced with a "31-", as references to sections prefaced with a "3-".

As is authorized by §1043(d)(ii) of the NYC Charter, there was no public hearing regarding this rule, on the ground that such a public hearing would serve no public purpose. This determination was made because this rule merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has amended internal numbering references within its rules so as to change all references from §1404 of the City Charter to references to §1049-a of the City Charter, and so as to change all references from its own rules prefaced with a "31-" to references to its own rules prefaced with a "3-".

This immediate implementation is essential in view of the fact that ECB is being consolidated with OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will become effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that all the internal references within ECB's own rules will properly and timely reflect the new numbering of the Charter provision and of ECB's own rules resulting from the consolidation of ECB and OATH.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-13 Filing.

All documents required or permitted to be filed with the tribunal or the board shall be filed at the office of the executive director or at the tribunal or a branch thereof when more specifically provided by notice from the tribunal.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-13) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section repealed and added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-14 Form of Documents.

(a) All documents filed with the executive director shall contain a caption setting forth the title of the action, the file or docket number assigned to the action and a designation as to the nature of the document.

(b) All documents filed must be signed by the party or by the party's attorney or other duly authorized agent. The signature of an attorney constitutes a certification that he or she has read the document; that to the best of his or her knowledge, information and belief, there is good ground to support it; and that it is not interposed for delay.

(c) All documents, other than notices of violation (provision for which is made in §3-3), required to be served on other parties, shall be accompanied by an affidavit of service when filed. Such affidavit of service shall recite the date and manner of service as to each party and be executed by the serving party.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-14) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

Subd. (c) amended City Record Nov. 25, 2008 §2, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-15 Computation of Time.

(a) Except as otherwise provided herein, computation of any period of time prescribed in these rules shall be as follows:

(1) The start date for the time period shall not be considered in the computation. The next business day is the first day of the time period.

(2) The computation is based on the number of calendar days.

(3) If the last day in the period is a Saturday, Sunday or New York City legal holiday, the period is extended to the next business day.

(b) When mail is used for service of any document (other than a notice of violation) on an opposing party, five additional days shall be granted the opposing party in taking any action or making any response required or permitted by these rules.

(c) Any emergency action taken by the board which requires action within a 24 hour period shall be taken regardless of whether the 24 hour period includes a Saturday, Sunday or legal holiday.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-15) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

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Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-16 Appearances.

The following persons are permitted to participate in proceedings before the tribunal:

(a) An individual may appear on his or her own behalf or by an authorized agent, or by attorney licensed to practice in the State of New York.

(b) A business entity, not-for-profit organization or government agency may appear by any authorized officer or employee or by attorney licensed to practice in the State of New York, or by any other duly authorized agent.

(c) Any representative who is authorized by a City agency to appear on its behalf before the board or its tribunal may be authorized by any other City agency that issues notices of violation returnable to the board to appear on its behalf. An appearance includes any time an agency appears before a hearing officer to present a case or a motion for adjournment or for any other purpose concerning a notice of violation.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-16) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters

through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER A GENERAL RULES*12

§3-17 Public Information and Access.

(a) The executive director shall maintain files containing all information, documents, evidence, tape recordings, transcripts, and any other items submitted or produced in the course of any adjudicatory or special hearing or enforcement proceeding.

(b) Case files shall be available to the public in accordance with the Public Information Law of the State of New York (Public Officers Law, Art. 6) and the Rules of the City of New York (43 RCNY 1). Case files shall be retained on the premises of the tribunal for one year after the final action in a proceeding and then may be archived or destroyed in accordance with law.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-17) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 12]: ** Subchapter A amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-31 Notice of Violation.

(a) **Form:** All adjudicative hearings instituted by a petitioner shall be commenced by the issuance of a notice of violation on a form approved by the board.

(b) **Contents:** The notice of violation shall contain the name and address, when known, of a respondent; a brief description of the alleged violation, its date and place of occurrence; and reference to the provision of law or rule charged. The notice of violation shall contain information advising the respondent of the maximum penalty and of the time in which the respondent may admit or deny the violation charged. The notice of violation shall also contain a warning to the respondent that failure to plead in the manner and time stated in the notice may result in a default decision and order being entered against the respondent. On or after November 25, 2008, any notice of violation filed pursuant to this section that refers to section 1404 of the Charter as the legal authority for jurisdiction under which a hearing is to be held shall be deemed to refer to §1049-a of the Charter.

(c) **Service:** A notice of violation issued by a petitioner may be served on a respondent in accordance with the methods set out in §1049-a(d)(2) of the New York City Charter which render the tribunal's decision and order automatically docketable in Civil Court, or alternatively as provided by the statute, rule or other provision of law governing the violation alleged. Lawful service in a manner other than that provided for in §1049-a(d)(2) shall give the tribunal jurisdiction to hold a hearing or render a decision and order whether after hearing or in default thereof, but such decision and order shall not be entered in Civil Court or any other place provided for entry of civil judgments without

court proceedings.

(d) **Filing:** The original or a copy of the notice of violation, together with the proof(s) of service, shall be filed with the tribunal prior to the first scheduled hearing date. Failure to timely file all proofs of service shall not divest the tribunal of jurisdiction to proceed with a hearing or to issue a default order.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-31) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section repealed and added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

Subd. (b) amended City Record Nov. 25, 2008 §1, eff. Nov. 25, 2008 per City Record notice. [See

Note 1]

Subd. (c) amended City Record Nov. 25, 2008 §3, eff. Nov. 25, 2008 per City Record notice.

[See T48 §3-12 Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Nov. 25, 2008:

The Board has amended §3-31(b) of Title 48 of the Rules of the City of New York (RCNY), to add text that reads as follows: "On or after November 25, 2008, any notice of violation filed pursuant to this section that refers to §1404 of the Charter as the legal authority and jurisdiction under which a hearing is to be held shall be deemed to refer to §1049-a of the Charter."

This text is being added to §3-31 in view of the fact that ECB's jurisdiction is now grounded in §1049-a of the New York City Charter, rather than in §1404 of the Charter, as was previously the case. This change is due to the enactment of Local Law Number 35 of 2008, which resulted in the consolidation of the Environmental Control Board (ECB) with the Office of Administrative Tribunals and Hearings (OATH). Local Law Number 35 re-numbered §1404 of the Charter as §1049-a of the Charter, effective on November 23, 2008. November 23, 2008 was the functional transfer date of the consolidation.

The Board has amended §3-31 in order to ensure that all NOVs issued on and after November 25, 2008, accurately reflect the legal authority and jurisdiction, §1049-a of the Charter, under which the hearing on the NOV will be held.

It should be noted that §3-31 of Title 48 of the RCNY was previously denominated §31-31 of Title 15 of the RCNY. However, that section is now numbered as §3-31 of Title 48 because all of ECB's rules have been transferred into Title 48 and given a new prefix of "3-" rather than of "31-" as a result of the consolidation of ECB with OATH.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has added text to indicate that "[o]n or after November 25, 2008, any notice of

violation filed pursuant to this section that refers to §1404 of the Charter as the legal authority and jurisdiction under which a hearing is to be held shall be deemed to refer to §1049-a of the Charter."

This immediate implementation is essential in view of the fact that ECB is being consolidated with OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH will become effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that NOVs will accurately reflect the legal authority and jurisdiction, §1049-a of the Charter, under which the hearing on the NOV will be held.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

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The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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[Footnote 1]: * Subchapter B amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter title amended City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-32 Admissions and Payments by Mail.

Where the notice of violation states that a mailable penalty schedule exists for the cited violation, a respondent may admit to the violation charged and pay the penalty by mail in the manner and time directed by the notice of violation. Payment in full is deemed an admission of liability and no further hearings or appeal will be allowed.

HISTORICAL NOTE

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Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

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Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-33 Pre-hearing Reschedules.

Upon application by respondent, ex-parte, to the executive director and for good cause shown, the executive director may postpone the hearing date set in the notice of violation for a brief period of time and reschedule the hearing. The executive director may deny any further requests for a reschedule and require respondent to appear and make such motion for adjournment to a hearing officer at the scheduled hearing.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-33) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

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Section in original publication July 1, 1991.

FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-34 Adjudication by Mail.

(a) The executive director may designate certain classes of alleged violations or defenses as appropriate for adjudication by mail and prescribe procedures for such adjudication. Where respondent is offered the option of contesting the violation or presenting a defense by mail, respondent may move for such adjudication by application addressed to the tribunal. Such application shall set forth all facts and arguments relevant to the case relied on by the respondent. The application may be supported by affidavits or other documentary evidence.

(b) Upon receipt by the tribunal of an application for adjudication by mail, the matter shall be assigned to a hearing officer who shall review the record. The hearing officer may request further evidence to be submitted by respondent, may direct respondent to serve a copy of the application on petitioner, or may render a recommended decision and order based on the evidence in the record. The hearing officer may also deny the application for adjudication by mail and direct respondent to appear for a hearing in person.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-35 Motions to Intervene.

(a) **As of Right.** (1) A person may intervene as of right in an adjudicatory or enforcement proceeding if such person may be directly and adversely affected by an order of the board. An order imposing a monetary penalty only shall not be deemed an order directly or adversely affecting any person other than respondent.

(2) A written application by any person to intervene as of right shall be filed with the tribunal and served upon each party to the proceeding not less than 5 days before the hearing. Such application shall set forth in detail the reasons the applicant seeks to intervene. Upon being served with an application for intervention, any party wishing to respond thereto may do so within 3 days after receipt of the application. Such response, accompanied by any supporting documents, must be filed with the tribunal and served upon the applicant and all other parties. When such written application is made by any person, the matter shall be assigned to a hearing officer for disposition.

(3) An intervenor as of right shall have all the rights of an original party, except that the hearing officer may provide that such intervenor shall be bound by orders previously entered or evidence previously received, and that the intervenor shall not raise issues or seek to add parties which might have been raised or added more properly at an earlier stage of the proceeding.

(b) **Discretionary Intervention.**

When written application by any person for discretionary intervention is filed with the tribunal prior to the date set for hearing in any adjudicatory proceeding, the matter shall be assigned to a hearing officer. The hearing officer, subject to the necessity of conducting an orderly and expeditious hearing, may permit such person to intervene if good cause is shown therefore or if the applicant is in a position to assist in the proof or defense of the proceeding. An intervenor permitted to intervene at the discretion of the hearing officer shall be assigned such role in the proceeding as the hearing officer in his or her discretion may direct, taking into consideration the avoidance of unfairness to the parties and the intervenor and the avoidance of undue delay. An oral application to intervene by any person may be made at the commencement of the hearing and shall be considered by the hearing officer assigned to the case. A discretionary intervenor is not a party to the proceeding and has no standing to appeal the hearing officer's recommended decision and order.

HISTORICAL NOTE

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-36 Consolidation.

In the interest of convenient, expeditious and complete determination of cases involving the same or similar issues or the same parties, the hearing officer may consolidate two or more notices of violation for adjudication at one hearing.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-37 Discovery.

(a) Upon written request received by the opposing party at least five business days prior to the scheduled hearing date, any party is entitled to receive from the opposing party a list of the names of witnesses who may be called and copies of documents intended to be submitted into evidence.

(b) Pre-hearing discovery shall be limited to the matters enumerated above. All other applications or motions for discovery, including depositions on oral examination, shall be made to a hearing officer at the commencement of the hearing and the hearing officer may order such further discovery as is deemed appropriate in his or her discretion.

(c) Upon the failure of any party to properly respond to a lawful discovery order or request or such party's wrongful refusal to answer questions or produce documents, the hearing officer may take whatever action he or she deems appropriate including but not limited to preclusion of evidence or witnesses, or striking the pleadings or defenses of such party. It shall not be necessary for a party to have been subpoenaed to appear or produce documents at any properly ordered discovery proceeding for such sanctions to be applicable.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-37) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per CityRecord notice. [See Chapter 3 footnote]

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Section in original publication July 1, 1991.

FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

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Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

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I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-38 Subpoenas.

(a) Upon application to the tribunal by a party, the tribunal shall issue a subpoena for attendance at deposition or hearing, which may include a command to produce specified books, documents or tangible things which are reasonably necessary to a resolution of the issues, subject to the limitations on discovery prescribed by these rules.

(b) All subpoenas shall be issued on forms approved by the board and shall be signed by a hearing officer. A hearing officer, on motion timely made before the return date of the subpoena, or on the hearing officer's own motion, may quash or modify the subpoena if it is unreasonable or was wrongfully issued.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-38) City Record Nov. 24, 2008 §1, eff. Nov. 24,

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-39 Interlocutory Appeals. [Repealed]

HISTORICAL NOTE

Section repealed City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

6

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-40 Amendments and Supplemental Pleadings. [Repealed]

HISTORICAL NOTE

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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Rules of the City of New York

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER B ADJUDICATIONS-PRE-HEARING PROCEDURE*1

§3-41 Summary Decisions. [Repealed]

HISTORICAL NOTE

Section repealed City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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(ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

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***** Current through December 2009 ****

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-51 General Rules.

(a) **Expedition.** Hearings shall proceed with all reasonable expedition and insofar as is practicable shall be held at one place and shall continue without suspension, except for brief recesses, until concluded. Subject to §3-52.1, the hearing officer shall have the authority to grant brief adjournments, for good cause shown, and consistent with the requirements of expedition.

(b) **Notice of Hearing.** The notice of violation shall set the hearing date and place or, if none, the executive director shall set such time and place. In no event shall such hearing date be set for more than 60 days after the filing of the notice of violation at the tribunal. At least 10 days notice of such hearing date and location shall be sent to all parties. Where respondent waives the 10 day notice and requests an expedited hearing, the executive director may assign the case for immediate hearing, upon appropriate notice to petitioner and opportunity for petitioner to appear.

(c) **Rights of Parties.** Every party, except intervenors under §3-35(b), shall have the right of due notice, cross examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing.

(d) **Order of Hearing.** The following shall be the order of all adjudicatory hearings, subject to modification by the hearing officer for good cause:

(1) Presentation and argument of motions preliminary to a hearing on the merits;

(2) Presentation of opening statements; if any

(3) Petitioner's case in chief;

(4) Respondent's case in chief;

(5) Petitioner's case in rebuttal;

(6) Respondent's case in rebuttal;

(7) Respondent's closing argument;

(8) Petitioner's closing argument.

(e) **Oaths.** All persons giving testimony as witnesses at a hearing must be placed under oath.

(f) **Language Assistance Services.** (1) Appropriate language assistance services shall be afforded to respondents whose primary languages are not English to assist such respondents in communicating meaningfully with hearing officers. Such language assistance services shall include interpretation of hearings and of pre-hearing conferences conducted by hearing officers, where interpretation is necessary to assist the respondent in communicating meaningfully with the hearing officer. At the beginning of any hearing or pre-hearing conference, the hearing officer shall advise the respondent of the availability of interpretation. In determining whether interpretation is necessary to assist the respondent in communicating meaningfully with the hearing officer, the hearing officer shall consider all relevant factors, including but not limited to the following: (i) information from board administrative personnel identifying a respondent as requiring language assistance services to communicate meaningfully with a hearing officer; (ii) a request by the respondent for interpretation; (iii) even if interpretation was not requested by the respondent, the hearing officer's own assessment whether interpretation is necessary to enable meaningful communication with the respondent. If the respondent requests an interpreter and the hearing officer determines that an interpreter is not needed, that determination and the basis for the determination shall be made on the record.

(2) When required by paragraph (1) of this subsection, interpretation services shall be provided at hearings and at pre-hearing conferences by a professional interpretation service that is made available by the board, unless the respondent requests the use of another interpreter, in which case the hearing officer in his or her discretion may use the respondent's requested interpreter. In exercising that discretion, the hearing officer shall take into account all relevant factors, including but not limited to the following: (i) the respondent's preference, if any, for his or her own interpreter; (ii) the apparent skills of the respondent's requested interpreter; (iii) whether the respondent's requested interpreter is a child under the age of eighteen; (iv) minimization of delay in the hearing process; (v) maintenance of a clear and usable hearing record; (vi) whether the respondent's requested interpreter is a potential witness who may testify at the hearing. The hearing officer's determination and the basis for this determination shall be made on the record.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-51) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

Subd. (c) amended City Record Nov. 25, 2008 §4, eff. Nov. 25, 2008 per City Record notice. [See

T48 §3-12 Note 1]

FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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[Footnote 2]: * Subchapter C amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter re-titled City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-52 Hearing Officers.

(a) **Who Presides.** Hearings in enforcement proceedings shall be presided over by a hearing officer appointed by the board.

(b) **Powers and Duties.** Hearing officers shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. They shall have all powers necessary to these ends, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpoenas and discovery orders and to rule upon objections to such orders;

(3) To rule upon offers of proof and receive evidence;

(4) To regulate the course of the hearing and the conduct of the parties and their representatives;

(5) To hold conferences for the simplification of issues or any other proper purpose;

(6) To interrogate witnesses;

(7) To consider and rule upon all procedural and other motions, including requests for adjournment;

(8) To make and file recommended decisions and orders.

(c) **Interference.** In the performance of their adjudicative functions, hearing officers shall not be responsible to or subject to the supervision of direction of any officer, employee or agent of a petitioner. No ex-parte communication relating to other than ministerial matters regarding a proceeding, including internal agency directives not published as rules, shall be received by a hearing officer from the petitioning agency or from individual members of the board.

(d) **Power to Discipline.** The hearing officer may for good cause noted on the record, and after a warning, bar any person, including a party or an attorney or other representatives of a party, from continued participation in a hearing where such person refuses to comply with the hearing officer's directions or behaves in a disorderly, dilatory or obstructionist manner. Any person so barred may make a prompt application to the executive director for a review of the hearing officer's action. The hearing may continue at the hearing officer's discretion, unless the executive director orders that further proceedings be stayed pending a decision on the application. No interlocutory appeal shall lie to the board from the decision of the executive director granting or denying the application.

(e) **Disqualification of Hearing Officer.**

(1) When a hearing officer deems himself or herself disqualified to preside in a particular proceeding, the hearing officer shall withdraw from the proceeding by notice on the record and shall notify the executive director of such withdrawal.

(2) A party may, for good cause shown, request that the hearing officer remove or disqualify himself or herself. Such motion shall be ruled upon by the hearing officer in the proceeding. If the hearing officer denies the motion, the party may obtain a brief adjournment in order to promptly apply for review by the executive director.

(3) Upon recusal or removal of the hearing officer, the executive director shall appoint another hearing officer to continue the case. If a refusal to recuse is upheld by the executive director, the party may re-raise the issue on appeal.

HISTORICAL NOTE

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Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 2]: * Subchapter C amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter re-titled City Record Sept. 5, 1997 eff. Oct. 5, 1997.

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-52.1

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-52.1 Adjournments.

(a) In general, a hearing officer may adjourn a proceeding if he or she decides that the adjournment would allow one party to present its side of the dispute more effectively and would not be unreasonably inconvenient or unfair to the other party. In certain instances, however, a hearing officer's authority to adjourn a proceeding is limited. This Rule describes those instances.

(b) The Rule uses these special definitions:

(i) A respondent's appearance is "timely" if the respondent appeared within two hours of the scheduled hearing time for a notice of violation.

(ii) If the respondent has timely appeared, an appearance by the officer who issued the notice of violation is "timely" if the officer appears within two hours of the scheduled hearing time for the notice of violation or within one hour after a hearing officer has announced that he or she is available to call the notice of violation for a hearing.

(iii) "Extraordinary circumstances" are circumstances that could not reasonably have been foreseen by the petitioning agency. They do not include the fact that the parties disagree about the notice of violation or the charges it contains.

(c) Respect for a respondent's convenience means that a hearing should not be routinely adjourned once a respondent has appeared at a board office as instructed by the notice of violation. If a respondent makes a timely appearance on the date indicated on a notice of violation and at the specific board office location indicated on the notice of violation (or, if no specific board office location is indicated, at any board office location), the hearing officer may adjourn the hearing only if (i) the respondent consents to the adjournment; or (ii) a representative of the petitioning agency appears at the hearing, unless the failure of any representative of the petitioning agency to appear is due to extraordinary circumstances.

(d) Once a hearing has been adjourned for the convenience of one party, it should not routinely be adjourned again to accommodate the same party unless good cause is shown that a further adjournment is necessary to afford the party a reasonable opportunity to present relevant, non-cumulative testimony or evidence that would contribute to a full and fair hearing of each party's side of the dispute. However, absent extraordinary circumstances, a hearing will not be adjourned for the sole purpose of enabling the officer who issued the notice of violation to attend if: (i) the hearing has already been adjourned for the sole purpose of enabling the officer who issued the notice of violation to attend; (ii) the respondent timely appears on the adjourned hearing date at the specific board office location indicated on the adjournment order; and (iii) the issuing officer does not timely appear at the specific board office indicated on the adjournment order. In order to ensure the fairness and efficient functioning of the adjournment process, the petitioning agency will be granted an opportunity to confirm the issuing officer's availability for the proposed adjourned date of the hearing. If it is not possible for the date to be confirmed at the time of the hearing, proposed adjourned dates will be selected at the hearing, the petitioning agency will confirm with the hearing officer and within one week of the initial hearing notify the board of the adjourned date upon which the issuing officer will be available. A written notice will be mailed by the board to the respondent and the petitioning agency confirming the new adjourned date.

(e) An adjournment will sometimes be appropriate because of extraordinary circumstances. Under such circumstances, a petitioning agency may be entitled to an adjournment that would not otherwise be permitted. To ask for an adjournment because of extraordinary circumstances, the agency must file with the board a written statement of the claimed circumstances, accompanied by any supporting documents. The agency must also serve a copy of its request and any supporting documents on the respondent. The request must be made as soon as is reasonable after the agency becomes aware of the circumstances it claims to be extraordinary, but in no event more than five days after the agency becomes aware of those circumstances. The hearing officer before whom the case is pending shall determine whether extraordinary circumstances have been demonstrated to warrant an adjournment. The hearing officer shall also determine whether the case should be continued through consideration of written submissions only or through one or more additional hearing dates. In making those determinations, the hearing officer shall give the respondent an opportunity to state and support a position with respect to the existence of extraordinary circumstances, the appropriateness of an adjournment, the best approach to continuing the hearing and any other matter raised by the petitioning agency's submission.

HISTORICAL NOTE

Section added City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules

contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-53 Amendments to Notice of Violation.

(a) **By Leave.** If and whenever determination of a controversy on the merits will be facilitated thereby, the hearing officer may, upon such conditions as are necessary to avoid injustice or unfair surprise to a party, allow appropriate amendments to the notice of violation.

(b) **Conformance to Evidence.** When issues not raised by the notice of violation but reasonably within its scope are tried by the express or implied consent of the parties, they shall be treated in all respects as if they had been raised, and such amendments of the notices of violation as may be necessary to make it conform to the evidence shall be allowed at any time.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-53) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

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Section in original publication July 1, 1991.

FOOTNOTES

6

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-54 Evidence.

(a) **Burden of Proof.** The petitioner shall have the burden of proof in establishing by a preponderance of the credible evidence that respondent has committed the violation charged in the notice of violation, but the proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto. The notice of violation, if sworn to or affirmed, shall constitute prima facie evidence of the facts stated therein.

(b) **Admissibility.** Relevant, material and reliable evidence shall be admitted without regard to technical or formal rules or laws of evidence applicable in the courts of the State of New York. Irrelevant, immaterial, unreliable or unduly repetitious evidence shall be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable.

(c) **Official Notice.** Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge and experience of the board or the hearing officer. Opportunity to disprove such noticed fact shall be granted to any party making timely motion therefore.

(d) **Objections.** Objections to evidence shall be timely and shall briefly state the grounds relied upon. Rulings on all objections shall appear on the record.

(e) **Exceptions.** Formal exception to an adverse ruling is not required.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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Section in original publication July 1, 1991.

CASE NOTES

¶ 1. The court held that this section was not unconstitutionally vague. Although the regulation did not specify the standard of proof, the court interpreted the regulation to require proof by a preponderance of evidence, which is the normal standard in a civil proceeding. New Amber Auto Service v. New York City Environmental Control Board, 163 Misc.2d 113, 619 N.Y.S.2d 496 (Sup.Ct. New York Co. 1994).

FOOTNOTES

6

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This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-55 Interlocutory Appeals.

Interlocutory appeals from rulings of a hearing officer may be filed only after leave to file has been obtained from the hearing officer. Leave to appeal will not be granted except upon a showing that the ruling complained of involves substantial rights and will materially affect the final decision, and that a determination of its correctness before conclusion of the hearing is essential to serve the interests of justice. The board may, in its discretion, refuse to hear such interlocutory appeal even though leave to appeal has been obtained from the hearing officer. Unless otherwise ordered by the board or the hearing officer, an interlocutory appeal shall not stay the proceeding or extend the time for the performance of an act.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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Section repealed, added and re-titled City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

CASE NOTES

¶ 1. The Environmental Control Board may permit extensions of the time to appeal a decision, where the request for extension was made within the 30 day limit for filing appeals. Reminisce Bar and Lounge v. City of New York Department of Environmental Protection, 178 Misc.2d 640, 680 N.Y.S.2d 143 (Sup.Ct. New York Co. 1998).

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules

within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

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be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 2]: * Subchapter C amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter re-titled City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-56 Transcript.

The board shall provide or arrange for either a stenographically reported or mechanically recorded verbatim transcript of all hearings. A digital, tape or other electronic or mechanical recording may be deemed the transcript of the hearing for all purposes under these Rules.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-56) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section repealed, added and re-titled City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Section in original publication July 1, 1991.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER C ADJUDICATIONS-HEARING PROCEDURES*2

§3-57 Decisions.

(a) **Hearing Officer's Recommended Decision and Order.** As soon as possible after conclusion of the hearing, the hearing officer shall prepare a recommended decision and order. The hearing officer's decision shall set forth findings of fact and conclusions of law, and it shall set forth the hearing officer's reasons for findings on all material issues. If the charges contained in the notice of violation are upheld, the hearing officer shall prepare an order setting forth the penalty, and if the board is authorized by law to impose remedial relief or other sanction, the relief or sanctions recommended. The recommended decision and order shall be filed with the executive director and served on all parties.

(b) **Finality.** If timely exceptions are not filed as per §3-71, the hearing officer's recommended decision and order will be automatically adopted by the board without further action and shall constitute the board's final action in the matter.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-57) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Subd. (b) amended City Record Nov. 25, 2008 §5, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

FOOTNOTES

6

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER D ADJUDICATIONS-APPEAL PROCEDURES*3

§3-71 Exceptions to Recommended Decision and Order.

(a) **Filing.** Any party aggrieved by the hearing officer's recommended decision and order may, within 30 days of mailing of the same, file written exceptions with the tribunal. A copy of the exceptions shall be served upon all parties, and proof of such service filed with the tribunal within 30 days of the mailing of said decision and order. Written exceptions must contain a concise statement of the issues presented, specific objections to the findings of fact and conclusions of law set forth in the hearing officer's recommended decision and order, and arguments presenting clearly the points of law and fact relied on in support of the position taken on each issue.

(b) **Answer.** Within 20 days after the service on a party of exceptions to the hearing officer's recommended decision and order, any party supporting the hearing officer's recommended decision and order or opposing the matters raised in the exceptions may file an answering brief. An answering brief shall follow the format and be served as required of exceptions by subparagraph (a).

(c) **Replies.** Further briefing shall not be permitted unless required by the board.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-71) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Subd. (a) amended City Record Oct. 13, 2006 §8, eff. Nov. 12, 2006. [See T48 §3-103 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER D ADJUDICATIONS-APPEAL PROCEDURES*3

§3-72 Timeliness and Extensions of Time.

(a) Any application for a written copy of the transcript of the hearing or a copy of the audio tape shall be made within the time allotted for the filing of exceptions. A copy of such application shall be served upon all parties, and proof of such service filed with the tribunal within the time allotted for filing exceptions. In that event, the time within which exceptions to the hearing officer's recommended decision and order must be filed with the tribunal shall be extended by 20 days from the date when such transcription or audio tape is delivered or mailed to the party requesting same.

(b) Any application to extend time to file for any other reason shall be made to the executive director and supported by evidence of impossibility or other explanation of inability to file timely. A copy of such application shall be served upon all parties, and proof of such service filed with the tribunal.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-72) City Record Nov. 24, 2008 §1, eff. Nov. 24,

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FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER D ADJUDICATIONS-APPEAL PROCEDURES*3

§3-73 Payment of Penalty.

(a) No appeal by a respondent shall be permitted unless within 20 days of the mailing of the hearing officer's recommended decision and order the civil penalty imposed by said order is paid or the respondent shall have posted a cash or recognized surety company bond in the full amount imposed by the decision and order appealed from.

(b) Any application for a waiver of such prior payment of the civil penalty must be made within 20 days of the mailing of the hearing officer's recommended decision and order and must be supported by evidence of financial hardship. Waivers of such prepayment may be granted in the discretion of the executive director.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local

Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

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I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER D ADJUDICATIONS-APPEAL PROCEDURES*3

§3-74 Board Review.

(a) When exceptions have been filed with the tribunal, the board shall consider the entire matter on the basis of the record before it. The notice of violation, the transcript of the hearing and all briefs filed and exhibits received in evidence, together with the hearing officer's recommended decision and order, shall constitute the hearing record.

(b) The board may from time to time establish panels from among its members who shall conduct the review. If an appeal panel deems it necessary, it shall order further testimony or evidence be taken or submitted, or it may order oral argument on any or all of the questions raised on appeal. The appeal panel shall report its findings to the full board for final resolution.

(c) After such review, the board shall issue its decision. Such decision shall contain findings of fact and conclusions of law. An order consistent with such decision shall be made, exercising such of the board's powers as are deemed appropriate.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-74) City Record Nov. 24, 2008 §1, eff. Nov. 24,

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Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

FOOTNOTES

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CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER D ADJUDICATIONS-APPEAL PROCEDURES*3

§3-75 Amendments to Board Appeal Decision and Order.

An application to the board by any party for a superseding appeal decision and order may be made within 10 days of mailing of the board's final decision and order, to correct ministerial errors or errors due to mistake of fact or law.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER D ADJUDICATIONS-APPEAL PROCEDURES*3

§3-76 Judicial Review of Board Decisions.

(a) After exhaustion of the procedures set forth above, judicial review of the final decision and order of the board may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

(b) If a respondent appeals and the board does not issue a final decision and order after 180 days from the filing of exceptions, the respondent may at any time seek judicial review of the hearing officer's recommended decision and order pursuant to Article 78 of the New York Civil Practice Law and Rules and rely on the hearing officer's recommended decision and order as the final decision and order of the board, provided that three specific conditions are met:

(i) at least 45 days before the filing of a petition pursuant to Article 78 of the New York Civil Practice Law and Rules, the respondent files with the board written notice of the respondent's intention to file the petition;

(ii) the board has still not issued a final decision and order when the respondent files the petition; and

(iii) the respondent serves the petition on the board pursuant to the New York Civil Practice Law and Rules.

(c) After a respondent files with the board notice of intention to file a petition for judicial review under the preceding subsection (b), the board may still issue a final decision and order unless the respondent has already filed the

petition.

HISTORICAL NOTE

Section added City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters

through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 3]: * Subchapter B amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter added City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER E MISCELLANEOUS*4

§3-81 Default by Respondent.

(a) Failure of a respondent to make a timely response, or appear or proceed as required by the tribunal or hearing officer or these rules shall constitute a default. Upon default, the hearing officer or board shall thereupon render such decision and order in accordance with §1049-a(d)(1)(d) of the Charter. Orders rendered in consequence of a default shall take effect immediately. Notice of such order shall be sent to respondent.

(b) Where respondent was permitted to admit and pay by mail pursuant to §3-32, respondent shall also be offered the opportunity to enter a late admission and payment by mail within 30 days of the mailing date of the default order issued against respondent. An appropriate fee may be imposed by the tribunal for the processing of such late admission.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section amended City Record Nov. 25, 2008 §6, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Section repealed and reissued (former T15 §31-81) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental

Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.

[Footnote 4]: * Subchapter E amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter added City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER E MISCELLANEOUS*4

§3-82 Stays of Default.

Except as otherwise provided by rule or statute, a request by respondent for a stay of a default order and a hearing must be made by application to the executive director within 30 days of mailing of the default order. When a timely request is made for a stay of a first default, the executive director shall grant the request. A timely request for a stay of a second or subsequent default made for the same notice of violation may be denied by the executive director absent a showing of a meritorious defense.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-82) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

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Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 4]: * Subchapter E amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter added City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER E MISCELLANEOUS*4

§3-83 Late Request for Stay of Default.

(a) A request by a respondent for stay of default and a new hearing made more than 30 days after service of the default order shall be granted where, within 90 days from mailing of the default order, respondent alleges a credible explanation and excuse for the default together with an allegation of a meritorious defense to the violation charged.

(b) The executive director may designate categories of alleged defenses which in the interest of justice shall be grounds for a late stay of default and a hearing without regard to the requirements set out in paragraph (a) above.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-83) City Record Nov. 24, 2008 §1, eff. Nov. 24,

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FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER E MISCELLANEOUS*4

§3-84 Stipulation in Lieu of Hearing.

(a) At any time prior to the issuance of the hearing officer's recommended decision and order the petitioner may offer the respondent a settlement of the matter by stipulation in lieu of further hearing. The stipulation shall contain an admission of the violation, the further facts stipulated to, if any, the amount of the penalty to be imposed, and the compliance ordered, if any.

(b) If entered into by respondent and filed with the tribunal prior to the first scheduled hearing date, in the manner and form set by the tribunal, the stipulation shall be reviewed by the board. Within a reasonable time after receipt of such stipulation, the board shall cause to be issued a final decision and order incorporating the terms of said stipulation or, if the stipulation is not acceptable to the board, the matter will be rescheduled for further hearing.

(c) If entered into before a hearing officer during the course of a hearing and if the hearing officer approves such stipulation, it shall be incorporated into the hearing officer's recommended decision and order.

(d) Decisions and orders based upon stipulations shall not be appealable.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-84) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

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through adjudication to the appellate process in a simple, unambiguous fashion.
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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER F*5 SPECIAL HEARINGS AND ENFORCEMENT PROCEEDINGS

§3-91 Cease and Desist Actions.

(a) **Scope.** This section governs cease and desist actions brought by the board pursuant to Administrative Code §§24-178, 24-257, or 24-524, after respondent has had notice and an opportunity for a hearing on the violations alleged pursuant to the provisions of §§24-184, 24-263, or 24-524 as appropriate, and has failed to comply with orders issued by the board in such proceedings.

(b) **Issuance of Order and Notice.** Cease and desist actions shall be commenced by the issuance by the board of an order to cease and desist and a notice of special hearing. The order and notice shall identify the particular compliance order previously issued after an adjudicatory hearing, or in default thereof, that respondent is alleged to have disregarded, and the activity, equipment, device and/or process involved. The order shall direct respondent to show cause at a special hearing why the equipment, device or process should not be sealed and additional penalties imposed and shall notify respondent that if respondent does not appear as directed, the board order will be implemented forthwith.

(c) **Service.** The order to cease and desist and notice of special hearing shall be served personally or by certified mail, return receipt requested.

(d) **Hearing.** The special hearing shall be presided over by a hearing officer of the tribunal who shall have all of the powers and duties set out in subchapter C of these rules, except as more specifically provided below. The hearing

officer shall receive such evidence as may be presented by the petitioner which requested the board to issue the cease and desist order concerning respondent's failure to comply with orders previously issued, and such evidence as respondent may present in defense.

(e) **Report.** In lieu of a recommended hearing decision and order, the hearing officer shall prepare a report summarizing the evidence and arguments offered together with the hearing officer's findings of fact and recommendation as to whether the sealing should proceed and additional penalties be imposed. The report shall be promptly filed with the board.

(f) **Board Order.** Upon receipt of the hearing officer's report, the board may adopt, reject or modify the findings and recommendations and direct such further hearings or issue such further orders to respondent as are appropriate under the circumstances to assure correction of the violations. In any case in which the board issues an order requiring affirmative action to be taken by the respondent, such order may also require the respondent to file with the board a report or reports under oath attesting to respondent's compliance with the order. Failure to file a required report within the time limit set forth may, in the board's discretion, constitute a violation of the order regardless of whether the respondent has otherwise been in compliance with the provisions of the order.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-91) City Record Nov. 24, 2008 §1, eff. Nov. 24,

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FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was

consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

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ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

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[Footnote 5]: * Subchapter F amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter added City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER F*5 SPECIAL HEARINGS AND ENFORCEMENT PROCEEDINGS

§3-92 Post-Sealing Special Hearing.

At any time after a sealing has taken place, a respondent may request a special hearing to present evidence as to why the seal should be removed or sealing order modified. The request may be made by letter addressed to the board or the executive director or their designee at the tribunal. A special post-sealing hearing shall then be scheduled and shall be presided over by a hearing officer of the tribunal and conducted in accordance with the provisions of subparagraphs (d), (e) and (f) of §3-81.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

Section amended City Record Nov. 25, 2008 §7, eff. Nov. 25, 2008 per City Record notice. [See T48 §3-12 Note 1]

Section repealed and reissued (former T15 §31-92) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

FOOTNOTES

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local

Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

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Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER F*5 SPECIAL HEARINGS AND ENFORCEMENT PROCEEDINGS

§3-93 Application for a Temporary or Limited Unsealing or Stay.

If it appears that remediation undertaken by a respondent cannot proceed or its effectiveness cannot be tested while a seal remains in place, the respondent may, by written application addressed to the executive director, request that a seal be temporarily removed or stayed for a limited period. The executive director may authorize a temporary unsealing or stay of sealing for the above specified reasons for such limited period and subject to such conditions as the executive director deems appropriate.

HISTORICAL NOTE

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Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 5]: * Subchapter F amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1] Subchapter added City Record Sept. 5, 1997 eff. Oct. 5, 1997.

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER F*5 SPECIAL HEARINGS AND ENFORCEMENT PROCEEDINGS

§3-94 Hearings after Emergency Cease and Desist Orders.

When the board has issued an emergency cease and desist order, without hearing, on account of an imminent peril to public health, pursuant to Administrative Code §§24-178(f), 24-346(e) or 24-523(b), any person affected by such emergency order may, by written notice to the board, request a hearing or an accelerated hearing in accordance with said provisions. The hearing held pursuant to the request shall be held by the board and shall not be referred to a hearing officer. The hearing shall otherwise be conducted in accordance with the relevant provisions of law and such of the board's rules for adjudicatory hearings as may be applicable.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See

T48 §3-11 Note 1]

Section repealed and reissued (former T15 §31-94) City Record Nov. 24, 2008 §1, eff. Nov. 24,

2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local

Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER F*5 SPECIAL HEARINGS AND ENFORCEMENT PROCEEDINGS

§3-95 Post Judgment Amendment of Records.

(a) Upon the motion of any party, the board may amend a judgment or judgments to designate a judgment debtor by his, her or its correct legal name.

(b) The motion shall be made in writing and filed with the executive director. The movant shall also file an affidavit setting forth the facts and evidence relied on by the movant and an affidavit of service, by certified or registered mail and regular mail, of the motion on the party whose name is sought to be corrected in the judgment or judgments at his, her or its last known address and at the address or addresses at which the notice or notices of violation was or were served. Such motion shall be served on all parties. The date and time of the hearing on the motion is to be set forth in the moving papers in accordance with the direction of the executive director but shall not be sooner than 10 days after the service of such motion on the party whose name is sought to be corrected. At such hearing any party may appear, in person or otherwise, with or without counsel, cross-examine witnesses, present evidence and testify. If the party whose name is sought to be corrected does not appear at the hearing the hearing officer may proceed to determine the evidence presented by the moving party in support of the motion.

(c) If the hearing officer finds that the movant has established, by a preponderance of evidence (i) the true name of the judgment debtor, (ii) that such person is the same person as the person designated on the notice of violation as responsible for the violation or violations and (ii) that service of the notice or notices of violation and of all other papers in the proceeding or proceedings was or were properly made upon such person, he or she shall grant such motion and

issue a recommended decision and order directing the amendment and correction, to reflect the correct legal name of such person, of all records relating to the proceedings commenced by the service of such notice or notices of violation, including the records of judgments filed with the civil court and in the office of the county clerk.

(d) The recommended decision and order shall be filed with the executive director and served on all parties. Any party who appeared at the hearing, in person or otherwise, may file exceptions to such recommended decision and order in the manner provided in §3-71 and the board shall render a final decision and order on such exceptions. Such final decision and order shall be the final decision of the board for purposes of review pursuant to article 78 of the Civil Practice Law and Rules.

(e) If exceptions are not filed within the time provided in §3-71, the hearing officer's recommended decision and order shall become the final decision and order of the board and, in accordance with applicable law, shall not be subject to review pursuant to article 78 of the Civil Practice Law and Rules.

(f) An order correcting a judgment shall not affect the duration of a judgment. The judgment shall remain in full force and effect for eight years from the date the judgment was originally entered.

HISTORICAL NOTE

Section amended City Record May 15, 2009 §1, eff. June 14, 2009. [See T48 §3-11 Note 1]

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Section added City Record Sept. 5, 1997 eff. Oct. 5, 1997. [See Chapter 3 footnote]

Subd. (d) amended City Record Nov. 25, 2008 §8, eff. Nov. 25, 2008 per City Record notice. [See

T48 §3-12 Note 1]

Subd. (e) amended City Record Nov. 25, 2008 §8, eff. Nov. 25, 2008 per City Record notice. [See

T48 §3-12 Note 1]

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC

Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

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Finding of Substantial Need for Earlier Implementation

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-100 General.

Whenever a respondent is found in violation of any of the following provisions of the New York City Administrative Code, Rules of the City of New York, New York City Health Code, New York State Public Health Law, New York Codes, Rules and Regulations, New York City Zoning Resolution, New York State Vehicle and Traffic Law, New York State Environmental Conservation Law, any civil penalties recommended by a Hearing Officer pursuant to §3-57(a) and/or any default penalties imposed pursuant to §3-81(a) in accordance with §1049-a(d)(1)(d) of the Charter and/or any civil penalties imposed for admissions of violation(s) pursuant to §3-32 or late admissions pursuant to §3-81(b) will be imposed pursuant to the penalty schedules set forth below.

Please note that some of the penalties in the Penalty Schedules set forth below are established by law as flat penalties. Thus, for some of the penalties set forth below, no range of dollar amounts is set forth in the Administrative Code or other applicable law. However, solely for the convenience of the public, these flat penalties are included in the Penalty Schedules set forth below, to ensure, to the extent possible, that these Penalty Schedules are comprehensive.

HISTORICAL NOTE

Section amended City Record Nov. 25, 2008 §9, eff. Nov. 25, 2008 per City Record notice. [See T48

§3-12 Note 1]

Section repealed and reissued (former T15 §31-100) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Closing par added City Record Aug. 16, 2007 §1, eff. Sept. 15, 2007. [See §3-122 Note 1]

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

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No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules

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ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

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be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

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RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-101 Air Asbestos Penalty Schedule.

AIR ASBESTOS PENALTY SCHEDULE

If a stipulation is offered and accepted at a hearing, the stipulation (stip.) penalty will be imposed.

Unless otherwise indicated, all citations are to 15 RCNY Chapter 1.

A second violation is a violation by the same respondent within two years, for an infraction within the same category as the prior infraction. (Categories are defined by description subheadings on this schedule, e.g., "Notification.")

The default penalty for all charges in this Penalty Schedule is $10,000.

Section	Description	1st Violation Penalty	1st Violation STIP.	2nd Violation Penalty	2nd Violation STIP.
1-01(e)	Knowingly made a false statement or submitted a false document to DEP	2400	1500	4800	3000
1-01(g)	Interfered with or obstructed DEP personnel	2400	1500	4800	3000
1-01(f)	Did not permit DEP inspection of Asbestos Project/Abatement Activities	2400	1500	4800	3000
1-01(c)	Failure of Asbestos Handler Supervisor to comply with all provisions of	1200	1000	2400	1500

	Asbestos Rules				
1-01(h)	Unprofessional conduct	1200	1000	2400	1500
	ASBESTOS INVESTIGATION CERTIFICATE				
1-16(a)(1)	Conduct of building survey and hazard assessment without DEP certification	2400	1500	4800	3000
1-16(a)(3)	Failure to collect bulk samples as specified	2400	1500	4800	3000
1-16(h)	Failure to sign/affix valid investigators seal to plan report as required	1200	1000	2400	1500
1-21(a)	Failed to comply with reporting and filing require- ments	2400	1500	4800	3000
1-21(b)	Failed to calculate project size and scope as required	2400	1500	4800	3000
	NOTIFICATION				
1-22(b)	Owner failed to determine the amount of ACM to be disturbed by permitted activity	2400	1500	4800	3000
1-23(c)	Failure to file required Asbestos Assessment Report (ACP-5) with Buildings Dept	2400	1500	4800	3000
1-25(c)	Failed to file Asbestos inspection report 7 days before work starts	2400	1500	4800	3000
1-25(d)	Failed to notify DEP in writing of any change in project notification	1200	1000	2400	1500
1-27(b)	Failure to immediately notify DEP of emergency project as required	2400	1500	4800	3000
1-27(c)	Failure to notify DEP in writing of emergency project within 48 hours	2400	1500	4800	3000
	PERMITTING				
1-26(a)	Failure to obtain asbestos abatement permit when required	4800	3000	9600	6000
1-26(c)(3)	Failure to maintain/provide record of final inspection	2400	1500	4800	3000
1-26(e)	Failed to terminate asbestos abatement permit w/in 1 yr of issuance	4800	3000	9600	6000
1-26(f)	Failure to maintain required insurance during work-permitted work	1200	1000	2400	1500
1-26(h)	Commencement of permitted work prior to permit issuance	1200	1000	2400	1500
	RECORDKEEPING REQUIREMENTS FOR INVESTIGATOR				
1-28(a)	Failure to maintain permanent records of Asbestos surveys as required	2400	1500	4800	3000
1-28(b)	Failure to compile complete records of Asbestos survey as required	1200	1000	2400	1500
1-28(c)	Failure to properly record work by non-certified individual as required	1200	1000	2400	1500
1-28(d)	Failure to maintain records of Asbestos surveys for 30 years	1200	1000	2400	1500
1-28(e)	Failure to make Asbestos survey records available for inspection by DEP	2400	1500	4800	3000
	PROJECT RECORD & PROJECT SUMMARY				
1-29(a)	Failure to properly maintain project record	1200	1000	2400	1500
1-29(b)	Failure to properly maintain project summary	1200	1000	2400	1500
1-29(c)	Failure to make project record or project summary available for inspection in a timely manner	1200	1000	2400	1500
	AIR MONITORING				
1-36(a)	Failure to retain independent third party Air Monitor	4800	3000	9600	6000
1-36(b)	Failure to have technician present during air sample collection	1200	1000	2400	1500
1-36(c)	Use of lab without required qualifications to perform bulk sample analysis	2400	1500	4800	3000
1-36(d)	Use of lab without required qualifications to perform air sample analysis	2400	1500	4800	3000
1-36(e)	Employment of unqualified analyst to perform air sample analysis (TEM)	2200	1500	4800	3000
1-37(a)	Failed to perform bulk sampling as required	1200	1000	2400	1500
1-37(b)	Failed to utilize area Air sampling equipment for PCM per 60 NIOSH 7400	1200	1000	2400	1500
1-37(c)	Failed to utilize area Air sampling equipment for TEM as required	1200	1000	2400	1500
1-37(d)	Failure to to use appropriate air sampling pump calibrated by rotometer	1200	1000	2400	1500
1-37(e)	Failure to properly inspect air sampling equipment	1200	1000	2400	1500
1-37(f)	Failure to create/maintain air sampling log	2400	1500	4800	3000

1-41(a)	Failed to conduct Air sampling in accordance with required schedule	4800	3000	9600	6000
1-41(b)	Failed to conduct Pre-Abatement Air sampling as required	1200	1000	2400	1500
1-41(c)	Failed to conduct Air sampling during abatement as required	2400	1500	4800	3000
1-41(d)	Failure to conduct Post-Abatement air sampling as required	2400	1500	4800	3000
1-42(a)	Utilization of improperly located air samplers	1200	1000	2400	1500
1-42(b)	Failed to locate ambient samplers properly	1200	1000	2400	1500
1-42(c)	Placed Air sampling equipment in corners or near obstructions	1200	1000	2400	1500
1-42(d)	Failed to have a chain of custody record for air samples	2400	1500	4800	3000
1-42(e)	Failed to follow specified area sampling schedule for air monitoring	2400	1500	4800	3000
1-42(f)	Failed to conduct air sampling for glovebag and tent procedures as required	2400	1500	4800	3000
1-43(a)	Failed to confirm absence of visible ACM before final air monitoring	2400	1200	4800	2400
1-43(b)	Failed to properly place required number of samples in work area	1200	1000	2400	1500
1-43(c)	Failed to properly place samples outside work area	1200	1000	2400	1500
1-43(d)	Failed to conduct aggressive sampling according to required procedures	2400	1500	4800	3000
1-43(e)	Area Air samples did not meet schedules for Post-Abatement monitoring	2400	1500	4800	3000
1-43(f)	Failed to reclean and re-sample in areas that failed clearance as required	2400	1500	4800	3000
1-43(g)	Failed to meet release criteria for any independent work area	2400	1500	4800	3000
1-44(a)	Failed to analyze and report PCM area Air samples as required	2400	1500	4800	3000
1-44(b)	Failed to analyze and report TEM area Air samples as required	2400	1500	4800	3000
1-44(c)	Failed to analyze and report bulk sample as required	1200	1000	2400	1500
1-44(d)	Failed to submit bulk/Air sampling results w/in 5 days of DEP request	2400	1500	4800	3000
1-45(a)	Failed to follow proper procedures when action criteria exceeded	4800	3000	9600	6000
1-45(b)	Failed to meet clearance and/or reoccupancy criteria	2400	1500	4800	3000
	WORKER PROTECTION REQUIREMENTS				
1-51(a)	Employed uncertified workers on an Asbestos project	4800	3000	9600	6000
1-51(b)	Failed to have supervisor present during abatement activities	4800	3000	9600	6000
1-51(c)	Allowed persons inside work place w/out proper protective clothing	4800	3000	9600	6000
1-51(d)	Failed to perform personal Air monitoring as per OSHA standards	2400	1500	4800	3000
1-51(e)	Failed to meet personal hygiene requirements at work site	1200	1000	2400	1500
1-51(f)	Failed to have required info in clean room	2400	1500	4800	3000
1-51(g)	Failed to post Asbestos warning signs at all approaches to work place	2400	1500	4800	3000
1-51(h)	Failed to affix required warning labels to all ACM waste containers	2400	1500	4800	3000
	MATERIALS AND EQUIPMENT				
1-61(a)	Did not store replacement materials outside work area as required	2400	1500	4800	3000
1-61(b)	Used replacement materials which did not comply with NYC Code and regulations	1200	1000	2400	1500
1-61(c)	Failed to use plastic of 6-mil thickness or greater for plasticizing	2400	1500	4800	3000
1-61(d)	Used duct tape and/or adhesive incapable of properly sealing plastic	2400	1500	4800	3000
1-61(e)	Failed to use and/or label 6-mil bags or containers for ACM as required	2400	1500	4800	3000
1-61(f)	Failed to enclose ACM in airtight manner with impact resistant material	2400	1500	4800	3000
1-61(g)	Failed to use HEPA filtration as required on hand power tools	1200	1000	2400	1500
1-61(h)	Failed to provide ladders/scaffolds and/or seal joints/ends of same	2400	1500	4800	3000
1-61(i)	Failed to use UL listed and approved electrical equipment	1200	1000	2400	1500
1-61(j)	Failure to use non-carcinogenic/non-toxic chemicals	4800	3000	9600	6000
1-61(k)	Failure to use non-combustible/fire-retardant materials	4800	3000	9600	6000
1-61(l)	Failure to obtain DEP approval for substitute equipment/material	1200	1000	2400	1500
	GENERAL WORK PLACE PREPARATION-LARGE PROJECT				
1-81(a)	Failed to post notice of Asbestos project as specified	1200	1000	2400	1500
1-81(b)	Failure to post floor plan as specified	1200	1000	2400	1500

1-81(c)	Failure to vacate work place prior to and during abatement activities	4800	3000	9600	6000
1-81(d)	Failure to provide power from outside the work area thru GFI at source	4800	3000	9600	6000
1-81(e)	Failure to install worker decon in required sequence	4800	3000	9600	6000
1-81(f)	Failure to limit disturbance of ACM before erecting partition as required	2400	1500	4800	3000
1-81(g)	Failure to lockout/isolate heating/ventilation/air conditioning system	4800	3000	9600	6000
1-81(h)	Commencement of abatement prior to completion of work place preparation	4800	3000	9600	6000
1-81(i)	Failure to properly pre-clean and remove moveables and/or cover carpet	1200	1000	2400	1500
1-81(j)	Failure to remove flammables/extinguish ignition sources	2400	1500	4800	3000
1-81(k)	Failure to properly pre-clean and plasticize fixed objects in work area	1200	1000	2400	1500
1-81(l)	Failure to use temporary emergency lighting when required	1200	1000	2400	1500
1-81(m)	Failure to properly pre-clean the work area prior to plasticizing	2400	1500	4800	3000
1-81(n)	Failure to install isolation barriers over all openings to work place	4800	3000	9600	6000
1-81(o)(1)-(3)	Failure to segregate work area from work site with partitions as required	4800	3000	9600	6000
1-81(o)(4)-(5)	Failure to construct partitions to ensure unobstructed means of egress	4800	3000	9600	6000
1-81(p)	Failure to properly seal floors and walls with 2 layers of 6-mil plastic	4800	3000	9600	6000
1-81(q)	Failure to remove/clean ceiling-mounted objects not previously sealed	1200	1000	2400	1500
1-81(r)	Removal of contaminated ceiling tiles prior to full work area preparation	2400	1500	4800	3000
1-81(s)	Failure to lock entrances not used for workers or as emergency exits	2400	1500	4800	3000
1-81(t)	Failure to properly maintain/check exits	4800	3000	9600	6000
1-81(u)	Failure to post/maintain exit signs in work area	1200	1000	2400	1500
1-81(v)	Failure to post/maintain no smoking signs in work place	1200	1000	2400	1500
1-81(w)	Failure to properly seal and/or cover floor drains, pits, sumps, etc.	1200	1000	2400	1500
1-81(x)	Failure to maintain, secure, lockout elevators running thru work area	4800	3000	9600	6000
1-81(y)	Failure to provide adequate toilet facilities in vicinity of clean room	1200	1000	2400	1500
1-81(z)	Failure to have fire extinguisher(s) in work place	1200	1000	2400	1500
	WORKER DECONTAMINATION ENCLOSURE-LARGE PROJECT				
1-82(a)	Failed to provide or locate worker decon outside work area as required	4800	3000	9600	6000
1-82(b)	Failed to construct worker decon as specified	4800	3000	9600	6000
1-82(c)	Failed to fully line worker decon with 2 layers of opaque 6-mil plastic	2400	1500	4800	3000
1-82(d)	Failed to secure/weatherproof outside or publicly accessible decon	2400	1500	4800	3000
1-82(e)	Failed to provide proper prefabricated or trailer worker decon	1200	1000	2400	1500
1-82(f)	Failed to construct and/or maintain clean room as required	1200	1000	2400	1500
1-82(g)	Failed to install and/or maintain shower room as required	2400	1500	4800	3000
1-82(h)	Failed to provide shower filtration system as specified	2400	1500	4800	3000
1-82(i)	Failed to properly use or maintain equipment room	1200	1000	2400	1500
	WASTE DECONTAMINATION ENCLOSURE SYSTEM-LARGE PROJECT				
1-83(a)	Failed to properly construct waste decon as specified	4800	3000	9600	6000
1-83(b)	Failed to locate/install waste/worker decon where 1 exit exists	2400	1500	4800	3000
1-83(c)	Failed to construct waste decon in accordance with requirements of 1-82	2400	1500	4800	3000
	COMBINED WORKER/WASTE DECON-SMALL PROJECT				
1-84(a)	Failure to properly construct alternative worker/waste decon for small project	4800	3000	9600	6000
1-84(b)	Failure to properly utilize alternative worker/waste decon for small project	4800	3000	9600	6000
	ENGINEERING CONTROLS-LARGE PROJECT				
1-91(a)	Failed to utilize negative pressure ventilation equipment	4800	3000	9600	6000

1-91(a)(1)	Failure to use manometer to document pressure differential	1200	1000	2400	1500
1-91(b)	Failed to use negative pressure ventilation equipment 24 hrs/day	4800	3000	9600	6000
1-91(c)	Did not maintain static negative Air pressure of 0.02 in. water column	4800	3000	9600	6000
1-91(d)	Failed to turn on negative Air units 1 by 1 to check barrier integrity	2400	1500	4800	3000
1-91(e)	Failed to use dedicated power supply for negative Air units	2400	1500	4800	3000
1-91(f)	Failure to utilize/properly locate negative air cutoff switch	4800	3000	9600	6000
1-91(g)	Failure to follow procedures for loss of power to negative air units	4800	3000	9600	6000
1-91(h)	Failure to provide required air changes in work area	2400	1500	4800	3000
1-91(i)	Failure to make openings for negative air units airtight	1200	1000	2400	1500
1-91(j)	Use of negative air units not in compliance w/ANSI 9.2. Standards	4800	3000	9600	6000
1-91(k)	Operation of negative air system contrary to EPA report 560/5-85 (1985)	4800	3000	9600	6000
1-91(l)	Failure to exhaust negative air units to outside as required	2400	1500	4800	3000
1-91(m)	Failure to properly use second negative air unit in series as required	2400	1500	4800	3000
1-91(o)	Failure to smoke test/inspect/monitor ducts to ensure no fiber release	1200	1000	2400	1500
	WORK PLACE ENTRY AND EXITPROCEDURES-LARGE PROJECT				
1-92(a)	Failed to ensure proper work place entrance procedures are followed	2400	1500	4800	3000
1-92(b)	Failed to ensure that proper work area exit procedures are followed	4800	3000	9600	6000
	EQUIP/WASTE CONTAINER DECON &REMOVAL PROC. LARGE PROJECT				
1-93(a)	Permitted storage of ACM/carts in clean room when used as holding area	1200	1000	2400	1500
1-93(b)	Improperly removed waste while workers used combined decon system	1200	1000	2400	1500
1-93(c)	Improper worker transit during waste transfer in combined decon	1200	1000	2400	1500
1-93(d)	Did not clean ACM container/equipment properly before transfer into decon	1200	1000	2400	1500
1-93(e)	Failed to properly bag/package containerized ACM waste and equipment	1200	1000	2400	1500
1-93(f)	Improper washroom transit of workers prior to end of waste removal	1200	1000	2400	1500
1-93(g)	Failed to properly remove waste and equipment from airlock to holding area	1200	1000	2400	1500
1-93(h)	Failed to use/clean waste storage carts as required	1200	1000	2400	1500
1-93(i)	Failed to secure exit from waste decontamination system	1200	1000	2400	1500
1-93(j)	Failed to store waste storage carts in worksite holding area	1200	1000	2400	1500
	MAINTENANCE OF DECON SYSTEM ANDBARRIERS-LARGE PROJECT				
1-94(a)	Failed to inspect plastic barriers and partitions twice per shift	1200	1000	2400	1500
1-94(b)	Failed to smoke test plastic barriers and decon twice daily	1200	1000	2400	1500
1-94(c)	Failed to immediately repair damage or defects in decon	2400	1500	4800	3000
1-94(d)	Failed to follow proper procedure upon fiber release or barrier damage	4800	3000	9600	6000
1-94(e)	Failed to document specified events in daily projects log	1200	1000	2400	1500
	ACM ABATEMENT PROCEDURES				
1-102(a)	Performed dry removal of ACM without EPA and/or DEP approval	4800	3000	9600	6000
1-102(b)	Failed to sufficiently wet down ACM for enhanced penetration	4800	3000	9600	6000
1-102(c)	Failed to properly apply removal encapsulant as per federal guidelines	1200	1000	2400	1500
1-102(d)	Failed to bag ACM directly upon detachment from substrate as specified	2400	1500	4800	3000
1-102(e)	Failed to properly wet, wrap and secure large components of ACM	2400	1500	4800	3000
1-102(f)	Failed to remove all visible ACM residue from abated surfaces	2400	1200	4800	2400
	ENCAPSULATION PROCEDURES				
1-103(a)	Failure to utilize proper material for encapsulation/repair of ACM	1200	1000	2400	1500
1-103(b)	Failed to properly remove loose or hanging ACM before encapsulation	1200	1000	2400	1500
1-103(c)	Failed to use acceptable pigmented encapsulant	1200	1000	2400	1500

1-103(d)	Used encapsulant solvent or vehicle containing volatile hydrocarbon	1200	1000	2400	1500
1-103(e)	Improperly used latex paint as encapsulant	1200	1000	2400	1500
1-103(f)	Failed to properly field test encapsulant prior to use	1200	1000	2400	1500
1-103(g)	Failed to apply required thickness of bridging encapsulant over ACM	1200	1000	2400	1500
1-103(h)	Failed to use a different color for each coat of encapsulant	1200	1000	2400	1500
1-103(i)	Failed to properly apply penetrating encapsulant to ACM	1200	1000	2400	1500
1-103(j)	Failed to apply encapsulant with airless spray equipment as specified	1200	1000	2400	1500
1-103(k)	Failed to properly identify encapsulated ACM	2400	1500	4800	3000
	ENCLOSURE PROCEDURE				
1-104(a)	Did not properly remove loose/hanging ACM before installing enclosure	2400	1500	4800	3000
1-104(b)	Failed to properly repair areas damaged during enclosure procedure	1200	1000	2400	1500
1-104(c)	Failed to properly lower/remove/replace utilities service components	1200	1000	2400	1500
1-104(d)	Failed to properly identify enclosed ACM	2400	1500	4800	3000
	GLOVEBAG PROCEDURES				
1-105(a)	Failed to properly conduct glovebag procedures	4800	3000	9600	6000
1-105(b)(1)	Failed to bring tools/materials into work area before glovebag begins	2400	1500	4800	3000
1-105(b)(2)	Failed to conduct Air monitoring during glovebag procedure as required	2400	1500	4800	3000
1-105(b)(3)	Failed to have trained/equipped workers to conduct glovebag procedures	2400	1500	4800	3000
1-105(b)(4)	Failed to use properly sized glovebag for diameter of insulation	2400	1500	4800	3000
1-105(b)(5)	Failed to wet ACM prior to stripping during glovebag procedure	4800	3000	9600	6000
1-105(b)(6)	Failed to properly attach glovebag to insulation	4800	3000	9600	6000
1-105(b)(7)	Failed to smoke test glovebag as required	2400	1500	4800	3000
1-105(b)(8)	Failed to properly seal adjacent insulation during glovebag procedure	2400	1500	4800	3000
1-105(b)(9)	Failed to properly clean/wet surface, tools, etc. before glovebag is moved	2400	1500	4800	3000
1-105(b)(10)	Failed to properly seal insulation ends	2400	1200	4800	3000
1-105(b)(11)	Failed to properly remove tools/tool pouch from glovebag	2400	1500	4800	3000
1-105(b)(12)	Failed to use HEPA vacuum to evacuate glovebag or for clean up	2400	1500	4800	3000
1-105(b)(13)	Failed to properly collapse or seal glovebag prior to bag removal	2400	1500	4800	3000
1-105(b)(14)	Failed to properly double-bag and detach glovebag	2400	1500	4800	3000
1-105(b)(15)	Failed to properly wet/bag, dispose of waste from glovebag procedure	2400	1500	4800	3000
1-105(d)	Failure to utilize glovebag within containment as specified	1200	1000	2400	1500
	TENT PROCEDURES				
1-106(a)	Conducted tent procedures on 260 linear ft/160 sq. or more of ACM	2400	1500	4800	3000
1-106(b)	Failed to properly install and/or construct tent	2400	1500	4800	3000
1-106(c)	Failure to install airlock at tent entrance when required	2400	1500	4800	3000

1-106(d)	Failure to wear appropriate personal protective equipment during tent procedure	4800	3000	9600	6000
1-106(e)	Failure to attach tent to surface to produce an airtight seal	2400	1500	4800	3000
1-106(f)	Failure to provide/maintain proper negative air in tent	1200	1000	2400	1500
1-106(g)	Failure to use required wet removal methods during tent procedures	2400	1500	4800	3000
1-106(h)	Failure to place ACM removed in tent procedures in leaktight container	2400	1500	4800	3000
1-106(i)	Failure to properly clean/encapsulate enclosed surfaces in tent	2400	1500	4800	3000
1-106(j)	Failure to clean/encapsulate surfaces after tent failure/termination	2400	1500	4800	3000
1-106(k)	Failure to properly clean/double bag ACM for disposal as specified	2400	1500	4800	3000
1-106(l)	Failure to follow specified procedures for worker exit from tent	2400	1500	4800	3000
1-106(m)	Failure to have 4 air changes after abatement but before tent collapse	2400	1500	4800	3000
1-106(n)	Failure to collapse tent or dispose of contaminated material as specified	2400	1500	4800	3000
1-106(o)	Failure to follow proper glovebag procedure during removal in tent	1200	1000	2400	1500
	ROOFING REMOVAL PROCEDURES				
1-107(a)	Failure to properly cordon off and restrict access to work area	1200	1000	2400	1500
1-107(b)	Failure to use proper foam or liquid during removal	2400	1500	4800	3000
1-107(c)	Failure to maintain blanket of foam or liquid during removal	2400	1500	4800	3000
1-107(d)	Failure to keep ACRM wet during bagging process	1200	1000	2400	1500
1-107(e)	Failure to ensure that all persons in work area wear proper boots	1200	1000	2400	1500
1-107(f)	Carrying out of abatement during adverse weather conditions	1200	1000	2400	1500
1-107(g)	Failure to properly locate worker/waste decons	1200	1000	2400	1500
1-107(h)	Failure to remove or plasticize movable objects	1200	1000	2400	1500
1-107(i)	Failure to properly seal openings/ensure adequate air supply	1200	1000	2400	1500
1-107(j)	Failure to plasticize fixed objects as specified	1200	1000	2400	1500
1-107(k)	Failure to blanket roofing material w/foam before removal	2400	1500	4800	3000
1-107(l)	Failure to use HEPA filters on power tools used in removal	1200	1000	2400	1500
1-107(m)	Failure to properly conduct cleanup procedures	1200	1000	2400	1500
1-107(n)	Failure to conduct proper visual inspection	1200	1000	2400	1500
1-107(o)	Failure to remove all plastic sheeting after visual inspection	1200	1000	2400	1500
1-107(p)	Failure to conduct required air monitoring	1200	1000	2400	1500
	FLOORING REMOVAL PROCEDURES				
1-108(b)	Failure to use proper foam or liquid during removal	2400	1500	4800	3000
1-108(c)	Failure to maintain blanket of foam or liquid during removal	2400	1500	4800	3000
1-108(d)	Failure to keep ACM wet during bagging process	1200	1000	2400	1500
1-108(e)	Failure to ensure that all persons in work area wear proper boots	1200	1000	2400	1500
1-108(f)	Failure to plasticize baseboards and walls as specified	1200	1000	2400	1500
1-108(g)	Failure to provide negative pressure ventilation	1200	1000	2400	1500
1-108(h)	Failure to properly conduct cleanup procedures	1200	1000	2400	1500
1-108(i)	Failure to conduct proper visual inspection	1200	1000	2400	1500
1-108(j)	Failure to remove all plastic sheeting after visual inspection	1200	1000	2400	1500
1-108(k)	Failure to conduct required air monitoring	1200	1000	2400	1500
	VERTICAL SURFACE REMOVAL PROCEDURES				
1-109(a)	Failure to properly prepare work area	1200	1000	2400	1500
1-109(b)	Failure to construct decon within restricted area	1200	1000	2400	1500
1-109(c)	Failure to follow proper cleanup procedure	1200	1000	2400	1500
1-109(d)	Failure to conduct required air monitoring	1200	1000	2400	1500
	CONTROLLED DEMOLITION PROCEDURES				
1-110(a)	Demolition of building w/ACM in place w/no danger of collapse	4800	3000	9600	6000
1-110(b)	Failure to provide copy of condemnation letter to DEP	1200	1000	2400	1500
1-110(c)	Failure to perform demolition as per AC 28-215/56 NYCRR 11.5	2400	1500	4800	3000

	PRELIMINARY CLEANUP PROCEDURES-LARGE PROJECT				
1-111(a)	Failure to bag/wrap/containerize waste immediately upon removal	4800	3000	9600	6000
1-111(b)	Failure to properly clean waste decon on completion of waste removal	2400	1500	4800	3000
1-111(c)	Failure to properly clean worker decon when required	2400	1500	4800	3000
1-111(d)	Failure to stop work and dispose of excess water in work area	1200	1000	2400	1500
	FINAL CLEAN-UP PROCEDURES				
1-112(a)	Failed to HEPA vacuum all surfaces after removal of all visible ACM	1200	1000	2400	1500
1-112(b)	Failed to wet clean all surfaces in work area (first cleaning)	2400	1500	4800	3000
1-112(c)	Failure to apply lockdown encapsulant as specified	2400	1500	4800	3000
1-112(d)	Failure to vacate area for 12 hrs after 1st cleaning	1200	1000	2400	1500
1-112(e)	Failed to remove 1st layer of surface barriers	1200	1000	2400	1500
1-112(f)	Failure to properly perform 2nd cleaning	2400	1200	4800	2400
1-112(g)	Failure to follow required procedures for third cleaning	1200	1000	2400	1500
1-112(h)	Failure to remove 2nd layer of surface barriers	1200	1000	2400	1500
1-112(i)	Failure to verify absence of ACM prior to clearance air monitoring	2400	1200	4800	2400
1-112(j)	Failure to remove containerized waste from work areas as required	1200	1000	2400	1500
1-112(k)	Failure to properly decontaminate or dispose of tools, equipment, etc.	1200	1000	2400	1500
1-112(l)	Removal of isolation barriers before successful clearance air monitoring	4800	3000	9600	6000
1-112(m)	Failure to submit project monitor's report within 21 days of project completion	2400	1500	4800	3000
	PRE-DEMOLITION ABATEMENTPROCEDURES				
1-125(a)	Failed to post notice of Asbestos Project as required before abatement	2400	1500	4800	3000
1-125(b)	Failed to evacuate all occupants prior to abatement activities	2400	1500	4800	3000
1-125(c)	Failed to lock out electrical power and/or provide outside power as required	1200	1000	2400	1500
1-125(d)	Failed to install worker waste decon in required sequence	2400	1500	4800	3000
1-125(e)	Failed to lock out HVAC and/or install isolation barriers at ducts	4800	3000	9600	6000
1-125(f)	Commenced abatement prior to completion of work place preparation	4800	3000	9600	6000
1-125(g)	Used methods that raise dust during work area preparation	2400	1500	4800	3000
1-125(h)	Failed to properly preclean and/or remove objects from work area	1200	1000	2400	1500
1-125(i)	Failed to install required isolation barriers as specified	2400	1500	4800	3000
1-125(j)	Failed to properly cover/seal cinderblock/porous construction material	2400	1500	4800	3000
1-125(k)	Failed to make flooring in work area watertight	2400	1500	4800	3000
1-125(l)	Disturbed contaminated ceiling tiles prior to full work area prep	2400	1500	4800	3000
1-125(m)	Failure to establish and maintain required means of egress	4800	3000	9600	6000
1-125(n)	Failed to lock entrances to work area against unauthorized entry	2400	1500	4800	3000
1-125(o)	Failed to maintain/secure/lock-out elevators running thru work area	2400	1500	4800	3000
1-125(p)	Failed to provide adequate external toilet facilities near clean room	1200	1000	2400	1500
	ACM PROCEDURES: ORDER OF WORK				
1-126(a)	Failed to prevent demolition from compromising abatement on lower floors	4800	3000	9600	6000
1-126(b)	Improperly routed demolition debris through removal project work area	1200	1000	2400	1500
1-126(d)	Failed to maintain proper separation between abatement and demolition areas	1200	1000	2400	1500
1-126(e)	Failed to remove ACM from underground floors in proper sequence	1200	1000	2400	1500
1-126(f)	Failed to remove ACM from street level floor last	1200	1000	2400	1500
	CLEAN-UP PROCEDURES DURINGABATEMENT				
1-127(a)	Failure to bag/wrap/containerize waste immediately upon removal	4800	3000	9600	6000
1-127(b)	Failure to properly clean waste decon on completion of waste removal	2400	1500	4800	3000
1-127(c)	Failure to clean worker decon after shift/meal break as specified	2400	1500	4800	3000

1-127(d)	Failure to stop work and dispose of excess water in work area	1200	1000	2400	1500
	CLEAN-UP PREPARATION FOR CLEARANCEAIR MONITORING				
1-128(a)	Failure to properly remove/containerize visible accumulations of ACM	4800	3000	9600	6000
1-128(b)	Failure to remove containerized waste from work area as required	2400	1500	4800	3000
1-128(c)	Failure to properly wet-clean/HEPA vac surfaces in work area	2400	1500	4800	3000
1-128(d)	Failure to properly clean and/or encapsulate plastic on porous material	2400	1500	4800	3000
1-128(e)	Failure to properly encapsulate surfaces in work area	2400	1500	4800	3000
1-128(f)	Failure to remove and decontaminate all tools and equipment as required	1200	1000	2400	1500
1-128(g)	Removal of isolation barriers before final Air clearance	4800	3000	9600	6000
1-128(h)	Failure to submit project monitor's report within 21 days of project completion	2400	1500	4800	3000
12 NYCRR Part 56	Violation of New York State Industrial Code Rule 56-level 1(includes sections 56-4.2, 56-4.3, 56-4.9d, 56-4.10, 56-4.12c, 56-5.1a, 56-5.1f, 56-5.1h, 56-5.1j, 56-7.1d, 56-7.2n, 56-7.4a, 56-7.4b, 56-7.5a, 56-7.5b, 56-7.5c, 56-7.5d, 56-7.5e, 56-7.6, 56-7.7, 56-7.8a, 56-7.9a, 56-7.9b, 56-7.9c, 56-7.11a, 56-7.11b, 56-7.11d, 56-7.11e, 56-8.2e, 56-8.2g, 56-8.3a, 56-8.4a, 56-8.4b, 56-8.4c, 56-8.7a, 56-8.7l, 56-8.8a, 56-8.8b, 56-8.8k, 56-9.1a, 56-9.2d, 56-9.2g, 56-11.2a, 56-11.2f, 56-11.3a, 56-11.4a, 56-11.4b, 56-11.4c, 56-11.4d, 56-11.4e, 56-11.5a, 56-11.5c, 56-11.6a, 56-11.6b, 56-11.6c, 56-11.6d, 56-11.6e, 56-11.6f, 56-11.7a, 56-11.7b, 56-11.7c, 56-11.7d, 56-11.8a, 56-11.8b, 56-11.8c, 56-11.8d)	4800	3000	9600	6000
12 NYCRR Part 56	Violation of New York State Industrial Code Rule 56-level 2(includes sections 56-4.5, 56-4.6, 56-4.8a, 56-4.8c, 56-4.9b, 56-4.9c, 56-4.12a, 56-4.12b, 56-5.1e, 56-6.2a, 56-6.2b, 56-7.1b, 56-7.1c, 56-7.2a, 56-7.2d, 56-7.2e, 56-7.2f, 56-7.2g, 56-7.2h, 56-7.2i, 56-7.2j, 56-7.2k, 56-7.2l, 56-7.2m, 56-7.3, 56-7.4c, 56-7.5f, 56-7.10c, 56-7.11c, 56-7.11f, 56-8.2a, 56-8.2b, 56-8.2h, 56-8.4e, 56-8.4f, 56-8.4g, 56-8.4h, 56-8.4i, 56-8.5a, 56-8.5b, 56-8.5c, 56-8.5d, 56-8.5e, 56-8.7j, 56-8.7k, 56-8.8c, 56-8.8e, 56-8.8i, 56-8.8j, 56-8.9a, 56-8.9b, 56-9.1b, 56-9.1d, 56-9.2b, 56-9.3a, 56-9.3c, 56-9.3d, 56-11.3d, 56-11.3e)	2400	1500	4800	3000
12 NYCRR Part 56	Violation of New York State Industrial Code Rule 56-level 3(includes sections 56-3.4a, 56-3.6a, 56-3.6b, 56-3.6d, 56-3.6e, 56-4.7a, 56-4.7b, 56-4.7c, 56-4.8b, 56-4.9a, 56-5.1g, 56-7.2b, 56-7.2o, 56-7.10a, 56-7.10b, 56-7.11g, 56-8.1b, 56-8.2d, 56-8.2f, 56-8.6a, 56-8.6b, 56-8.7b, 56-8.7c, 56-8.7d, 56-8.7e, 56-8.7f, 56-8.7g, 56-8.7h, 56-8.7i, 56-8.8d, 56-8.8f, 56-8.8g, 56-8.8h, 56-8.9c, 56-8.9d, 56-8.9e, 56-8.9f, 56-8.9h, 56-8.9i, 56-9.1c, 56-9.1f, 56-9.1h, 56-9.3b, 56-10.2, 56-10.4, 56-11.3c, 56-11.5b)	1200	1000	2400	1500
	AIR CODE-STOP WORK ORDERS				
24-146.1(h)	Resumed work in violation of stop work order	4400	2750	8800	5500

HISTORICAL NOTE

Section extensively amended City Record Dec. 9, 2009 §§1-23, eff. Dec. 9, 2009 per City Record notice. [See Note 2]

Section repealed and reissued (former T15 §31-101) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Air Code-Stop Work Orders 24-146.1(h) added City Record June 20, 2005 §1, eff. July 20, 2005.

[See Note 1]

12 NYCRR Part 56 (3 entries) amended City Record Mar. 2, 2007 §5, eff. Apr. 1, 2007. [See §3-103

Note 2]

NOTE

1. Statement of Basis and Purpose in City Record June 20, 2005:

The Environmental Control Board is making the following revisions to the ECB Penalty Schedules: (1) After considering the many public comments received in connection with the hearing held on November 18, 2004, the Board is now including within the ECB Penalty Schedules set out in Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York the penalty schedules relating to general and food vendor violations, by adding a Food Vendor Administrative Code Penalty Schedule; a General Vendor Penalty Schedule; and also adding additional food-vendor related charges to the Health Code penalty schedule, and renaming that penalty schedule the Miscellaneous Food Vendor Violations Penalty Schedule. (2) The Board is repealing the previous Sewer Control Rules Penalty Schedule, and reenacting that Penalty Schedule, as a result of the enactment of an amendment to §24-524(f) of the NYC Administrative Code, which changes the permissible minimum and maximum civil penalties for sewer code charges, and as a result of the NYC DEP Policy on Incentives for Business to Comply with Regulations Governing Discharges to Public Sewers, which encourages the voluntary disclosure of violations in exchange for a reduction or elimination of the penalty. (3) In the Air Code Penalty Schedule, the Board is revising the penalties for violation of Administrative Code §24-163 (idling of motor vehicle) and the definition of second and third offense applicable to §24-163, as a result of the enactment of an amendment to Administrative Code §24-178(b), which changes the penalty structure for such violations. (4) In the Air Code Penalty Schedule, the Board is adding a penalty for miscellaneous violations of NYC Administrative Code, Title 24, Ch. 1. (5) In the Health Code Lead Abatement Penalty Schedule, the Board is adding an explanatory note clarifying that the Penalty Schedule applies to previously-issued lead-abatement Notices of Violation, citing §173.14 of the Health Code. (6) In the Air Asbestos Penalty Schedule, the Board is adding a penalty for violation of Administrative Code §24-146(h), pertaining to air asbestos stop-work orders. (7) At the request of the Fire Department, the Board is clarifying the definition of second and subsequent violations in the Fire Penalty Schedule. (8) In the Buildings Penalty Schedule, the Board is adding a penalty for violation of Administrative Code §27-981.2 (failure to provide and install an approved operational carbon monoxide detecting device) as a result of the enactment of an amendment to the Administrative Code adding §§27-981.1 through 27-981.3 pertaining to carbon monoxide detecting devices.

2. Statement of Basis and Purpose in City Record Dec. 9, 2009: The Environmental Control Board (ECB) held a Public Hearing on various amendments to the Air Asbestos Penalty Schedule found in §3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented. In the fall of 2007, Mayor Bloomberg convened the Construction, Demolition and Abatement Working Group, consisting of the Department of Environmental Protection, the Department of Buildings, the Fire Department, the Mayor's Office of Operations, and the Law Department. The Working Group was created in the aftermath of the August 18, 2007 fire at the Deutsche Bank building in lower Manhattan, which killed two New York City firefighters. The building, which had been damaged on 9/11, was undergoing asbestos abatement at the time of the fire, and the containment structures erected as part of the abatement, combined with the smoky conditions caused by the fire, caused the firefighters to become disoriented and interfered with rescue efforts. In light of these events, the Working Group was assigned to make recommendations to improve the safety of construction, demolition and abatement operations for workers, first responders and the general public. The Working Group identified 28 issues and developed 33

recommendations which were summarized in a July 2008 report to the Mayor entitled "Strengthening the Safety, Oversight and Coordination of Construction, Demolition and Abatement Operations". As a result of the Report, new provisions were added to the Air Pollution Control Code, requiring changes to the existing DEP Asbestos Rules found in Title 15, Chapter 1 of the Rules of the City of New York and the Environmental Control Board (ECB) Penalty Schedule found in §3-101, Subchapter G of Title 48 of the Rules of the City of New York entitled Air Asbestos Penalty Schedule. In addition, numerous changes were needed in order to conform the Rules and this Penalty Schedule to the New York State Department of Labor rules (Industrial Code Rule 56), which were extensively revised in 2006. The updates to the DEP rules were initially published in the City Record on July 30, 2009. After the required public hearing, final publication took place on September 11, 2009. The revised DEP Rules will become effective on November 13, 2009. In light of the new emphasis on building, fire and life-safety issues, the amount of the penalty for each charge was based on a determination as to the severity of an infraction in its effect on either (1) risk of exposure of any person to asbestos fibers or (2) risk of creation of building, fire or life-safety hazards. The most significant changes to the penalty schedule track the changes in the Air Asbestos rules. These changes are: **Permitting Requirements and Recordkeeping**: Subchapter C, which governs asbestos-related notifications, has been extensively revised. Asbestos projects which pose the greatest public-safety risks will now require an asbestos abatement permit, to be issued by DEP after approval of a Work Place Safety Plan, prepared by an engineer or architect, which addresses building and fire safety issues. Section 1-26 is the new permitting section. The penalties for failing to obtain a permit when required (§ 1-26(a)) and failing to terminate a permit within one year of issuance (§ 1-26(e)) are set at $4800, as these sections constitute the basic requirements of the new permitting scheme. The penalties for these changes appear in §4 of the proposed rule set forth above. Section 1-29 has been added to conform to NYS Department of Labor rules. This section requires the long-term maintenance of records related to the project. The penalties for these charges appear in §5 of the proposed rule and are set at the lowest level. **Egress**: The Rules contain new provisions requiring that egress be maintained during abatement work. The penalties for these changes appear in §10 of the proposed rule. The rules also require daily checks and the recording of egress conditions in the project log book. The penalties for these changes appear in §5 of the proposed rule. **Fire Safety**: The new penalty schedule encompasses changes to rules that strengthen the prohibition on smoking at abatement sites, require the use of fire-retardant plastic and fire-rated wood in the construction of containment structures, require the posting of a floor plan in the lobby and no smoking signs in the work place, and require that on certain projects a central cut-off switch be installed so that first responders can shut down negative air pressure units. New subsections of §1-61, sub-section (j), related to the use of carcinogenic or toxic substances, and (k), related to the use of fire-safe materials, are assigned high-level penalties due to the hazards presented by these infractions. Section 1-81 now contains several new work place preparation requirements related to fire-safety and egress issues. High-level penalties are proposed for §§ 1-81(o)(4-5) and 1-81(t), which relate to the maintenance of unobstructed means of egress. A high-level penalty is proposed for new § 1-91(f), which requires installation of a central cutoff switch for negative air machines on some projects; this was an important recommendation of the Working Group. The penalties for these changes appear in §§9, 10 and 13 of the proposed rule. **Air Monitoring**: Requirements relating to air monitoring have been changed to conform to New York State provisions. The penalties for these changes appear in §§2, 6, 7, and 8 of the proposed rule. **Small Projects**: All rules related to work place preparation and decontamination units now apply to all asbestos projects, not just large projects as under the existing Rules. The penalties for these changes appear in §11 of the proposed rule. **Special Procedures**: Four new sections have been added establishing special procedures for the removal of asbestos-containing roofing, flooring, and siding, as well as for controlled demolition of buildings with asbestos in place. In the past, these types of abatements were usually performed pursuant to standardized variances, and the new Rules for these procedures are based on the variance conditions which have been developed over the years. Most infractions under these new sections are assigned low-level penalties, as the asbestos materials involved are less likely to emit fibers when disturbed. The penalties for these changes appear in §17 of the proposed rule. There are few significant deletions from the existing penalty schedule. A few subsections and one entire section (1-127) have been deleted as part of the Rules revision, in order to conform to the NYS Department of Labor Rules. Finding of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of a Final Environmental Control Board rule that makes numerous amendments to the Air Asbestos Penalty Schedule, including penalties for the new Rules

which have been promulgated to enhance the safety of asbestos abatement projects for workers, first responders, and the general public. The Air Asbestos Penalty Schedule is found at §3-101 of Title 48 of the Rules of the City of New York. After the fire at the Deutsche Bank building that killed two firefighters in August 2007, Deputy Mayor Edward Skyler convened a Construction, Demolition & Abatement Working Group to recommend changes to strengthen the City's oversight and coordinated regulation of asbestos abatement operations. In July 2008 the Working Group recommended numerous changes to the DEP Asbestos Rules, 15 RCNY Chapter 1. As a result, extensive revisions to the DEP Asbestos Rules were promulgated and became effective on November 13, 2009. These revisions include a permitting requirement for many asbestos projects, the use of fire-retardant materials in the construction of enclosures, and the maintenance of proper egress at abatement sites. It is critical that DEP be able to fully enforce these new Rules as soon as possible. Since the new Rules are already in effect, it is important that the penalty schedule for these Rules be implemented upon publication of the Final Rule in the City Record, instead of waiting for the 30-day publication period to elapse. This will speed the Environmental Control Board's ability to adjudicate Notices of Violations issued under the Department of Environmental Protection's new Rules.

FOOTNOTES

6

[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is

November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a

civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004

147 of 198 DOCUMENTS

Rules of the City of New York

***** Current through December 2009 ****

48 RCNY 3-102

RULES OF THE CITY OF NEW YORK

Title 48 Office of Administrative Trials and Hearings (OATH)

CHAPTER 3*6 ENFORCEMENT PROCEDURES BEFORE THE ENVIRONMENTAL CONTROL BOARD

SUBCHAPTER G*7 PENALTIES

§3-102 Air Code Penalty Schedule.

AIR CODE

PENALTY SCHEDULE

Unless otherwise indicated all citations are to the NYC Administrative Code.

* Civil penalty if facility in compliance and not in default at time of hearing and facility is eligible for registration under 24-109(b) or 24-109(b)(4).

"Offense" is abbreviated "OFF." "Stipulation" is abbreviated "STIP." "Default" is abbreviated "DEF."

Except in connection with violations of §24-163, a second offense is a violation by the same respondent within two years of the prior violation, at the same premises (if premises-related), and involving the same equipment. The prior violation may have been for any section of the Air Code. In connection with violations of §24-163, a second or third or subsequent offense is a violation by the same respondent within two years of the prior violation(s) and involving the same equipment, where the prior violation(s) were for a violation of §24-163.

Schedules E , F and G are set forth as tables at the end of this section.

Section	Description	1stOff.	1stStip.	2nd/3d &Subsq.Off.	2nd/3d &Subsq.Stip.	Default

24-108(f)	Location of key to boiler room not posted or no key on premises	350	350	545	545	875
24-109(b)(1)	Spraying insulation material w/o registration.	1,040	1,040	1,615	1,615	2,600
24-109(b)(2)	Building demolition w/o registration	1,040	1,040	1,615	1,615	2,600
24-109(b)(3)	Unregistered fuel burning equipment-#4 or #6 oil.	560*(300)	560	870	870	1,400
24-109(b)(4)	Unregistered fuel burning equipment -#2 oil or natural gas	700*(350)	700	1,085	1,085	1,750
24-109(f)	Operating emission source with expired registration	350	350	545	545	875
24-111	Interference/obstruction of DEP personnel	700	700	1,085	1,085	1,750
24-112	Making/filing false or misleading statements/documents	700	No	1,085	No	1,750
24-113(a)	Permits, certificate, or registration not displayed	120	120	185	185	300
24-113(c)	No display of notice required for equipment using residual oil	120	120	185	185	300
24-117	Unauthorized discontinuance of refuse burning equipment	350	350	545	No	875
24-118	Installation of refuse burning equip. non-municipal, greater than 25sq. ft.	8,000	No	12,400	No	20,000
24-118	Installation of refuse burning equip. non-municipal, less than 25sq. ft	2,400	No	3,720	No	6,000
24-119(a)	Failure to provide refuse compactor	1,600	No	2,480	No	4,000
24-120	Equipment installed/altered w/out work permit	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	No	Sch.E, F, G
24-122(b)(1)	Operating fuel burning equipment w/out an operating certificate	Sch. E	Sch. E	Sch. E	No	Sch. E
24-122(b)(2)	Operating manufacturing equipment w/out an operating certificate	Sch. F	Sch. F	Sch. F	No	Sch. F
24-122(b)(3)	Operating portable powered equipment w/out an operating certificate	Sch. E	Sch. E	Sch. E	No	Sch. E
24-122(b)(4)	Operating refuse burning equipment w/out an operating certificate	Sch G	Sch. G	Sch. G	No	Sch. G
24-122(b)(5)	Operating equipment w/out required operating certificate	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	No	Sch.E, F, G
24-123(e)	Operating w/out renewal of expired operating certificate	350	350	545	No	875
24-141	Emission of air contaminant equipment requiring O.C. or registration	Sch E, F, G*(350)	Sch.E, F, G	Sch. E, F, G	Sch.E, F, G	Sch.E, F, G
24-141	Emission of air contaminant from unregulated source	400	400	620	620	1,000
24-142(a)	Emission of air contaminant (smoke)	Sch E, F,	Sch.E, F, G	Sch. E, F, G	Sch.E, F, G	Sch.E, F, G

		G*(350)				
24-142	Emission of air contaminant from unregulated equipment	350	350	545	545	875
24-143	Emission of air contaminant from motor vehicle (Diesel)	350	350	545	545	875
24-144	Emission of sulphur compounds	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-145	Emission of particulates from refuse or fuel burning equipment	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-146(a)	Particulate matter allowed to become airborne	700	700	1,085	1,085	1,750
24-146(b)	Asbestos spraying w/out permit	4,800	No	7,440	No	12,000
24-146(c)	Particulate emissions from construction activity	700	700	1,085	1,085	1,750
24-146(d)	Particulate emissions from untreated open areas	560	560	870	870	1,400
24-146(e)	Spraying of insulation material w/o proper required precaution	700	700	870	870	1,750
24-146(f)	Failure to take required precautions during demolition	1,200	1,200	1,860	1,860	3,000
24-147	Emission of air contaminant nitrogen oxides from boiler	1,400	1,400	2,170	2,170	3,500
24-148	Sale or use of photo-chemical solvents	1,050	1,050	1,630	1,630	2,625
24-149	Caused or permitted air contaminant from open fire	350	350	545	545	875
24-150	Smoking in elevator/failure to post no smoking sign	200	200	310	310	500
24-151	Concealing or masking of air contaminant emission	1,400	1,400	2,170	2,170	3,500
24-153	Air contaminant emission exceeding environmental rating	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-154	Failure to file environmental rating report	350	350	545	545	875
24-155	Improper maintenance of equipment requiring O.C. or registration	Sch E, F, G*(350)	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-155	Failure to maintain unregulated equipment	350	350	545	545	875
24-156	Use of equipment w/out required apparatus	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-159	Use of burning equipment by person w/out a certificate of fitness	350	350	545	545	875
24-160	No air contaminant recorder for boiler	Sch E	Sch E	Sch E	Sch E	Sch E
24-161	Operating fuel burning equipment w/out certificate of instruction	350	350	545	545	875
24-162(a)	Operating Refuse burning equipment at unauthorized times	Sch G	Sch G	Sch G	Sch G	Sch G
24-162(c)	Operation of discontinued refuse	Sch G	Sch G	Sch G	Sch G	Sch G

	burning equipment					
24-163	Idling of Diesel Motor Vehicle engine over three minutes	350	350	2nd Off.:545 3rd & sub-sq.Off: 740	2nd Off.:545 3rd & sub-sq.Off: 740	1st Off: 1,0002nd Off: 1,5003rd & subsq.Off: 2,000
24-163(f)	Idling of Motor Vehicle engine over one minute while adjacent to school (Diesel)	350	350	2nd Off.:545 3rd & subsq. Off.:740	2nd Off.:545 3rd & subsq. Off.:740	1st Off:1,0002nd Off.:1,5003rd & subsq. Off.:2,000
24-164	Operating soot blower of vessel in city waters	700	700	1,085	1,085	1,750
24-165	Failure to use air contaminant detector/recording as required	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-166	Use of inadequate combustion shut-off device	350	350	545	545	875
24-167	Improper use of equipment or apparatus	350	350	545	545	875
24-168	Use of improper fuel in fuel burning equipment	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-169(c)	Use/purchase, for regulated equipment, of fuel with excess sulphur	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-169	Use/purchase, for unregulated equipment of fuel with excess sulphur	350	350	545	545	875
24-169	Sale, offer, storage or transport of fuel with excess sulphur content	2,400	2,400	3,720	3,720	6,000
24-173	Improper use of solid fuel in fuel burning equipment	Sch E	Sch E	Sch E	Sch E	Sch E
24-174(a)	Sale, offer, transport or storage of gasoline with excessive lead content	1,060	1,060	1,645	1,645	2,650
24-174(b)	Use or purchase of gasoline with excessive lead content	350	350	545	545	875
24-175(a)	Sale, offer, store, transport or storage of gasoline exceeding volatility limits	1,060	1,060	1,645	1,645	2,650
24-175	Use or purchase of gasoline exceeding volatility limits	350	350	545	545	875
24-176	Failure to report shipment of fuel to NYC as required	350	350	545	545	875
24-178(b)(8)	Breaking a Board ordered seal	1,600	1,600	2,480	No	4,000
24-122(a)	Use or operation of equipment w/ out an operating certificate	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G	Sch.E, F, G
24-131	Failure to comply with conditions of certificate or permit	350	350	545	545	875
24-170	Failure to supply fuel supply information to the Commissioner	350	350	545	545	875

24-172	Excess volatile matter (by weight) in boiler fuel	350	350	545	545	875
24-177(a)	Fail to have required statement on fuel information ticket	350	350	545	545	875
24-177(b)	Failure to retain fuel information tickets by shipper	350	350	545	545	875
24-177(c)	Failure to retain fuel records for one year	350	350	545	545	875
24-131(c)	Failure to comply with Conditions of Certificate/Regulation of operation or Permit	265	265	400	400	875
24-143	Emission of Air contaminant from vehicle (non-diesel fuel)	300	300	460	460	875
24-163	Idling of Motor Vehicle Engine over three minutes (non-diesel fuel)	300	300	2nd Off.:460 3rd & sub-sq.Off: 620	2nd Off.:460 3rd & sub-sq.Off: 620	1st Off: 1,0002nd Off: 1,5003rd & subsq.Off: 2,000
24-163(f)	Idling of Motor Vehicle engine over one minute while adjacent to school (Non-diesel)	300	300	2nd Off.:460 3rd & subsq. Off.:620	2nd Off.:460 3rd & subsq. Off.:620	1st Off:1,0002nd Off.:1,5003rd & subsq. Off.:2,000
24-163.3(b)(1) Compliance: Use low sulfur fuel in non-road vehicle forthwith	Failed to use ultra low sulfur diesel fuel in nonroad vehicle (aggravated penalty for excess profit)	1,000 (plus agg. pen for excess profit)	No	5,000 (Plus agg. pen for excess profit)	No	10,000
24-163.3(b)(2) Compliance: Use best available technology forthwith	Failed to use best available technology for emission reduction in nonroad vehicle	1,000	1,000	5,000	5,000	10,000
24-163.3(b)(2) Compliance: Use best available technology forthwith	Failed to use best available technology for emission reduction in nonroad vehicle (aggravated penalty for excess profit)	1,000 (plus agg. pen for excess profit)	No	5,000 (plus agg. pen for excess profit)	No	10,000
24-163.3(o)	Made false claim regarding compliance with emission reduction requirements for diesel nonroad vehicles	20,000	20,000	20,000	20,000	20,000
24-163.3(o)	Made false claim regarding compliance with emission reduction requirements for diesel nonroad vehicles (aggravated penalty for excess profit)	20,000 (plus agg. pen for excess	No	20,000 (plus agg. pen for excess	No	25,000

		profit)		profit)		
24-163.8(b)(1)	Failed to use ultra low sulfur diesel fuel in generator for Film/ TV/Ad/Street Fair	500	500	2nd Off:500 3rd & subsq. Off:500	2nd Off:500 3rd & subsq. Off:500	1st Off:5002nd Off.:5003rd & subsq. Off:500
24-163.8(c)	Made false claim regarding use of ultra low sulfur diesel fuel in generator	500	No	2nd Off:500	2nd Off:No	1st Off:5002nd Off:500
24-108(e)	Refused access to authorized DEP employee	350	350	545	545	875
24-117(j)	Failure to cease operation of refuse burning equipment	875	No	875	No	875
24-125(c)	Failure to comply with appropriate criteria referred to in this section VAPOR RECOVERY REGULATIONS	350	No	545	No	875
15 RCNY4-03(a)(1)	No Stage 1 Vapor Collection System at Gas dispensing site	350	350	545	545	875
15 RCNY4-03(a)(2)(3)	Fail to maintain Stage 1 Vapor Collection and control system	350	350	545	545	875
15 RCNY4-03(a)(2)(IV)	Fail to connect and operate vapor collection system loading and unloading at site	350	350	545	545	875
15 RCNY4-03(a)(3)	No Stage 1 Vapor Recovery System Capacity at least 250 gallons	350	350	545	545	875
15 RCNY4-03(b)	No certificate of registration for gasoline dispensing site	350	350	545	545	875
15 RCNY4-04(a)(3)	No NYSDEC date for pressure test on gasoline transporting vehicle	350	350	545	545	875
15 RCNY4-04(c)	Fail to keep dome covers closed on gas transport vehicle	350	350	545	545	875
15 RCNY4-04(d)(1)	No Stage 1 Vapor collect/control system on gasoline transport vehicle	350	350	545	545	875
15 RCNY4-04(d)(2)	Fail to provide adequate training for operator of gasoline transport vehicle	350	350	545	545	875
15 RCNY4-04(d)(3)	Failure to maintain Stage 1 vapor collection/control system on gas transport vehicle	350	350	545	545	875
15 RCNY4-04(d)(4)	Failure to connect/operate vapor collection/control system on gas transport vehicle	350	350	545	545	875
15 RCNY4-05	Failure to control visible leaks from vehicle vapor collection/control system PERCHLOROETHYLENE DRY CLEANING FACILITIES	350	350	545	545	875

15 RCNY 12-04(a)	Installation of perc dry cleaning machine in residential building after 7/13/06	750	No	875	No	875
15 RCNY 12-04(b)	Failure to eliminate perc use in specified machines by 7/13/09	750	No	875	No	875
15 RCNY12-05(a)	Failure to install vapor barrier or room enclosure and general exhaust ventilation	750	No	No	875	875
15 RCNY12-06(a)	Improper vapor barrier or room enclosure and general exhaust ventilation	750	750	875	No	875
15 RCNY 12-06(a)(4)(i)	Improper process emission point location	750	No	875	No	875
15 RCNY 12-06(a)(4)(iii)	Process emissions greater than 20 ppm	750	750	875	No	875
15 RCNY 12-06(a)(4)(iv)	Failure to properly operate exhaust damper	750	750	875	No	875
15 RCNY 12-06(a)(5),(6)	Failure to have proper emission control systems	750	No	875	No	875
15 RCNY12-06(b)	Failure to remove equipment from service	750	No	875	No	875
15 RCNY12-06(b)	Failure to properly replace, retrofit, or convert equipment	750	No	875	No	875
15 RCNY12-06(b)	Fugitive emission greater than 50 ppm	750	No	875	No	875
15 RCNY12-07(a),(b)	Failure to inspect or self-monitor	750	750	875	No	875
15 RCNY12-07(g)	Failure to repair leak w/in 24 hrs.	750	750	875	No	875
15 RCNY12-08	Failure to comply with O&M requirements	750	750	875	No	875
15 RCNY12-08(d)(7)	Failure to have proper spill control equipment	750	750	875	No	875
15 RCNY12-08(d)(8)	Failure to keep solvent containers closed	750	750	875	No	875
15 RCNY12-10	Failure to properly manage hazardous waste	750	750	875	No	875
15 RCNY12-11(a)	Failure to seal floor drains	750	750	875	No	875
15 RCNY12-11(b)	Failure to install proper spill containment system	750	750	875	No	875
15 RCNY12-11(c)	Failure to report release, fire or explosion	750	750	875	No	875
15 RCNY12-11(d)	Failure to record emergency response actions	400	400	500	No	875
15 RCNY12-12	Failure to maintain proper records	400	400	500	No	875
15 RCNY12-13	Installation of uncertified equip-	750	750	875	No	875

	ment					
15 RCNY12-14(a)(1)	Failure to have owner or manager certification	750	750	875	No	875
15 RCNY12-14(a)(2)	Failure to have operator certification	750	750	875	No	875
15 RCNY 12-14(e)	Failure to attend required DEC training and hold valid DEC certificate	750	750	875	No	875
15 RCNY12-15(a)	Failure to submit notice of alteration or modifications	400	400	500	No	875
15 RCNY12-15(b)	Failure to have work permit or operating certificate	750	750	875	No	875
15 RCNY12-16	Failure to have 3d. Party inspection	750	750	875	No	875
15 RCNY12-18	Failure to post public notice in conspicuous location	400	400	500	No	875
15 RCNY 12	Violation of perc dry cleaner rules	750	No	875	No	875
	CONSTRUCTION DUST RULES					
15 RCNY 13-01(d)	No access to inspect site	700	700	1085	1085	1750
15 RCNY 13-01(e)	Interference w/DEP employee	700	700	1085	1085	1750
15 RCNY 13-04(a)	Failed to control release of dust from construction by wetting or other acceptable means	1000	1000	1500	1500	1750
15 RCNY 13-04(b)	Failed to cover trucks used to transport particulate matter	1000	1000	1500	1500	1750
15 RCNY 13-04(c)	Failed to provide adequate water to perform wet method of dust control	1000	1000	1500	1500	1750
15 RCNY 13-04(e)	Failed to provide suitable drainage for water and sludge	800	800	1200	1200	1750
15 RCNY 13-05(a)	Failed to wet (& maintain wet) all exterior building surfaces prior to & during demolition	1000	1000	1500	1500	1750
15 RCNY 13-05(b)	Failed to wet and/or cover construction materials before & during loading and transport	1000	1000	1500	1500	1750
15 RCNY 13-05(c)	Failed to use wetting to control dust during drilling, griding or other similar construction activities	1000	1000	1500	1500	1750
15 RCNY 13-05(d)	Failed to control dust produced at transfer points	800	800	1200	1200	1750
15 RCNY 13-05(e)	Failed to have sprinklers at transfer points capable of being operated by person responsible for loading	800	800	1200	1200	1750
15 RCNY 13-05(f)	Failed to moisten soil or debris piles to prevent windblown dust	1000	1000	1500	1500	1750
15 RCNY 13-06(a)	Failed to properly remove debris during hand demolition	1000	1000	1500	1500	1750

15 RCNY 13-06(b)	Failed to board up windows to prevent dust emission during renovation	800	800	1200	1200	1750
15 RCNY 13-06(c)	Failed to suppress dust during sandblasting	800	800	1200	1200	1750
15 RCNY 13-06(d)	Failed to cover trucks used to transport dust-producing materials	1000	1000	1500	1500	1750
15 RCNY 13-06(e)	Failed to remove earth or other materials daily	800	800	1200	1200	1750
15 RCNY 13-06(g)	Used blowers for mud or dirt removal	800	800	1200	1200	1750
15 RCNY 13-06(h)	Failed to operate construction vehicles slowly to minimize dust emissions	800	800	1200	1200	1750
15 RCNY 13-06(i)	Failed to properly stabilize disturbed areas	800	800	1200	1200	1750
15 RCNY 13-07(b)	Failed to wet adequately before and during demolition	1000	1000	1500	1500	3000
15 RCNY 13-07(c)	Failed to use chutes/buckets to transport debris	1000	1000	1500	1500	3000
15 RCNY 13-07(d)	Failed to remove dust/debris daily from adjacent areas	800	800	1200	1200	3000
15 RCNY 13-08(a)	Performed dry sandblasting	800	800	1200	1200	1750
15 RCNY 13-08(b)	Failed to use containment during sandblasting	800	800	1200	1200	1750
15 RCNY 13-08(c)	Failed to use curtains during sandblasting	800	800	1200	1200	1750
15 RCNY 13-08(d)	Failed to give required advance notice of sandblasting	800	800	1200	1200	1750
15 RCNY 13-09	Failed to register dust-emitting construction equipment with DEP	875	875	1315	1315	1750
15 RCNY 13-10	Failed to prevent dust emission from open areas after demolition	800	800	1200	1200	1750
NYC Admin. Code. Title 24, Ch. 1	Misc. Violation of Air Pollution Control Code	350	350	545	545	875

This schedule is to be used with the Air Code Penalty Schedule

SCHEDULE E-PENALTIES FOR FUEL BURNING EQUIPMENT
Gross Input or Designed Fuel Consumption of Equipment in Million of BTU/Hr

Civil Penalties				
#4 or #6 Fuel Oil and Solid Fuels	Gasoline, #2 Fuel Oil and Nat. Gas	1st. Viol./Stip.	2nd Viol./Stip	Max

Less than 2.8	Less than 2.8	560	870	1,400
2.8 to less than 2.1	2.8 to less than 50	720	1,115	1,800
21 to less than 42	50 or greater	1,200	1,860	3,000
42 or greater		1,600	2,480	4,000

SCHEDULE F-PENALTIES FOR OTHER THAN FUEL OR REFUSE

BURNING EQUIPMENT

Emission Rate in cubic feet per minute	Civil Penalties Based on Environmental Ratings as Contained inSection 24-153		
	Env. Rating A		
	1st Viol./ Stip	2nd Viol./Stip.	Max
Less than 5,000	2,400	3,720	6,000
5,000 to less than 20,000	3,200	4,960	8,000
20,000 or greater	4,800	7,440	12,000
	Env. Rating B		
	1st Viol. /Stip.	2nd Viol./ Stip	Max
Less than 5,000	1,600	2,480	4,000
5,000 to less than 20,000	2,400	3,720	6,000
20,000 or greater	3,200	4,960	8,000
	Env. Rating C		
	1st Viol./Stip.	2nd Viol./Stip.	Max
Less than 5,000	1,200	1,860	3,000
5,000 to less than 20,000	1,600	2,480	4,000
20,000 or greater	2,400	3,720	6,000
	Env. Rating D		
	1st Viol./ Stip	2nd Viol./Stip	Max
Less than 5,000	800	1,240	2,000
5,000 to less than 20,000	1,200	1,860	3,000
20,000 or greater	2,000	3,100	5,000

SCHEDULE G-PENALTIES FOR REFUSE BURNING EQUIPMENT

Maximum Horizontal inside Cross Sectional Area of Primary Combustion Chamber in Square Feet	Civil Penalties		
	1st Viol./Stip	2nd Viol./Stip	Max.
25 or less	640	995	1,600
25-40	800	1,240	2,000
Above 40	1,200	1,860	3,000

HISTORICAL NOTE

Section repealed and reissued (former T15 §31-102) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. [See Chapter 3 footnote]

Section added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. [See Subchapter G footnote]

Fourth undesignated paragraph amended City Record June 20, 2005 §2, eff. July 20, 2005. [See T48 §3-101 Note

1]

Table column headers amended City Record June 20, 2005 §3, eff. July 20, 2005. [See T48

§3-101 Note 1]

Table 24-163 Idling of Diesel Motor Vehicle engine over three minutes amended City Record June 20, 2005 §4, eff. July 20, 2005. [See T48 §3-101 Note 1]

Table 24-163 Idling of Motor Vehicle engine over three minutes (non-diesel fuel) amended City Record June 20, 2005 §3, eff. July 20, 2005. [See T48 §3-101 Note 1]

Table §24-163(f) Idling . . . (Diesel) added City Record Aug. 17, 2009 §1, eff. Sept. 16, 2009. [See Note 1]

Table §24-163(f) Idling . . . (Non-Diesel) added City Record Aug. 17, 2009 §2, eff. Sept. 16, 2009. [See Note 1]

Table 24-163.3(b)(1) added City Record Mar. 2, 2007 §4, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 24-163.3(b)(1) added City Record Mar. 2, 2007 §4, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 24-163.3(b)(2) added City Record Mar. 2, 2007 §4, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 24-163.3(b)(2) added City Record Mar. 2, 2007 §4, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 24-163.3(o) added City Record Mar. 2, 2007 §4, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table 24-163.3(o) added City Record Mar. 2, 2007 §4, eff. Apr. 1, 2007. [See §3-103 Note 2]

Table §24-163.8(b)(1) Failed . . . Fair added City Record Aug. 17, 2009 §3, eff. Sept. 16, 2009. [See Note 1]

Table §24-163.8(c) Made . . . generator added City Record Aug. 17, 2009 §3, eff. Sept. 16, 2009. [See Note 1]

Table Perchloroethyene Dry Cleaning Facilities

15 RCNY 12-04(a) added City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010

[See Note 2]

15 RCNY 12-04(b) added City Record Dec. 24, 2009 §1, eff. Jan. 23, 2010

[See Note 2]

15 RCNY 12-14(e) added City Record Dec. 24, 2009 §2, eff. Jan. 23, 2010

[See Note 2]

15 RCNY 12 amended City Record Dec. 24, 2009 §3, eff. Jan. 23, 2010

[See Note 2]

Table Perchloroethylene Dry Cleaning Facilities/NYC Admin. Code . . . 875 added City

Record June 20, 2005 §6, eff. July 20, 2005. [See T48 §3-101 Note 1]

Table Construction Dust Rules 15 RCNY 13-01(d) . . . 15 RCNY 13-10 (29 entries) added City Record Aug. 17,

2009 §4, eff. Sept. 16, 2009. [See Note 1]

NOTE

1. Statement of Basis and Purpose in City Record Aug. 17, 2009:

The Environmental Control Board (ECB) held a Public Hearing on August 6, 2009 on various amendments to the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented.

In sections 1 and 2 of the rule, the Board has revised the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add two new charges for violations of §24-163(f), Idling of Motor Vehicle engine over one minute while adjacent to school (Diesel) and Idling of Motor Vehicle over one minute while adjacent to school (Non-diesel). These charges were added to that Penalty Schedule in light of the enactment of Local Law 5 of 2009. This new law amends §24-163 of the New York City Administrative Code in relation to engine idling by adding new subdivisions (f) and (g).

Section 24-163(f) provides that the allowable idling time is reduced from three minutes to one minute if the motor vehicle in question is "adjacent" to a school. "Adjacent" is defined in Chapter 39 of the rules of the City of New York, §39-02 entitled "Engine idling adjacent to any public or non-public school: "Adjacent shall mean on each and every street on which a school is located and has entrances/exits to such street. School shall include any building or structure, playground, athletic field or other property that is part of the school."

An exception is made for school buses to allow idling for mechanical work, to maintain a comfortable temperature for passengers or to operate wheel chair lifts. A defense is provided where the school was not readily identifiable as such. The penalties set forth are the same as those for the existing three-minute prohibition set forth in §24-163(a) of the New York City Administrative Code.

In §3, the Board has revised the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by adding two new charges in light of the enactment of Local Law 16 of 2009 that amends the Administrative Code of the City of New York to add a new §24-163.8, in relation to the use of ultra low sulfur diesel fuel in diesel-powered generators used in the production of films, television programs and advertisements, and at street fairs in New York City. The first charge is for a violation of §24-163.8(b)(1), "Failed to use ultra low sulfur diesel fuel in generator for Film/TV/Ad/Street Fair." The second charge is for a violation of 24-163.8(c) "Made false claim regarding use of ultra low sulfur diesel fuel in generator." These charges have been added to that Penalty Schedule.

Section 24-163.8 provides that diesel-powered generators used to provide electricity for film, television or advertising productions or at street fairs must use ultra low sulfur diesel fuel. The provision applies to all productions or street fairs that require a permit from a city agency. For Film, TV and advertising productions, the Mayor's Office of Film, Theater and Broadcasting is required to issue a notice to the production company advising it of the new requirement. For street fairs, the Street Activity Permit Office is required to notify all applicants for street fair permits of the new requirement. The charging subdivision is (b)(1). In addition, under subdivision (c), the making of a false claim to a city agency "with respect to the provision of this section" is a violation. Subdivision (c) provides for a $500 penalty for violating the section or for making a false claim to a city agency with respect to the section.

In §4, the Board has revised the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by adding twenty-nine new charges in response to the Department of Environmental Protection's (DEP) promulgation of Chapter 13 of Title 15 of the Rules of the City of New York (RCNY) pertaining to the prevention of the emission of dust from construction related activities.

Section 24-146 of the Air Pollution Control Code ("Preventing particulate matter from becoming airborne . . .")

authorizes the DEP Commissioner to promulgate rules regarding dust control during construction-related activities. Specifically, §24-146(c) states: "No person shall cause or permit a building or its appurtenances or a road to be constructed, altered or repaired without taking such precautions as may be ordered by the commissioner to prevent particulate matter from becoming airborne." Subdivision (f) further provides that dust control measures are to be taken during demolition, and specifies that walls are not to be toppled without DEP approval.

In response to numerous requests for more specific guidance regarding compliance with §24-146, DEP has promulgated "Rules pertaining to the prevention of the emission of dust from construction related activities", 15 RCNY Chapter 13. Section 24-178 of the Air Pollution Control Code sets forth a minimum penalty of $440 and a maximum penalty of $1750 for violations of §24-146(c), and a minimum penalty of $750 and a maximum penalty of $3000 for violations of §24-146(f). The penalty schedule for the Construction Dust Rules is based on a range of $440 to $1750 with the exception of violations issued under §13-07 of Title 15 of the RCNY ("Demolition"). Penalties for those violations range from $750 to $3000.

The penalty schedule for the Construction Dust Rules includes four penalty levels:

For violations of §§13-01(d) and 13-01(e), which deal with access to the site and interference with an inspector, the penalties are $700 for a first offense and $1085 for a second offense, to conform to the penalties set forth for analogous sections of the Air Code.

For §13-09, which deals with registration, the penalty is $875 for a first offense and $1315 for a second offense, to conform to the penalties set forth in the Air Code for failure to register.

For those infractions deemed to present the greatest impact on public health and comfort, a first offense penalty of $1000 and a second offense penalty of $1500 are established.

For those infractions deemed to pose a lesser hazard, a first offense penalty of $800 and a second offense penalty of $1200 are established.

2. Statement of Basis and Purpose in City Record Dec. 24, 2009: The Environmental Control Board (ECB) held a Public Hearing on November 19, 2009 on amendments to the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. Neither written comments nor oral testimony were presented. In §§1 and 2 of this final rule, the Board has revised the Air Code Penalty Schedule found in §3-102 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) by adding two new charges for violations of §15 RCNY 12-04 and one new charge for a violation of §15 RCNY 12-14(e) respectively. These charges are being added to ECB's Air Code Penalty Schedule in light of recently promulgated amendments to 15 RCNY Chapter 12, Rules Governing and Restricting the Use of Percholoroethylene (perc) at Dry Cleaning Facilities in the City of New York. Those amendments were promulgated by the Department of Environmental Protection (DEP) to reflect changes in the national emissions standards for perc. 15 RCNY 12-04(a) prohibits the installation of perc dry cleaning machinery in a residential building after July 13, 2006. 15 RCNY 12-04(b) requires that by July 13, 2009, the use of perc be eliminated from dry cleaning machinery that was installed in residential buildings between December 21, 2005 and July 13, 2006. 15 RCNY 12-14(e) requires dry cleaning owners and/or managers and all machine operators of perc dry cleaning machines to attend sixteen hours of training, to pass a state-administered test and to hold valid DEC Owner/Manager Certifications and/or Operator Certificates. The penalties for these new sections are in line with those currently in effect for most violations of the Perc Dry Cleaner Rules. In §3, the Board has revised the description of 15 RCNY 12 for violations of perc dry cleaner rules not specifically set out in this penalty schedule.

FOOTNOTES

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[Footnote 6]: ** Chapter 3 and §§3-11-3-126 repealed and reissued (former T15 Chapter 31 §§31-11-31-126) City Record Nov. 24, 2008 §1, eff. Nov. 24, 2008 per City Record notice. Note further provisions of City Record Nov. 24, 2008:

Statement of Basis and Purpose. The Environmental Control Board (ECB) has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and the penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York. Such Chapter 3 of Title 48 shall contain all subchapters previously contained in Chapter 31 of Title 15, and the prefix "3" shall replace the prefix "31" in the rule numbers of all rules contained in such Chapter 3 of Title 48.

No public hearing was held on this rule in light of the fact that, pursuant to §1043(d)(ii) of the NYC Charter, ECB determined that a public hearing would serve no public purpose. ECB made this determination because the proposed repeal of ECB's rules as found in Title 15 of the RCNY, and the proposed reissuance and re-numbering of ECB's rules in Title 48 of the RCNY, merely reflects a ministerial implementation of the statutory mandate of Local Law Number 35 that ECB and OATH be consolidated. No written comments were received regarding this rule.

ECB proposed this repeal and reissuance in view of the fact that as of November 23, 2008, ECB was consolidated with the Office of Administrative Trials and Hearings (OATH) by virtue of the enactment of Local Law Number 35 of 2008. Title 48 of the RCNY includes OATH's rules. In view of the fact that ECB is consolidated with OATH, ECB's rules are being reissued as a part of OATH's rules within Title 48.

ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a.

Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB became effective on November 23, 2008.

The reason for the reissuance of ECB's rules in Chapter 3, in particular, of Title 48, is because OATH, by a rule simultaneously promulgated with this rule, is re-numbering what was previously numbered Chapter 3 of Title 48 ("Fitness and Discipline Hearings for OATH Employees") as Chapter 4 of Title 48. This re-numbering is being done so that ECB's rules can be placed within Chapter 3, in order to ensure a logical ordering of rules within Title 48.

ECB is also simultaneously promulgating a separate rule to re-number various internal references within ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board." For example, internal references to §1404 of the City Charter will be re-numbered as §1049-a, in order to reflect the re-numbering of the City Charter provision effectuated by Local Law Number 35 of 2008.

ECB will also in the near future be proposing additional rules to implement substantive mandates of Local Law Number 35, including mandates pertaining to the provision of language assistance services to respondents, and to adjournments.

Finding of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the City Charter, and represent to the

Mayor, that there is a substantial need for the implementation, immediately upon its final publication in the City Record, of the new Environmental Control Board rule that has (i) repealed Chapter 31 of Title 15 of the Rules of the City of New York, relating to the rules of procedure and penalty schedules of the Environmental Control Board, entitled "Enforcement Procedures Before the Environmental Control Board," and (ii) reissued all rules contained in such chapter as Chapter 3 of Title 48 of the Rules of the City of New York, which includes the rules of the Office of Administrative Trials and Hearings (OATH).

This immediate implementation is essential in view of the fact that ECB is being consolidated into OATH pursuant to the provisions of Local Law Number 35 of 2008, which provides that "[t]here shall be in the office of administrative trials and hearings an environmental control board." To effect this consolidation, Local Law Number 35 amends City Charter §1404, which currently governs ECB, and re-numbers that Charter section as Charter §1049-a. Local Law Number 35 takes effect thirty days after its becoming law, or "as soon as practicable thereafter as a transfer of functions may be effectuated pursuant to subdivision 2 of §70 of the civil service law." The law was signed on August 12, 2008. The date on which a "transfer of functions" will have been effectuated is November 23, 2008. Accordingly, the consolidation of OATH and ECB becomes effective on November 23, 2008.

In view of the fact that the consolidation of ECB and OATH becomes effective on Sunday, November 23, 2008, the implementation of this rule upon publication is necessary to ensure that ECB's rules of procedure and penalty schedules, entitled "Enforcement Procedures Before the Environmental Control Board," are included within OATH's rules in Title 48 of the RCNY on November 24th, 2008, the date of final publication in the City Record.

Note: References to NYC Charter §1404 have been changes to §1049-a in all Statements of Basis and Purpose.

Chapter 3 subchapter headings amended City Record Mar. 2, 2007 §8, eff. Apr. 1, 2007. [See §3-103 Note 2] Chapter amended City Record Sept. 5, 1997 eff. Oct. 5, 1997. Note further provisions of City Record Sept. 5, 1997:

Statement of Basis and Purpose of Proposed Regulations: The Environmental Control Board (ECB), is a civil administrative tribunal charged with adjudicating many of the City's quality of life violations. ECB has the authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out its duties under Chapter 45-A, §1049-a of the New York City Charter. The chief purpose of the proposed regulations is to ensure the Enforcement Procedures before the Board are clear and concise to the majority of users. Since the adoption of the existing enforcement procedures many additional areas of jurisdiction have been delegated to the Board resulting in the issuance of thousands of additional violations returnable to ECB for the hearing. The Board's intention for those who utilize the tribunal is that any rules they may be required to follow be easily understood. It is anticipated the proposed revisions will guide the user from pre-hearing matters through adjudication to the appellate process in a simple, unambiguous fashion.
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[Footnote 7]: * Subchapter G schedule of sections amended City Record Jan. 26, 2006 §1, eff. Feb. 25, 2006. Subchapter G added City Record Dec. 23, 2004 §1, eff. Dec. 23, 2004. Note: Statement of Basis and Purpose of Final Rule. The New York City Charter and Administrative Code and other applicable provisions of law provide a range of possible penalties for the offenses adjudicated by the Environmental Control Board. The Board has determined, however, that the penalties it imposes should be uniform for comparably situated respondents. To achieve this purpose, the Board has developed a penalty schedule for its Hearing Officers ("administrative law judges") of its Tribunal. The Board has further concluded that this penalty schedule should be promulgated as a rule in accordance with the provisions of Charter Chapter 45, the City Administrative Procedure Act. Due to extensive comments and proposed revisions relating to penalties for general and food

vendors, the Board has determined that it will briefly defer rulemaking action on these penalties.

Statement of Substantial Need for Earlier Implementation I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and represent to the Mayor, that there is a substantial need for implementation immediately upon its final publication in the City Record, of the rule setting forth penalties for offenses adjudicated by the Environmental Control Board. The rule amends Chapter 31 of Title 15 of the Rules of the City of New York, by adding a new Subchapter G, including Sections 31-100 through and including 31-126.

Immediate implementation of such rule is necessary because the Board has determined that in order to ensure compliance with City Administrative Procedure Act, it is advisable to publish penalty tables for offenses adjudicated by the Environmental Control Board pursuant to City Administrative Procedure Act rule making requirements. The Board must be in a position as soon as possible to impose on violators the penalties specified in said tables.

Mark D. Hoffer

Acting Chairperson

Environmental Control Board

Approved: Michael R. Bloomberg, Mayor

Date: December 21, 2004